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CHAPTER 763

An act to amend Sections 121361 and 121362 of, and to add and repeal Section 121360.5 of, the Health and Safety Code, relating to communicable diseases.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

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

(1) Each year, approximately 3,000 Californians develop tuberculosis (TB). Tuberculosis is a contagious disease transmitted through the air by bacteria when a person with active tuberculosis disease coughs or sneezes, and another person breathes in the tuberculosis bacteria.

(2) For each reported case of active tuberculosis disease, public health officials identify 10 or more individuals who have been directly exposed to the disease and are at risk of developing latent tuberculosis infection. These individuals who have been exposed to the disease are at the highest risk of developing active tuberculosis disease soon after exposure. Finding and screening individuals who have been recently exposed to active tuberculosis disease, referred to as ''contact investigation,'' is essential in preventing outbreaks of tuberculosis in communities.

(3) Public health officials estimate that as many as 3.4 million Californians may now be infected (latent tuberculosis infection) with the bacteria that can cause active tuberculosis disease. If undetected and untreated, an estimated 5 to 10 percent of persons in California, or 170,000 to 340,000 people, with latent tuberculosis infection will, throughout the course of their lives, develop active tuberculosis disease, thus continuing the cycle of transmission.

(4) Because persons with latent tuberculosis infection have no symptoms, the only way to detect their infection is by a tuberculin skin test.

(5) Tuberculin skin tests may now be placed and measured only by certain licensed health professionals, which do not include public health tuberculosis workers who are not licensed health professionals, but who are employed by, or under contract with, a city or county health department.

(6) The National Institute of Medicine's report on tuberculosis clearly recommends increased efforts at contact investigation, targeted skin testing, and bringing under treatment those individuals with latent

tuberculosis infection in order to prevent the progression to active, transmissible, tuberculosis disease.

(b) It is the intent of the Legislature to enact legislation to permit any city or county health department to provide for certification, by the local health officer, of tuberculin skin test technicians, who are public health tuberculosis workers, and to authorize tuberculin skin test technicians to place and measure skin tests for tuberculosis for the local health department, in order to increase the number of persons qualified to administer tests and to thereby more effectively, and more cost-effectively, control the spread and contagion of this communicable disease.

SEC. 2. This act shall be known, and may be cited, as the Omnibus Tuberculosis Control and Prevention Act of 2002.

SEC. 3. Section 121360.5 is added to the Health and Safety Code, to read:

121360.5. (a) Any city or county health department may provide for one-year certification of tuberculin skin test technicians by local health officers.

(b) For purposes of this section, a ''certified tuberculin skin test technician'' is an unlicensed public health tuberculosis worker employed by, or under contract with, a local public health department, and who is certified by a local health officer to place and measure skin tests in the local health department's jurisdiction.

(c) A certified tuberculin skin test technician may perform the functions for which he or she is certified only if he or she meets all of the following requirements:

(1) The certified tuberculin skin test technician is working under the direction of the local health officer or the tuberculosis controller.

(2) The certified tuberculin skin test technician is working under the supervision of a licensed health professional.

(d) A certified tuberculin skin test technician may perform intradermal injections only for the purpose of placing a tuberculin skin test and measuring the test result.

(e) A certified tuberculin skin test technician may not be certified to interpret, and may not interpret, the results of a tuberculin skin test.

(f) In order to be certified as a tuberculin skin test technician by a local health officer, a person shall meet all of the following requirements, and provide to the local health officer appropriate documentation establishing that he or she has met those requirements:

(1) The person has a high school diploma, or its equivalent.

(2) The person has completed a standardized course approved by the California Tuberculosis Controllers Association (CTCA), which shall include at least 24 hours of instruction in all of the following areas: Didactic instruction on tuberculosis control principles and instruction on

the proper placement and measurement of tuberculin skin tests, equipment usage, basic infection control, universal precautions, and appropriate disposal of sharps, needles, and medical waste, client preparation and education, safety, communication, professional behavior, and the importance of confidentiality.

A certification of satisfactory completion of this CTCA-approved course shall be dated and signed by the local health officer, and shall contain the name and social security number of the tuberculin skin test technician, and the printed name, the jurisdiction, and the telephone number of the certifying local health officer.

(3) The person has completed practical instruction including placing at least 30 successful intradermal tuberculin skin tests, supervised by a licensed physician or registered nurse at the local health department, and 30 correct measurements of intradermal tuberculin skin tests, at least 15 of which are deemed positive by the licensed physician or registered nurse supervising the practical instruction. A certification of the satisfactory completion of this practical instruction shall be dated and signed by the licensed physician or registered nurse supervising the practical instruction.

(g) The certification may be renewed, and the local health department shall provide a certificate of renewal, if the certificate holder has completed inservice training, including all of the following:

(1) At least three hours of a CTCA-approved standardized training course to assure continued competency. This training shall include, but not be limited to, fundamental principles of tuberculin skin testing.

(2) Practical instruction, under the supervision of a licensed physician or registered nurse at the local health department, including the successful placement and correct measurement of 10 tuberculin skin tests, at least five of which are deemed positive by the licensed physician or registered nurse supervising the practical instruction.

(h) The local health officer or the tuberculosis controller may deny or revoke the certification of a tuberculin skin test technician if the local health officer or the tuberculosis controller finds that the technician is not in compliance with this section.

(i) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 4. Section 121361 of the Health and Safety Code is amended to read:

121361. (a) (1) A health facility, local detention facility, or state correctional institution shall not discharge or release any of the following persons unless subdivision (e) is complied with:

(A) A person known to have active tuberculosis disease.

(B) A person who the medical staff of the health facility or of the penal institution has reasonable grounds to believe has active tuberculosis disease.

(2) In addition, persons specified in this subdivision may be discharged from a health facility only after a written treatment plan described in Section 121362 is approved by a local health officer of the jurisdiction in which the health facility is located. Any treatment plan submitted for approval pursuant to this paragraph shall be reviewed by the local health officer within 24 hours of receipt of that plan.

(3) The approval requirement of paragraph (2) shall not apply to any transfer to a general acute care hospital when the transfer is due to an immediate need for a higher level of care, nor to any transfer from any health facility to a correctional institution. Transfers or discharges described in this paragraph shall occur only after the notification and treatment plan required by Section 121362 have been received by the local health officer.

(4) This subdivision shall not apply to any transfer within the state correctional system or to any interfacility transfer occurring within a local detention facility system.

(b) No health facility shall, without first complying with subdivision (e), transfer a person described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) to another health facility. This subdivision shall not apply to any transfer within the state correctional system or to any interfacility transfer occurring within a local detention facility system.

(c) No state correctional institution or local detention facility shall transfer a person described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) from a state to a local, or from a local to a state, penal institution unless notification and a written treatment plan are received by the chief medical officer of the penal institution receiving the person.

(d) No local detention facility shall transfer a person described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) to a local detention facility in another jurisdiction unless subdivision (e) is complied with and notification and a written treatment plan are received by the chief medical officer of the local detention facility receiving the person.

(e) (1) Any discharge, release, or transfer described in subdivisions (a), (b), (c), and (d) may occur only after notification and a written treatment plan pursuant to Section 121362 has been received by the local health officer. When prior notification would jeopardize the person's health, the public safety, or the safety and security of the penal institution, the notification and treatment plan shall be submitted within 24 hours of discharge, release, or transfer.

(2) When a person described in paragraph (1) of subdivision (a) is released on parole from a state correctional institution, the notification

and written treatment plan specified in this subdivision shall be provided to both the local health officer for the county in which the parolee intends to reside and the local health officer for the county in which the state correctional institution is located.

(3) Notwithstanding any other provision of law, the Department of Corrections shall inform the parole agent, and other parole officials as necessary, that the person described in paragraph (1) of subdivision (a) has active or suspected active tuberculosis disease and provide information regarding the need for evaluation or treatment. The parole agent and other parole officials shall coordinate with the local health officer in supervising the person's compliance with medical evaluation or treatment related to tuberculosis, and shall notify the local health officer if the person's parole is suspended as a result of having absconded from supervision.

(f) No health facility that declines to discharge, release, or transfer a person pursuant to this section shall be civilly or criminally liable or subject to administrative sanction therefor. This subdivision shall apply only if the health facility complies with this section and acts in good faith.

(g) Nothing in this section shall relieve a local health officer of any other duty imposed by this chapter.

SEC. 5. Section 121362 of the Health and Safety Code is amended to read:

121362. Each health care provider who treats a person for active tuberculosis disease, each person in charge of a health facility, or each person in charge of a clinic providing outpatient treatment for active tuberculosis disease shall promptly report to the local health officer at the times that the health officer requires, but no less frequently than when there are reasonable grounds to believe that a person has active tuberculosis disease, and when a person ceases treatment for tuberculosis disease. Situations in which the provider may conclude that the patient has ceased treatment include times when the patient fails to keep an appointment, relocates without transferring care, or discontinues care. The initial disease notification report shall include an individual treatment plan that includes the patient's name, address, date of birth, tuberculin skin test results, pertinent radiologic, microbiologic, and pathologic reports, whether final or pending, and any other information required by the local health officer. Subsequent reports shall provide updated clinical status and laboratory results, assessment of treatment adherence, name of current care provider if the patient transfers care, and any other information required by the local health officer. A facility discharge, release, or transfer report shall include all pertinent and updated information required by the local health officer not previously reported on any initial or subsequent report, and shall

specifically include a verified patient address, the name of the medical provider who has specifically agreed to provide medical care, clinical information used to assess the current infectious state, and any other information required by the local health officer. Each health care provider who treats a person with active tuberculosis disease, and each person in charge of a health facility or a clinic providing outpatient treatment for active tuberculosis disease, shall maintain written documentation of each patient's adherence to his or her individual treatment plan. Nothing in this section shall authorize the disclosure of test results for human immunodeficiency virus (HIV) unless authorized by Chapter 7 (commencing with Section 120975) of, Chapter 8 (commencing with Section 121025) of, and Chapter 10 (commencing with Section 121075) of Part 4 of Division 105.

In the case of a parolee under the jurisdiction of the Department of Corrections, the local health officer shall notify the assigned parole agent, when known, or the regional parole administrator, when there are reasonable grounds to believe that the parolee has active tuberculosis disease and when the parolee ceases treatment for tuberculosis. Situations where the local health officer may conclude that the parolee has ceased treatment include times when the parolee fails to keep an appointment, relocates without transferring care, or discontinues care.

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 764

An act to amend Sections 2746.5, 2746.51, 2836, and 2836.1 of the Business and Professions Code, relating to nursing.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 2746.5 of the Business and Professions Code is amended to read:

2746.5. (a) The certificate to practice nurse-midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn.

(b) As used in this chapter, the practice of nurse-midwifery constitutes the furthering or undertaking by any certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician immediately. The practice of nurse-midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.

(c) As used in this article, ''supervision'' shall not be construed to require the physical presence of the supervising physician.

(d) A certified nurse-midwife is not authorized to practice medicine and surgery by the provisions of this chapter.

(e) Any regulations promulgated by a state department that affect the scope of practice of a certified nurse-midwife shall be developed in consultation with the board.

SEC. 2. Section 2746.51 of the Business and Professions Code is amended to read:

2746.51. (a) Neither this chapter nor any other provision of law shall be construed to prohibit a certified nurse-midwife from furnishing or ordering drugs or devices, including controlled substances classified in Schedule III, IV, or V under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), when all of the following apply:

(1) The drugs or devices are furnished or ordered incidentally to the provision of any of the following:

(A) Family planning services, as defined in Section 14503 of the Welfare and Institutions Code.

(B) Routine health care or perinatal care, as defined in subdivision (d) of Section 123485 of the Health and Safety Code.

(C) Care rendered to essentially healthy persons within a facility specified in subdivision (a), (b), (c), (d), (i), or (j) of Section 1206 of the Health and Safety Code, a clinic as specified in Section 1204 of the Health and Safety Code, a general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code, a licensed birth center as defined in Section 1204.3 of the Health and Safety Code, or a special hospital specified as a maternity hospital in subdivision (f) of Section 1250 of the Health and Safety Code.

(2) The drugs or devices are furnished or ordered by a certified nurse-midwife in accordance with standardized procedures or protocols.

For purposes of this section, standardized procedure means a document, including protocols, developed and approved by the supervising physician and surgeon, the certified nurse-midwife, and the facility administrator or his or her designee. The standardized procedure covering the furnishing or ordering of drugs or devices shall specify all of the following:

(A) Which certified nurse-midwife may furnish or order drugs or devices.

(B) Which drugs or devices may be furnished or ordered and under what circumstances.

(C) The extent of physician and surgeon supervision.

(D) The method of periodic review of the certified nurse-midwife's competence, including peer review, and review of the provisions of the standardized procedure.

(3) If Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished or ordered by a certified nurse-midwife, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician and surgeon.

(4) The furnishing or ordering of drugs or devices by a certified nurse-midwife occurs under physician and surgeon supervision. For purposes of this section, no physician and surgeon shall supervise more than four certified nurse-midwives at one time. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include all of the following:

(A) Collaboration on the development of the standardized procedure or protocol.

(B) Approval of the standardized procedure or protocol.

(C) Availability by telephonic contact at the time of patient examination by the certified nurse-midwife.

(b) (1) The furnishing or ordering of drugs or devices by a certified nurse-midwife is conditional on the issuance by the board of a number to the applicant who has successfully completed the requirements of paragraph (2). The number shall be included on all transmittals of orders for drugs or devices by the certified nurse-midwife. The board shall maintain a list of the certified nurse-midwives that it has certified pursuant to this paragraph and the number it has issued to each one. The board shall make the list available to the California State Board of Pharmacy upon its request. Every certified nurse-midwife who is authorized pursuant to this section to furnish or issue a drug order for a controlled substance shall register with the United States Drug Enforcement Administration.

(2) The board has certified in accordance with paragraph (1) that the certified nurse-midwife has satisfactorily completed at least six months

of physician and surgeon supervised experience in the furnishing or ordering of drugs or devices and a course in pharmacology covering the drugs or devices to be furnished or ordered under this section. The board shall establish the requirements for satisfactory completion of this paragraph.

(3) A copy of the standardized procedure or protocol relating to the furnishing or ordering of controlled substances by a certified nurse-midwife shall be provided upon request to any licensed pharmacist who is uncertain of the authority of the certified nurse-midwife to perform these functions.

(c) Drugs or devices furnished or ordered by a certified nurse-midwife may include Schedule II controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) under the following conditions:

(1) The drugs and devices are furnished or ordered in a hospital as described in subdivision (a) of Section 1250 of the Health and Safety Code and are furnished or ordered in accordance with requirements referenced in paragraphs (2) to (4), inclusive, of subdivision (a) and in paragraphs (1) to (3), inclusive, of subdivision (b).

(2) When Schedule II controlled substances, as defined in Section 11055 of the Health and Safety Code, are furnished or ordered by a certified nurse-midwife, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician and surgeon.

(d) Furnishing of drugs or devices by a certified nurse-midwife means the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure or protocol. Use of the term ''furnishing'' in this section shall include the following:

(1) The ordering of a drug or device in accordance with the standardized procedure or protocol.

(2) Transmitting an order of a supervising physician and surgeon.

(e) ''Drug order'' or ''order'' for purposes of this section means an order for medication or for a drug or device that is dispensed to or for an ultimate user, issued by a certified nurse-midwife as an individual practitioner, within the meaning of Section 1306.03 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician; (2) all references to ''prescription'' in this code and the Health and Safety Code shall include drug orders issued by certified nurse-midwives; and (3) the signature of a certified nurse-midwife on a drug order issued in

accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

SEC. 3. Section 2836 of the Business and Professions Code is amended to read:

2836. (a) The board shall establish categories of nurse practitioners and standards for nurses to hold themselves out as nurse practitioners in each category. Such standards shall take into account the types of advanced levels of nursing practice which are or may be performed and the clinical and didactic education, experience, or both needed to practice safely at those levels. In setting such standards, the board shall consult with nurse practitioners, physicians and surgeons with expertise in the nurse practitioner field, and health care organizations utilizing nurse practitioners. Established standards shall apply to persons without regard to the date of meeting such standards. If the board sets standards for use of nurse practitioner titles which include completion of an academically affiliated program, it shall provide equivalent standards for registered nurses who have not completed such a program.

(b) Any regulations promulgated by a state department that affect the scope of practice of a nurse practitioner shall be developed in consultation with the board.

SEC. 4. Section 2836.1 of the Business and Professions Code is amended to read:

2836.1. Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and his or her supervising physician and surgeon under any of the following circumstances:

(1) When furnished or ordered incidental to the provision of family planning services.

(2) When furnished or ordered incidental to the provision of routine health care or prenatal care.

(3) When rendered to essentially healthy persons.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or his or her designee.

(c) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's

competence, including peer review, and review of the provisions of the standardized procedure.

(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.

(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.

(f) Drugs or devices furnished or ordered by a nurse practitioner may include Schedule III through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure. When Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.

(g) The board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed (1) at least six month's physician and surgeon-supervised experience in the furnishing or ordering of drugs or devices and (2) a course in pharmacology covering the drugs or devices to be furnished or ordered under this section. The board shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term ''furnishing'' in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.

(i) ''Drug order'' or ''order'' for purposes of this section means an order for medication which is dispensed to or for an ultimate user, issued by a nurse practitioner as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a

prescription of the supervising physician; (2) all references to ''prescription'' in this code and the Health and Safety Code shall include drug orders issued by nurse practitioners; and (3) the signature of a nurse practitioner on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

CHAPTER 765

An act to amend Sections 1190 and 1191 of the Harbors and Navigation Code, relating to harbors, and making an appropriation therefor.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) Every vessel spoken inward or outward bound shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) Eight dollars and eleven cents ($8.11) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 73.01 mills per high gross registered ton as changed pursuant to law in effect on December 31, 1999. The mill rates established by this paragraph may be changed as follows:

(A) (i) On and after January 1, 2007, if the number of pilots licensed by the board is reduced to 60 pilots, for any subsequent decrease in the number of pilots, the mill rate then in effect shall be decreased by an incremental amount that is proportionate to one-half of the last audited annual average net income per pilot for each pilot licensed by the board below 60 pilots.

(ii) On and after January 1, 2007, if the number of pilots licensed by the board falls below 60, for any subsequent increase in the number of pilots, the mill rate then in effect shall be increased by an incremental amount that is proportionate to one-half of the last audited annual average net income per pilot for each new pilot that results in an increase in the number of pilots then licensed by the board.

(iii) The incremental mill rate adjustment authorized by this subparagraph shall be calculated using the data reported to the board for the number of gross registered tons handled by pilots licensed under this

division during the same 12-month period as the audited annual average net income per pilot. The incremental mill rate adjustment shall become effective at the beginning of the quarter (January 1, April 1, July 1, or October 1) as directed by the board.

(B) There shall be an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the board to recover the pilots' costs of obtaining new pilot boats. The incremental mill rate charge authorized by this subparagraph shall be identified as a pilot boat surcharge on the pilots' invoices and separately accounted for in the accounting required by Section 1136. Net proceeds from the sale of existing pilot boats shall be used to reduce the debt on the new pilot boats.

(C) In addition to the rate change specified in subparagraph (A) and the incremental rate specified in subparagraph (B), the mill rate established by this subdivision may be adjusted at the direction of the board if, after a hearing conducted pursuant to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, the board determines that there has been a catastrophic cost increase to the pilots that would result in at least a 2-percent increase in the overall annual cost of providing pilot services.

(2) A minimum charge for bar pilotage shall be six hundred sixty-two dollars ($662) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of such transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage that passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Union Pacific Railroad Bridge to the north and Hunter's Point to the south. The rate for pilotage to or from the high seas to or from a point past the Union Pacific Railroad Bridge or Hunter's Point shall include a movement fee in addition to the basic bar pilotage rate as specified by the board pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels. This subdivision does not apply to the rates charged by inland pilots for their services.

(d) The board shall determine the number of pilots to be licensed based on the 1986 manpower study adopted by the board.

(e) Consistent with the board's May 2002 adoption of rate recommendations, the rates imposed pursuant to paragraph (1) of subdivision (a) that are in effect on December 31, 2002, shall be increased by 4 percent on January 1, 2003; those in effect on December 31, 2003, shall be increased by 4 percent on January 1, 2004; those in

effect on December 31, 2004, shall be increased by 3 percent on January 1, 2005; and those in effect on December 31, 2005, shall be increased by 3 percent on January 1, 2006.

SEC. 2. Section 1191 of the Harbors and Navigation Code is amended to read:

1191. (a) The board, pursuant to Chapter 6 (commencing with Section 1200), shall recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots and inland pilots engaged in ship movements or special operations where rates for those movements or operations are not specified in Section 1190.

(b) Every vessel using pilots and inland pilots for ship movements or special operations that do not constitute bar pilotage shall pay the rate specified in the schedule of pilotage rates adopted by the Legislature.

(c) Consistent with the board's adoption of rate recommendations in May 2002, the minimum rates imposed pursuant to this section that are in effect on December 31, 2002, shall be increased by 26 percent on January 1, 2003; those in effect on December 31, 2003, shall be increased by 26 percent on January 1, 2004; those in effect on December 31, 2004, shall be increased by 14 percent on January 1, 2005; and those in effect on December 31, 2005, shall be increased by 14 percent on January 1, 2006.

CHAPTER 766

An act to amend Sections 1656.2, 12517.1, 13369, 16000, 16000.1, 16075, 16251, 16377, 16430, and 16434 of the Vehicle Code, relating to motor vehicles.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 1656.2 of the Vehicle Code is amended to read:

1656.2. The department shall prepare and publish a printed summary describing the penalties for noncompliance with Sections 16000 and 16028, which shall be included with each motor vehicle registration, registration renewal, and transfer of registration and with each driver's license and license renewal. The printed summary may contain, but is not limited to, the following wording:

"IMPORTANT FACTS ABOUT ENFORCEMENT OF CALIFORNIA'S COMPULSORY FINANCIAL RESPONSIBILITY LAW

California law requires every driver to carry written evidence of valid automobile liability insurance, a thirty-five thousand dollar ($35,000) bond, a thirty-five thousand dollar ($35,000) cash deposit, or a certificate of self-insurance that has been issued by the Department of Motor Vehicles.

You must provide evidence of financial responsibility when you renew the registration of a motor vehicle, and after you are cited by a peace officer for a traffic violation or are involved in any traffic accident. The law requires that you provide the officer with the name and address of your insurer and the policy identification number. Your insurer will provide written evidence of this number. Failure to provide evidence of your financial responsibility can result in fines of up to five hundred dollars ($500) and loss of your driver's license. Falsification of evidence can result in fines of up to seven hundred fifty dollars ($750) or 30 days in jail, or both, in addition to a one-year suspension of driving privileges.

Under existing California law, if you are involved in an accident that results in damages of over seven hundred fifty dollars ($750) to the property of any person or in any injury or fatality, you must file a report of the accident with the Department of Motor Vehicles within 10 days of the accident. If you fail to file a report or fail to provide evidence of financial responsibility on the report, your driving privilege will be suspended for up to four years. Your suspension notice will notify you of the department's action and of your right to a hearing. Your suspension notice will also inform you that if you request a hearing, it must be conducted within 30 days of your written request, and that a decision is to be rendered within 15 days of the conclusion of the hearing."

SEC. 2. Section 12517.1 of the Vehicle Code is amended to read:

12517.1. (a) A "schoolbus accident" means any of the following:

(1) A motor vehicle accident resulting in property damage in excess of seven hundred fifty dollars ($750) or personal injury, on public or private property, and involving a schoolbus, youth bus, school pupil activity bus, or general public paratransit vehicle transporting a pupil.

(2) A collision between a vehicle and a pupil or a schoolbus driver while the pupil or driver is crossing the highway when the schoolbus flashing red signal lamps are required to be operated pursuant to Section 22112.

(3) Injury of a pupil inside a vehicle described in paragraph (1) as a result of acceleration, deceleration, or other movement of the vehicle.

(b) The Department of the California Highway Patrol shall investigate all schoolbus accidents, except that accidents involving only property damage and occurring entirely on private property shall be investigated only if they involve a violation of this code.

SEC. 3. Section 13369 of the Vehicle Code is amended to read:

13369. This section applies to the following endorsements and certificates: passenger transport vehicle, hazardous materials, schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, farm labor vehicle, and vehicle used for the transportation of developmentally disabled persons.

(a) The department shall refuse to issue or renew, or shall revoke for any of the following causes, the certificate or endorsement of any person who:

(1) Within the preceding three years, has committed any violation which results in a conviction assigned a violation point count of two or more, as defined in Sections 12810 and 12810.5. The department shall not refuse to issue or renew, nor shall it revoke a person's hazardous materials or passenger transportation vehicle endorsement if the violation leading to the conviction occurred in the person's private vehicle and not in a commercial motor vehicle, as defined in Section 15210.

(2) Within the preceding three years, has had his or her driving privilege suspended, revoked, or on probation for any reason involving unsafe operation of a motor vehicle. The department shall not refuse to issue or renew, nor shall it revoke, a person's hazardous materials or passenger transportation vehicle endorsement if the person's driving privilege has, within the preceding three years, been placed on probation only for any reason involving unsafe operation of a motor vehicle, or if Section 13353.6 applies.

(b) The department may refuse to issue or renew, or may suspend or revoke the certificate or endorsement of any person who:

(1) Within the preceding 12 months, has been involved as a driver in three accidents in which the driver caused or contributed to the causes of the accidents.

(2) Within the preceding 24 months, as a driver, caused or contributed to the cause of an accident resulting in a fatality or serious injury or serious property damage in excess of seven hundred fifty dollars ($750).

(3) Has violated any provision of this code, or any rule or regulation pertaining to the safe operation of a vehicle for which the certificate or endorsement was issued.

(4) Has violated any restriction of the certificate, endorsement, or commercial driver's license.

(5) Has knowingly made a false statement or concealed a material fact on an application for a certificate or endorsement.

(6) Has been determined by the department to be a negligent or incompetent operator.

(7) Has demonstrated irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe that the applicant's ability to perform the duties of a driver may be impaired.

(8) Excessively or habitually uses, or is addicted to, alcoholic beverages, narcotics, or dangerous drugs.

(9) Does not meet the minimum medical standards established or approved by the department.

(c) The department may cancel the certificate or endorsement of any driver who:

(1) Does not have a valid license of the appropriate class.

(2) Has requested cancellation of the certificate or endorsement.

(3) Has failed to meet any of the requirements for issuance or retention of the certificate or endorsement, including, but not limited to, payment of the proper fee, submission of an acceptable medical report and fingerprint cards, and failure to meet prescribed training requirements.

(4) Has had his or her driving privilege suspended or revoked for a cause involving other than the safe operation of a motor vehicle.

(d) With regard to a violation, accident, or departmental action which occurred prior to January 1, 1991, subdivision (a) and paragraphs (1), (2), and (3) of subdivision (b) do not apply to a driver holding a valid passenger transport or hazardous materials endorsement, or a valid class 1 or class 2 license who is applying to convert that license to a class A or class B license with a passenger transport or hazardous materials endorsement, if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement, or a valid class 3 license who is applying for a class C license with a hazardous materials endorsement if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement.

(e) Subdivision (d) does not apply to drivers applying for a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle certificate.

(f) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation, except in cases where a longer period of suspension or revocation is required by law.

(2) Reapplication following cancellation under subdivision (d) may be made any time without prejudice.

SEC. 4. Section 16000 of the Vehicle Code is amended to read:

16000. (a) The driver of every motor vehicle who is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway or any reportable off-highway accident defined in Section 16000.1 that has resulted in damage to the property of any one person in excess of seven hundred fifty dollars ($750) or in bodily injury or in the death of any person shall, within 10 days after the accident, report the accident, either personally or through an insurance agent, broker, or legal representative, on a form approved by the department to the office of the department at Sacramento, subject to the provisions of this chapter. The driver shall identify on the form, by name and current residence address, if available, any person involved in the accident complaining of bodily injury.

(b) A report is not required pursuant to subdivision (a) if the motor vehicle involved in the accident was owned or leased by, or under the direction of, the United States, this state, another state, or a local agency.

SEC. 5. Section 16000.1 of the Vehicle Code is amended to read:

16000.1. (a) For purposes of this division, a ''reportable off-highway accident'' means an accident which includes all of the following:

(1) Occurs off the street or highway.

(2) Involves a vehicle that is subject to registration under this code.

(3) Results in damages to the property of any one person in excess of seven hundred fifty dollars ($750) or in bodily injury or in the death of any person.

(b) A ''reportable off-highway accident'' does not include any accident which occurs off-highway in which damage occurs only to the property of the driver or owner of the motor vehicle and no bodily injury or death of a person occurs.

SEC. 6. Section 16075 of the Vehicle Code is amended to read:

16075. (a) The suspension provisions of this article shall not apply to a driver or owner until 30 days after the department sends to the driver or owner notice of its intent to suspend his or her driving privilege, pursuant to subdivision (b) of Section 16070, and advises the driver or owner of his or her right to a hearing as hereinafter provided.

(b) If the driver or owner receiving the notice of intent to suspend wishes to have a hearing, the request for a hearing shall be made in writing to the department within 10 days of the receipt of the notice. Failure to respond to a notice of intent within 10 days of receipt of the notice is a waiver of the person's right to a hearing.

(c) If the driver or owner makes a timely request for a hearing, the department shall hold the hearing before the effective date of the suspension to determine the applicability of this chapter to the driver or owner, including a determination of whether:

(1) The accident has resulted in property damage in excess of seven hundred fifty dollars ($750), or bodily injury, or death.

(2) The driver or owner has established financial responsibility, as provided in Article 3 (commencing with Section 16050), was in effect at the time of the accident.

(d) A request for a hearing does not stay the suspension of a person's driving privilege. However, if the department does not conduct a hearing and make a determination pursuant thereto within the time limit provided in subdivision (b) of Section 16070, the department shall stay the effective date of the order of suspension pending a determination.

(e) The hearing provided for by this section shall be held in the county of residence of the person requesting the hearing. The hearing shall be conducted pursuant to Article 3 (commencing with Section 14100) of Chapter 3 of Division 6.

(f) The department shall render its decision within 15 days after conclusion of the hearing.

SEC. 7. Section 16251 of the Vehicle Code is amended to read:

16251. As used in this chapter and Chapter 3 (commencing with Section 16430), ''cause of action'' means any cause of action for damage to property in excess of seven hundred fifty dollars ($750) or for damage in any amount on account of bodily injury to or death of any person resulting from the operation by the defendant or any other person of any motor vehicle upon a highway in this state, except a cause of action based upon statutory liability by reason of signing the application of a minor for a driver's license.

SEC. 8. Section 16377 of the Vehicle Code is amended to read:

16377. Every judgment shall for the purposes of this chapter be deemed satisfied:

(a) When fifteen thousand dollars ($15,000) has been credited, upon any judgment in excess of that amount, or upon all judgments, collectively, which together total in excess of that amount, for personal injury to or death of one person as a result of any one accident.

(b) When, subject to the limit of fifteen thousand dollars ($15,000) as to one person, the sum of thirty thousand dollars ($30,000) has been credited, upon any judgment in excess of that amount, or upon all judgments, collectively, which together total in excess of that amount, for personal injury to or death of more than one person as a result of any one accident.

(c) When five thousand dollars ($5,000) has been credited, upon any judgment in excess of that amount, or upon all judgments, collectively, each of which is in excess of seven hundred fifty dollars ($750), and which together total in excess of five thousand dollars ($5,000), for damage to property of others as a result of any one accident.

(d) When the judgment debtor or a person designated by him or her has deposited with the department a sum equal to the amount of the unsatisfied judgment for which the suspension action was taken and presents proof, satisfactory to the department, of inability to locate the judgment creditor.

SEC. 9. Section 16430 of the Vehicle Code is amended to read:

16430. Proof of financial responsibility when required by this code means proof of financial responsibility resulting from the ownership or operation of a motor vehicle and arising by reason of personal injury to, or death of, any one person, of at least fifteen thousand dollars ($15,000), and, subject to the limit of fifteen thousand dollars ($15,000) for each person injured or killed, of at least thirty thousand dollars ($30,000) for the injury to, or the death of, two or more persons in any one accident, and for damages to property (in excess of seven hundred fifty dollars ($750)), of at least five thousand dollars ($5,000) resulting from any one accident. Proof of financial responsibility may be given in any manner authorized in this chapter.

SEC. 10. Section 16434 of the Vehicle Code is amended to read:

16434. Proof of financial responsibility may be given by a bond. The bond shall be conditioned for the payment of the amount specified in Section 16430, and shall provide for the entry of judgment on motion of the state in favor of any holder of any final judgment on account of damages to property over seven hundred fifty dollars ($750) in amount, or injury to any person caused by the operation of the person's motor vehicle.

CHAPTER 767

An act to add Part 2.2 (commencing with Section 10530) to Division 6 of the Water Code, relating to water.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Part 2.2 (commencing with Section 10530) is added to Division 6 of the Water Code, to read:

PART 2.2. INTEGRATED REGIONAL WATER MANAGEMENT PLANS

CHAPTER 1. SHORT TITLE

10530. This part shall be known and may be cited as the Integrated Regional Water Management Planning Act of 2002.

CHAPTER 2. LEGISLATIVE FINDINGS AND DECLARATIONS

10531. The Legislature finds and declares as follows:

(a) Water is a valuable natural resource in California, and should be managed to ensure the availability of sufficient supplies to meet the state's agricultural, domestic, industrial, and environmental needs. It is the intent of the Legislature to encourage local agencies to work cooperatively to manage their available local and imported water supplies to improve the quality, quantity, and reliability of those supplies.

(b) Improved coordination among local agencies with responsibilities for managing water supplies and additional study of groundwater resources are necessary to maximize the quality and quantity of water available to meet the state's agricultural, domestic, industrial, and environmental needs.

(c) The implementation of the Integrated Regional Water Management Planning Act of 2002 will facilitate the development of integrated regional water management plans, thereby maximizing the quality and quantity of water available to meet the state's water needs by providing a framework for local agencies to integrate programs and projects that protect and enhance regional water supplies.

CHAPTER 3. DEFINITIONS

10532. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

10533. ''Local public agency'' means any city, county, city and county, special district, corporation, or mutual water company.

10534. ''Qualified projects or programs'' means regional projects or programs that improve source water quality, improve drinking water quality, provide flood protection, improve levee stability, provide water supply reliability, increase agricultural, domestic, or environmental water supply, improve the quality or quantity of groundwater, protect watersheds for the purposes of improving water quality or water quantity, or undertake environmental mitigation, restoration, or enhancement.

10535. ''Qualified reports or studies'' means reports or studies relating to regional water quality, water supply planning, flood protection, or environmental mitigation, restoration, or enhancement projects or programs.

10536. ''Regional plan'' means a plan for the implementation or operation of qualified projects or programs or the preparation of qualified reports or studies.

10537. ''Regional water management group'' means a group in which three or more local public agencies, at least two of which have statutory authority over water supply, participate by means of a joint powers agreement, memorandum of understanding, or other written agreement, as appropriate, that is approved by the governing bodies of those local public agencies.

CHAPTER 4. INTEGRATED REGIONAL WATER MANAGEMENT PLANS

10540. (a) A regional water management group may prepare and adopt a regional plan in accordance with this part.

(b) The plan may address qualified programs or projects or qualified reports or studies over which any local public agency that is a participant in that group has authority to undertake, including any of those matters described in subdivision (c).

(c) A regional water management group may address any of the following matters in a regional plan:

(1) Groundwater management planning pursuant to Part 2.75 (commencing with Section 10750).

(2) Any activity identified in Section 10753.7.

(3) Urban water management planning pursuant to Part 2.6 (commencing with Section 10610).

(4) The preparation of a water supply assessment required pursuant to Part 2.10 (commencing with Section 10910).

(5) Agricultural water management planning pursuant to Part 2.8 (commencing with Section 10800).

(6) The planning, construction, or modification of a flood management project that meets the requirements for funding under Chapter 1 (commencing with Section 12570), Chapter 3 (commencing with Section 12800), or Chapter 4 (commencing with Section 12850), of Part 6.

(7) The planning, construction, or modification of a flood management project that meets the requirements for funding under Chapter 2 (commencing with Section 12310) of Part 4.8.

(8) The planning, construction, or modification of a flood management project approved pursuant to Chapter 2 (commencing with Section 12639) of Part 6.

(9) The planning, construction, or modification of a levee maintenance project that meets the requirements for funding under Part 9 (commencing with Section 12980) of this division, or Article 4 (commencing with Section 78540) of Chapter 4 of Division 24.

(10) The planning, construction, or modification of a water recycling project that meets the requirements for funding under Article 4 (commencing with Section 79135) of Chapter 7 of Division 26.

(11) The planning, construction, or modification of a publicly owned treatment works that meets the requirements of paragraph (1) of subdivision (a) of Section 13480.

(12) The planning, construction, or modification of a domestic water supply facility to meet safe drinking water standards in accordance with the Safe Drinking Water State Revolving Loan Fund Law of 1997 (Chapter 4.5 (commencing with Section 116760) of Part 12 of Division 104 of the Health and Safety Code).

(13) The planning, construction, or modification of a drainage water management unit, as that term is defined in subdivision (a) of Section 78640.

(14) A water recycling project that meets the requirements for funding under Article 4 (commencing with Section 79135) of Chapter 7 of Division 26.

(15) The implementation of a water conservation program that meets the definition of a voluntary cost-effective capital outlay water conservation program pursuant to Section 78670.

(16) The planning, construction, or modification of a program or project that carries out any of the activities described in subdivision (c) of Section 79080 or reduces the impacts of nonnative plant species on water quality, water supply, or ecosystem health.

(17) The planning, construction, or modification of a program or project that desalts brackish or saline waters for use as an agricultural, domestic, or municipal water supply.

10541. (a) A regional water management group shall publish a notice of intention to prepare a regional plan in accordance with Section 6066 of the Government Code if three or more participants in the group propose to prepare the regional plan.

(b) Not later than 15 days after the last date of the publication of the notice pursuant to subdivision (a), the regional water management group shall hold a public hearing as to whether or not to prepare a regional plan. After the hearing, if three or more participants in the group determine to prepare the regional plan, the group shall prepare the plan not later than three years after the date of the hearing.

(c) Upon the completion of the regional plan, the regional water management group shall publish a notice of intention to adopt the regional plan in accordance with Section 6066 of the Government Code

if three or more participants in the group propose to adopt the regional plan.

(d) Not later than 15 days after the last date of the publication of the notice pursuant to subdivision (c), the regional water management group shall hold a public hearing as to whether or not to adopt the regional plan. After the hearing, if three or more participants in the group determine to adopt the regional plan, including at least two of which that have statutory authority over water supply, the group shall adopt the plan not later than 30 days after the date of the hearing.

CHAPTER 5. FUNDING FOR QUALIFIED PROJECTS AND PROGRAMS

10543. When selecting projects and programs pursuant to Division 24 (commencing with Section 78500), Division 26 (commencing with Section 79000), Division 26.5 (commencing with Section 79500), if enacted by the voters on November 5, 2002, or as part of any Category A program, as defined in the CALFED Record of Decision, dated August 28, 2000, the department, board, State Department of Health Services, or CALFED, as appropriate, shall include in any set of criteria used to select projects and programs they administer under those divisions or as part of any Category A program, a criterion that provides a benefit for qualified projects or programs.

CHAPTER 6. MISCELLANEOUS

10545. Nothing in this part affects any powers granted to a local public agency by any authority other than this part.

10546. Nothing in this part authorizes a regional water management group to define, or otherwise determine, the water rights of any person or entity.

CHAPTER 768

An act to add Section 100185.5 to the Health and Safety Code, relating to public health.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 100185.5 is added to the Health and Safety Code, to read:

100185.5. (a) When a letter or order of denial of continued enrollment or suspension of any type or duration, based upon fraud or abuse, or a withholding of payments, based upon reliable evidence of fraud or willful misrepresentation, is issued by the department to a provider, the director shall review the evidence supporting the denial of continued enrollment, suspension, or withholding of payments. If, in the opinion of the director, the evidence shows a pattern or practice of fraud, abuse, or willful misrepresentation that, if replicated in any other health care program administered by the department, could cause either fiscal loss to the state or harm to any participant, the director may deny continued enrollment, suspend, or withhold payments to, the provider with respect to those other health care programs. Any denial of continued enrollment, suspension, or withholding of payments may be for an indefinite or definite period of time, may be stayed for a period of time, and may be with or without conditions or probation.

(b) The director may deny the application of an applicant or provider to participate in any health care program administered by the department, when, based upon fraud or abuse, the applicant or provider has been denied continued enrollment in, or suspended from, any health care program administered by the department, or has had payments withheld based upon reliable evidence of fraud or willful misrepresentation in connection with any health care program administered by the department, and remains ineligible to participate in the health care program from which the applicant or provider was denied continued enrollment, suspended, or had payments withheld.

(c) The director may deny any new or additional application of a provider to participate in any health care program administered by the department if utilization controls including, but not limited to, prior authorization or special claims review pursuant to Sections 51159, 51455, and 51460 of Title 22 of the California Code of Regulations have been imposed upon that provider by any health care program administered by the department. Applications shall not be denied based solely upon utilization controls imposed upon an entire class or category of providers to which that provider belongs.

(d) Notwithstanding any other provision of law, any provider or applicant who has been denied continued enrollment in, or suspended from, or who has had payments withheld in connection with, any health care program administered by the department, or whose application to participate in a health care program administered by the department is denied, pursuant to this section, may appeal that action in accordance with Section 14043.65 of the Welfare and Institutions Code.

(e) For purposes of this section, the following definitions apply:

(1) ''Abuse'' has the same meaning as that term is defined in Section 14043.1 of the Welfare and Institutions Code.

(2) ''Administered by the department'' means administered by the State Department of Health Services or by its agents or contractors on behalf of the State Department of Health Services.

(3) ''Applicant'' means any person, individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents thereof, that applies to the department for enrollment as a provider or participation as a provider in a health care program administered by the department.

(4) ''Fraud'' has the same meaning as that term is defined in Section 14043.1 of the Welfare and Institutions Code.

(5) ''Provider'' means any person, individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents thereof, that provides services, goods, supplies, or merchandise, directly or indirectly, to a person enrolled in a health care program administered by the department.

(6) ''Withholding of payments'' means the withholding of payments in accordance with Section 14107.11 of the Welfare and Institutions Code.

(f) For purposes of this section, ''suspension'' includes, but is not limited to, suspensions authorized under Article 1.3 (commencing with Section 14043) or Article 3 (commencing with Section 14123) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(g) For purposes of this section, ''health care program administered by the department'' includes, but is not limited to, the Medi-Cal program.

CHAPTER 769

An act to amend Section 62560 of the Food and Agricultural Code, relating to market milk.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 62560 of the Food and Agricultural Code is amended to read:

62560. (a) The security charges provided for in Section 62561 shall be collected until the secretary determines that the value of the fund approximates 110 percent of the dollar amount of the total purchases of milk of all classes then currently being paid for and received in one

month by the handler with the largest payment obligation to producers for that month.

(b) When the fund reaches the maximum provided for in this section, the secretary shall discontinue collection of the security charges.

(c) If necessary, the secretary may reinstate the security charges for the purpose of replacing periodically any withdrawals from the fund and otherwise adding money to the fund in order that the maximum value of the fund, as provided in this section, is maintained.

(d) In consultation with the Milk Producers Security Trust Fund Advisory Board, the secretary may consider and use alternative financial instruments as an alternative to solely using security charges to meet the financial security requirements of this section.

(e) For the purposes of this section, ''fund'' includes the combined value of any alternative financial instrument and security charge collected.

CHAPTER 770

An act to amend Section 1102.6b of the Civil Code, relating to real property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 1102.6b of the Civil Code is amended to read:

1102.6b. (a) This section applies to all transfers of real property for which all of the following apply:

(1) The transfer is subject to this article.

(2) The property being transferred is subject to a continuing lien securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or to a fixed lien assessment collected in installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) A notice is not required pursuant to Section 53341.5 of the Government Code.

(b) In addition to any other disclosure required pursuant to this article, the seller of any real property subject to this section shall make a good faith effort to obtain a disclosure notice concerning the special tax as provided for in Section 53340.2 of the Government Code, or a disclosure

notice concerning an assessment installment as provided in Section 53754 of the Government Code, from each local agency that levies a special tax pursuant to the Mello-Roos Community Facilities Act, or that collects assessment installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), on the property being transferred, and shall deliver that notice or those notices to the prospective purchaser, as long as the notices are made available by the local agency.

(c) The seller of real property subject to this section may satisfy the disclosure notice requirements in regard to the bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) by delivering a disclosure notice that is substantially equivalent and obtained from another source, until December 31, 2004. For the purposes of this section, a substantially equivalent disclosure notice includes, but is not limited to, a copy of the most recent year's property tax bill or an itemization of current assessment amounts applicable to the property.

(d) If a disclosure received pursuant to subdivision (b), or (c) has been delivered to the transferee, a seller or his or her agent is not required to provide additional information concerning, and information in the disclosure shall be deemed to satisfy the responsibility of the seller or his or her agent to inform the transferee regarding, the special tax or assessment installments and the district. Notwithstanding subdivision (b) or (c), nothing in this section imposes a duty to discover a special tax, assessment installments, or the existence of any levying district not actually known to the agents.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that prospective purchasers of real property have all the relevant information they need to make an informed decision, and to clarify that substantial compliance by property owners continues to be legally sufficient in the absence of the availability of formal disclosures by public entities, it is necessary that this act take effect immediately.

CHAPTER 771

An act to amend Section 1102.6b of the Civil Code, relating to real property.

[Approved by Governor September 20, 2002. Filed with
Secretary of State September 21, 2002.]

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

SECTION 1. Section 1102.6b of the Civil Code is amended to read:

1102.6b. (a) This section applies to all transfers of real property for which all of the following apply:

(1) The transfer is subject to this article.

(2) The property being transferred is subject to a continuing lien securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or to a fixed lien assessment collected in installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) A notice is not required pursuant to Section 53341.5 of the Government Code.

(b) In addition to any other disclosure required pursuant to this article, the seller of any real property subject to this section shall make a good faith effort to obtain a disclosure notice concerning the special tax as provided for in Section 53340.2 of the Government Code, or a disclosure notice concerning an assessment installment as provided in Section 53754 of the Government Code, from each local agency that levies a special tax pursuant to the Mello-Roos Community Facilities Act, or that collects assessment installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), on the property being transferred, and shall deliver that notice or those notices to the prospective purchaser, as long as the notices are made available by the local agency.

(c) The seller of real property subject to this section may satisfy the disclosure notice requirements in regard to the bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) by delivering a disclosure notice that is substantially equivalent and obtained from another source, until December 31, 2004. For the purposes of this section, a substantially equivalent disclosure notice includes, but is not limited to, a copy of the most recent year's property tax bill or an itemization of current assessment amounts applicable to the property.

(d) (1) Notwithstanding subdivision (c), at any time after the effective date of this section, the seller of real property subject to this section may satisfy the disclosure notice requirements of this section by

delivering a disclosure notice obtained from a nongovernmental source that satisfies the requirements of paragraph (2).

(2) A notice provided by a private entity other than a designated office, department, or bureau of the levying entity may be modified as needed to clearly and accurately describe a special tax pursuant to the Mello-Roos Community Facilities Act levied against the property or to clearly and accurately consolidate information about two or more districts that levy or are authorized to levy a special tax pursuant to the Mello-Roos Community Facilities Act against the property, and shall include the name of the Mello-Roos levying taxes against the property, the annual tax due for the Mello-Roos for the current tax year, the maximum tax that may be levied against the property in any year, the percentage by which the maximum tax for the Mello-Roos may increase per year, and the date until the tax may be levied against the property for the Mello-Roos and a contact telephone number, if available, for further information about the Mello-Roos. A notice provided by a private entity other than a designated office, department, or bureau of the levying entity may be modified as needed to clearly and accurately describe special assessments and bonds pursuant to the Improvement Bond Act of 1915 levied against the property, or to clearly and accurately consolidate information about two or more districts that levy or are authorized to levy special assessments and bonds pursuant to the Improvement Bond Act of 1915 against the property, and shall include the name of the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915, the current annual tax on the property for the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915 and a contact telephone number, if available, for further information about the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915.

(3) This section does not change the ability to make disclosures pursuant to Section 1102.4 of the Civil Code.

(e) If a disclosure received pursuant to subdivision (b), (c), or (d) has been delivered to the transferee, a seller or his or her agent is not required to provide additional information concerning, and information in the disclosure shall be deemed to satisfy the responsibility of the seller or his or her agent to inform the transferee regarding the special tax or assessment installments and the district. Notwithstanding subdivision (b), (c) or (d), nothing in this section imposes a duty to discover a special tax or assessment installments or the existence of any levying district not actually known to the agents.

SEC. 2. This act is intended to ensure that prospective purchasers of real property have the relevant information that they need to make an informed decision, and to clarify that substantial compliance by property

owners continues to be legally sufficient in lieu of formal disclosures by public entities.

CHAPTER 772

An act to amend Sections 25005.1, 25212.1, 25213, 25213.3, 25232.1, 25232.3, 25530, 25532, and 25608 of the Corporations Code, to amend Sections 17214, 17606, 17609.2, 17627, 22157, 22705, 22712, 50320, and 50325 of, to add Section 22342 to, and to amend and renumber Section 17005.3 of, the Financial Code, relating to the Commissioner of Corporations.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 25005.1 of the Corporations Code is amended to read:

25005.1. ''Entity conversion transaction'' means a conversion pursuant to Section 15677.2, 15677.8, 16902, 16908, 17540.2, 17540.8, or a conversion that occurs entirely out of state, unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 1.5. Section 25005.1 of the Corporations Code is amended to read:

25005.1. ''Entity conversion transaction'' means a conversion pursuant to Section 1151, 1157, 15677.2, 15677.8, 16902, 16908, 17540.2, 17540.8, or a conversion that occurs entirely out of state, unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 2. Section 25212.1 of the Corporations Code is amended to read:

25212.1. The commissioner may immediately revoke by order the certificate of any broker-dealer if the broker-dealer fails to comply with

any currently effective order of the commissioner which is necessary for the protection of any investor, unless the broker-dealer secures a court order restraining the enforcement of the commissioner's revocation order within 10 days of the date the order is issued.

SEC. 3. Section 25213 of the Corporations Code is amended to read:

25213. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or deny or bar from any position of employment, management or control of any broker-dealer or investment adviser, any officer, director, partner, agent, employee of, or person performing similar functions for, a broker-dealer, or any other person, if the commissioner finds that the censure, suspension, denial, or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25212 or has been convicted of, or pled nolo contendere to, any offense or been held liable in any civil action specified in subdivision (b) of Section 25212, or is enjoined from any act, conduct or practice specified in subdivision (c) of Section 25212 or is subject to any order specified in subdivision (d) of Section 25212.

SEC. 4. Section 25213.3 of the Corporations Code is amended to read:

25213.3. The commissioner shall, after appropriate notices and opportunity for hearing, by order suspend, for a period not exceeding 12 months, or bar from any position of employment, management or control of any broker-dealer, any officer, director, partner, agent, employee of, or person performing similar functions for, a broker-dealer, or any other person, if the person has been convicted of, or has pleaded nolo contendere to, a felony or misdemeanor in violation of Section 25541 that was committed on or after January 1, 1989.

SEC. 5. Section 25232.1 of the Corporations Code is amended to read:

25232.1. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 or has been convicted of any offense or held liable in any civil action specified in subdivision (b) of Section 25232 or is enjoined from any act, conduct or practice specified in subdivision (c) of Section 25232 or is subject to any order specified in subdivision (d) of Section 25232.

SEC. 6. Section 25232.3 of the Corporations Code is amended to read:

25232.3. The commissioner may immediately revoke the certificate of any investment adviser if the investment adviser fails to comply with any currently effective order of the commissioner which is necessary for the protection of any investor, unless the investment adviser secures a court order restraining the enforcement of the commissioner's revocation order within 10 days of the date the order is issued.

SEC. 7. Section 25530 of the Corporations Code is amended to read:

25530. (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate.

A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, trustees or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) In any case in which a defendant is ordered by the court to pay restitution to a victim, the court may in its order require the payment as a money judgment, which shall be enforceable by a victim as if the restitution order were a separate civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Any order issued under this subdivision shall contain

provisions that are designed to achieve a fair and orderly satisfaction of the judgment.

SEC. 8. Section 25532 of the Corporations Code is amended to read:

25532. (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230 or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

(d) If, after an order has been made under subdivision (a), (b), or (c), a request for hearing is filed in writing within one year of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

SEC. 9. Section 25608 of the Corporations Code is amended to read:

25608. (a) The commissioner shall charge and collect the fees fixed in this section and Section 25608.1. All fees charged and collected under this section and Section 25608.1 shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement thereof and shall be credited to the State Corporations Fund.

(b) The fee for filing an application for a negotiating permit under subdivision (c) of Section 25102 is fifty dollars ($50).

(c) The fee for filing a notice pursuant to paragraph (5) of subdivision (h) of Section 25102 and the fee for filing a notice pursuant to paragraph (4) of subdivision (f) of Section 25102, in addition to the fee prescribed in those paragraphs, if applicable, shall be determined based on the value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
$25,000 or less	$ 25
$25,001 to $100,000	$ 35
$100,001 to $500,000	$ 50
$500,001 to $1,000,000	$150
Over $1,000,000	$300

(d) The fee for filing an application for designation of an issuer pursuant to subdivision (k) of Section 25100 is fifty dollars ($50).

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under paragraph (1) of subdivision (b) of Section 25113 (except applications for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in subdivision (k)) is two hundred dollars ($200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars ($2,500).

The fee for filing a small company application for qualification of the sale of securities by permit under paragraph (2) of subdivision (b) of Section 25113 is two thousand five hundred dollars ($2,500). In the case where the costs of processing a small company application exceed the filing fee, an additional fee shall be charged, not to exceed one thousand dollars ($1,000), over and above the filing fee based on the costs of the salary or other compensation paid to persons processing the application plus overhead costs reasonably incurred in the performance of the work. In determining the costs, the commissioner may use the estimated average hourly cost for all persons processing applications for the fiscal year.

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 or a notice of intention to sell under subdivision (t) of Section 25100 is two hundred dollars ($200) plus one-fifth of 1 percent of the aggregate value of the securities

sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars ($2,500).

(g) For the purpose of determining the fees fixed in subdivisions (e) and (f):

(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

(2) Interim or voting trust certificates shall have a value equal to the aggregate value of the securities to be represented by the interim or voting trust certificates.

(3) The value of a warrant or right to purchase or subscribe to another security of the same or another issuer shall be an amount equal to the consideration to be paid for that warrant or right plus an amount equal to the consideration to be paid upon purchase of the additional securities, provided that if the latter amount is not determinable at the time of qualification, that amount shall then be the value of the additional securities as determined by the commissioner.

(4) In the case of a share dividend where the shareholders are given an option to accept either cash or additional shares of common stock, the value of the securities to be sold shall be the maximum amount of cash that would be payable in the event that all shareholders elected to accept cash.

(h) The fee for filing an application for qualification of the sale of securities by permit under Section 25121 is:

(1) Two hundred dollars ($200) in connection with any change (including any stock split or reverse stock split or stock dividend, except a stock dividend where the shareholders are given an option to accept either cash or additional shares of common stock) in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(2) Two hundred dollars ($200) plus one-fifth of 1 percent of the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration to be received in exchange therefor, up to a maximum aggregate fee of two thousand five hundred dollars ($2,500), in any exchange of securities by the issuer with its existing security holders exclusively, or in any exchange in connection with any merger or consolidation or purchase of corporate assets in consideration of the issuance of securities, or any entity conversion transaction.

(i) The fee for filing an application for qualification of the sale of securities by notification under Section 25131 shall be one hundred dollars ($100).

(j) The fee for an application for the removal of any condition under Section 25141 is fifty dollars ($50).

(k) The fee for filing any application for a permit to execute or issue any guarantee of any security is fifty dollars ($50).

(*l*) The fee for acting as escrowholder for securities under Section 25149 is fifty dollars ($50). In addition, a fee of two dollars and fifty cents ($2.50) shall be paid for the deposit with the commissioner of each new certificate or other document resulting from a transfer in escrow.

(m) The fee for filing an application for an order (1) consenting to the transfer in escrow of securities or (2) consenting to the transfer of securities subject to any condition imposed by the commissioner requiring the commissioner's consent to the transfer is twenty dollars ($20) for each transfer.

(n) The filing fee for an amendment to an application filed after the effective date of the qualification of the sale of securities is fifty dollars ($50) plus any additional fee that would have been required to be paid with the original application for qualification of the sale of securities under this section if the matters set forth in the amendment had been included in the original application.

(o) (1) The fee for filing an application for a broker-dealer certificate under Section 25211 is three hundred dollars ($300).

(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that the broker-dealer and the number of its agents in this state bears to the aggregate number of broker-dealers and agents in this state as shown by records maintained by or on behalf of the commissioner. The pro rata share may include the costs of any examinations, audit, or investigation provided for in subdivision (r).

(3) Every broker-dealer who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a minimum assessment of seventy-five dollars ($75) on or before the 31st of December in each year.

(4) The commissioner may assess and levy against each broker-dealer any additional amount above the minimum assessment amount of seventy-five dollars ($75) that is reasonable and necessary to support the broker-dealer program under this division. If an additional amount is assessed, the commissioner shall notify each broker-dealer by mail of any additional amount assessed and levied against it on or before the 30th day of May in each year, and that amount shall be paid within 20 days thereafter. 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.

(5) If a broker-dealer fails to pay any assessment on or before the 30th day of the month following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the broker-dealer. If, after that order is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a broker-dealer shall not conduct business pursuant to this division except as may be permitted by order of the commissioner; provided, however, that the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided under this division.

(6) In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of the broker-dealer program under this division and all reimbursements applicable to the administration of the broker-dealer program under this division.

(p) The commissioner shall charge a fee of twenty-five dollars ($25) for the filing of a notice or report required by rule adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(q) (1) Except as provided for in paragraph (2), the fee for filing an application for an investment adviser under Section 25231 is one hundred twenty-five dollars ($125), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Every investment adviser who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars ($125) on or before the 31st day of December.

(2) Paragraph (1) shall not apply to a broker-dealer licensed under Section 25210.

(r) (1) Except as provided for in paragraph (2), the fee for any routine or nonroutine regulatory examination, audit, or investigation is the amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the amount of expenses including overhead reasonably incurred in the performance of the work. In determining the costs associated with an examination, audit, or investigation, the commissioner may use the estimated average hourly cost for all persons performing examinations, audits, or investigations for the fiscal year.

(2) An investment adviser licensed under Section 25230 pursuant to the Investment Adviser Registration Depository shall not be subject to paragraph (1) only in regard to the fee for a routine regulatory

examination of its investment advisory services for which it is licensed under Section 25230.

(s) The fee for any hearing held by the commissioner pursuant to Section 25142 shall be the sum determined by the commissioner to cover the actual expense of noticing and holding the hearing.

(t) The commissioner may fix by rule a reasonable charge for any publications issued under his or her authority. The charges shall not apply to reports of the commissioner in the ordinary course of distribution.

(u) The fee for filing an offer under subdivision (b) of Section 25507 shall be the amount of filing fee payable under subdivision (e), (f), (h), or (i) of this section if an application had been filed to qualify the transaction in which the securities upon which the offer is to be made were sold in violation of the qualification provisions of this law.

(v) The fee for filing an application for exemption pursuant to subdivision (*l*) of Section 25100 is two hundred fifty dollars ($250).

(w) The commissioner may by rule require payment of a fee for filing a notice or report required by a rule adopted pursuant to Section 25105. The fee required in connection with a transaction as defined by that rule shall not exceed the fees specified in subdivision (c) based on the value of the securities sold, but the commissioner may permit a single notice for more than one transaction.

(x) The fee for filing the first notice of transaction under subdivision (n) of Section 25102 is six hundred dollars ($600).

(y) The fee for filing a notice of transaction under subdivision (o) of Section 25102 shall be the fee for filing an application for qualification of the sale of securities by permit under paragraph (1) of subdivision (b) of Section 25113 as set forth in subdivision (e) of this section.

(z) The fee for filing a notice of transaction under subdivision (h) of Section 25103 shall be six hundred dollars ($600).

SEC. 10. Section 17005.3 of the Financial Code is amended and renumbered to read:

17005.4 ''Person subject to this division'' means any person undertaking the performance of escrow agent services. Unless specifically exempted, as in Section 17006, however, this definition shall not be used to exclude anyone.

SEC. 11. Section 17214 of the Financial Code is amended to read:

17214. (a) There is established in the Department of Corporations an Escrow Law Advisory Committee consisting of 11 members. The members shall consist of the commissioner or his or her designee; the chairman of the board and the immediate past chairman of the board for the Escrow Agents' Fidelity Corporation; the current chairman of the board and the immediate past chairman of the board for the Escrow Institute of California; a person selected by the commissioner to

represent a different type of business ownership under this division; a person selected by the commissioner to represent a different type of business specialization; a person selected by the commissioner to represent small businesses operating pursuant to this division; a person selected by the commissioner to represent medium-sized businesses operating pursuant to this division; an attorney at law experienced in escrow matters selected by the commissioner; and a certified public accountant experienced in the escrow business selected by the commissioner.

Except for the members from the Escrow Agents' Fidelity Corporation and the Escrow Institute of California, members appointed by the commissioner shall serve for a term of two years.

The committee shall meet at least quarterly. The commissioner or his or her designee shall chair the committee. All members shall serve without compensation or reimbursement for expenses.

Where the chairman of the board or the immediate past chairman of the board of the Escrow Agents' Fidelity Corporation is the same person, or is unable to serve on the advisory committee, then the commissioner after consultation with the board of directors of the Escrow Agents' Fidelity Corporation, shall choose a member of the board of directors to serve on the committee. Where the president or past president of the Escrow Institute of California is the same person, or is unable to serve on the advisory committee, then the commissioner after consultation with the board of directors of the Escrow Institute of California, shall choose a member of the board of directors to serve on the committee.

(b) The purpose of the committee is to assist the commissioner in the implementation of the commissioner's duties under this chapter.

SEC. 12. Section 17606 of the Financial Code is amended to read:

17606. The commissioner may immediately revoke by order the escrow agent's license if the licensee fails to comply with any order, unless the escrow agent secures a court order restraining the enforcement of the commissioner's revocation order.

SEC. 13. Section 17609.2 of the Financial Code is amended to read:

17609.2. Whenever the commissioner deems it necessary for the general welfare of the public, the commissioner has continuous authority to exercise the powers set forth in this division whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked.

SEC. 14. Section 17627 of the Financial Code is amended to read:

17627. The commissioner may issue subpoenas and require the attendance of parties for examination under this article as provided for in this chapter.

SEC. 15. Section 22157 of the Financial Code is amended to read:

22157. Licensees shall preserve their books, accounts, and records, including cards used in the card system, if any, for at least three years after making the final entry on any loan recorded therein.

SEC. 16. Section 22342 is added to the Financial Code, to read:

22342. (a) As used in this section, ''instant loan check'' or ''live check'' means any loan or extension of credit that is made available in the form of a check, draft, or any other negotiable instrument that can be deposited in a bank or used for third-party payments. ''Instant loan check'' or ''live check'' does not include a check, draft, or any other negotiable instrument provided in response to an application for credit or as a means of access to an existing loan or extension of credit, including a home equity or personal line of credit.

(b) No person shall produce, advertise, offer, sell, distribute, or otherwise transfer for use in this state any live check unless the document bears the following phrase printed in 12-point type on the front of the document: ''THIS IS A LOAN OR AN EXTENSION OF CREDIT. YOU WILL PAY CHARGES.''

(c) Live checks shall only be negotiable for a period of 30 days after the date printed on the live check. Printed material accompanying the live check shall advise the consumer to void and destroy the live check if it is not going to be negotiated.

(d) Loan solicitations shall be mailed in envelopes with no indication that a negotiable instrument is contained in the mailing. Envelopes shall be marked with ''do not forward'' instructions to the postal service in the event that the intended addressee is no longer at the location.

(e) Any loan solicitation made through a live check shall be honored in the full amount by the issuer unless the account on which the solicitation is made is closed by the consumer prior to the date the check is cashed.

(f) In the event that a live check is stolen or incorrectly received by someone other than the intended payee, and the live check is cashed or otherwise negotiated based upon fraud or misrepresentation by someone other than the intended payee, the following safeguards for the consumer shall apply:

(1) The creditor, upon receipt of notification that the consumer did not negotiate the live check and is a victim of identity theft as defined in Section 1798.92 of the Civil Code, shall provide, and the consumer may complete, a statement confirming that the consumer did not deposit, cash, or otherwise negotiate the live check.

(2) Upon completion of the confirmation statement by the consumer, the consumer who was the intended payee shall have no liability for the loan obligation, absent any fraud by that consumer.

(3) Upon receipt of notification that the consumer did not negotiate the live check and is a victim of identity theft as defined in Section

1798.92 of the Civil Code, the creditor shall take appropriate actions set forth in Sections 1785.25 and 1785.26 of the Civil Code.

(g) The commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties against a licensee who violates this section, and the licensee shall be liable for administrative penalties of no more than two thousand five hundred dollars ($2,500) for each willful violation. Any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted under the act. The remedy available under this subdivision is in addition to any other remedies available to the commissioner under this division that may be employed to enforce the provisions of this section.

(h) Nothing in this section shall preclude the application of any section or rule under this division.

SEC. 17. Section 22705 of the Financial Code is amended to read:

22705. Whenever the commissioner deems it necessary for the general welfare of the public, he or she has continuous authority to exercise the powers set forth in this division whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked.

SEC. 18. Section 22712 of the Financial Code is amended to read:

22712. Whenever, in the opinion of the commissioner, any person is engaged in business as a broker or finance lender, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

SEC. 19. Section 50320 of the Financial Code is amended to read:

50320. Whenever, in the opinion of the commissioner, a person is engaged, either actually or through subterfuge, in the business of making residential mortgage loans or servicing residential mortgage loans without a license from the commissioner, the commissioner may order that person to desist and refrain. If, within 30 days after an order is served, a request for a hearing is filed in writing and the hearing is not held within 60 days of the filing, the order is rescinded. This section does not apply to persons exempted under subdivision (g) of Section 50003.

SEC. 20. Section 50325 of the Financial Code is amended to read:

50325. The commissioner may immediately revoke the residential mortgage lender's or residential mortgage loan servicer's license if the licensee fails to comply with any order issued under Section 50318,

50319, 50321, 50322 or 50503. The commissioner shall not revoke the license if, within 10 days from the effective date of the revocation order, the licensee secures a court order restraining the enforcement of the commissioner's revocation order.

SEC. 21. Section 1.5 of this bill incorporates amendments to Section 25005.1 of the Corporations Code proposed by both this bill and SB 399. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 25005.1 of the Corporations Code, and (3) this bill is enacted after SB 399, in which case Section 1 of this bill shall not become operative.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 773

An act to amend Sections 1502, 1523.1, and 1531.2 of, to add Section 1530.1, and to repeal Section 1502.2 of, the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) Over the past 20 years, new models of service have emerged for persons with developmental disabilities, elders with functional or cognitive impairments, and other adults needing daytime assistance outside of the home.

(2) Day programs provide a wide variety of services, ranging from respite for caregivers to independent living skill training for persons with developmental disabilities.

(3) This diversity of programs is a major strength of California's community-based services, which are designed to meet the individual needs of persons using these services.

(4) Licensing rules and regulations have not kept pace with changing community practices and service models.

(5) There is a need to modernize the rules governing the licensure of adult day programs in keeping with the state's policy to offer consumers choices and to provide services in the least restrictive setting.

(6) The current separate community care licensing categories for adult day care and adult day support programs create unnecessary complexity and confusion for consumers, providers, and regulators.

(b) Therefore, it is the intent of the Legislature in enacting this act to improve consumer access to community care licensed programs by consolidating the licensure categories of adult day care and adult day support and associated regulations.

SEC. 2. Section 1502 of the Health and Safety Code is amended to read:

1502. As used in this chapter:

(a) ''Community care facility'' means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) ''Residential facility'' means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) ''Adult day program'' means any community-based facility or program that provides care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of these individuals on less than a 24-hour basis.

(3) ''Therapeutic day services facility'' means any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.

(4) ''Foster family agency'' means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that

level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(5) ''Foster family home'' means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

(6) ''Small family home'' means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(7) ''Social rehabilitation facility'' means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

(8) ''Community treatment facility'' means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code.

Nothing in this section shall be construed to prohibit or discourage placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.

(9) ''Full-service adoption agency'' means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(B) Assesses the birth parents, prospective adoptive parents, or child.

(C) Places children for adoption.

(D) Supervises adoptive placements.

Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

(10) ''Noncustodial adoption agency'' means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assesses the prospective adoptive parents.

(B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(C) Cooperatively supervises adoptive placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

(11) ''Transitional shelter care facility'' means any group care facility that provides for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

(12) ''Transitional housing placement facility'' means a community care facility licensed by the department pursuant to Section 1559.110 to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(b) ''Department'' or ''state department'' means the State Department of Social Services.

(c) ''Director'' means the Director of Social Services.

SEC. 3. Section 1502.2 of the Health and Safety Code is repealed.

SEC. 4. Section 1523.1 of the Health and Safety Code is amended to read:

1523.1. (a) (1) A fee adjusted by facility and capacity shall be charged by the department for the issuance of an original license or special permit or for processing any application therefor. After initial licensure, the fee shall be charged by the department annually on each anniversary of the effective date of the license or special permit. The fee is for the purpose of financing a portion of the application and annual processing costs and the activities specified in subdivision (b). The fee shall be assessed as follows:

Fee Schedule

Facility Type	Capacity	Original Application	Annual
Foster Family and Adoption Agencies		$1,000	$1,000
Other Community Care Facilities, Except Adult Day Programs	1–6	$300	$300
	7–15	$450	$450
	16–49	$600	$600
	50+	$750	$750
Adult Day Programs	1–15	$0	$50
	16–30	$100	$100
	31–60	$200	$200
	61–75	$250	$250
	76–90	$300	$300
	91–120	$400	$400
	121+	$500	$500

(2) Certified family homes of foster family agencies and foster family homes shall be exempt from the fees imposed pursuant to this subdivision.

(3) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a facility licensed under this chapter which serves six or fewer persons.

(b) (1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department to fund increased assistance and monitoring of facilities with a history of noncompliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the Budget Act in support of the licensing program.

(2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use of this revenue, as approved by the Director of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. For fiscal year 1992–93 and thereafter, the department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(c) A facility may use a bona fide business check to pay the license fee required under this section.

(d) Failure to pay required license fees, including the finding of insufficient funds to cover bona fide business checks submitted for the purpose shall constitute grounds for denial of a license or special permit or forfeiture of a license or special permit.

SEC. 5. Section 1530.1 is added to the Health and Safety Code, to read:

1530.1. (a) The department shall adopt regulations, in consultation with providers, consumers, and other interested parties, to combine adult day care and adult day support centers licensing categories into one category, which shall be designated adult day programs.

(b) The consolidated regulations shall take into account the diversity of consumers and their caregivers, and the role of licensing in promoting consumer choice, health and safety, independence, and inclusion in the community.

(c) The department shall also take into account the diversity of existing programs designed to meet unique consumer needs, including, but not limited to, programs serving elders with cognitive or physical impairments, non-facility-based programs serving persons with developmental disabilities, respite-only programs, and other programs serving a unique population.

SEC. 6. Section 1531.2 of the Health and Safety Code, as added by Chapter 729 of the Statutes of 1998, is amended to read:

1531.2. (a) Upon the filing by the department of emergency regulations with the Secretary of State, an adult day program, as defined in Division 6 of Title 22 of the California Code of Regulations, or Section 1502, that provides care and supervision for adults with Alzheimer's disease and other dementias may install for the safety and security of these persons secured perimeter fences or egress control devices of the time-delay type on exit doors if they meet all of the requirements for additional safeguards required by those regulations. The initial adoption of new emergency regulations on and after January 1, 1999, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(b) As used in this section, ''egress control device'' means a device that precludes the use of exits for a predetermined period of time. An egress control device shall not delay any client's departure from the facility for longer than 30 seconds. Facility staff may attempt to redirect a client who attempts to leave the facility.

(c) A facility that installs an egress control device pursuant to this section shall meet all of the following requirements:

(1) The facility shall be subject to all fire and building codes, regulations, and standards applicable to adult day programs using egress control devices or secured perimeter fences and before using an egress

control device shall receive a fire clearance from the fire authority having jurisdiction for the egress control devices.

(2) The facility shall require any client entering the facility to provide documentation of a diagnosis by a physician of Alzheimer's disease or other dementias, if such a diagnosis has been made. For purposes of this section, Alzheimer's disease shall include dementia and related disorders that increase the tendency to wander, decrease hazard awareness, and decrease the ability to communicate.

(3) The facility shall provide staff training regarding the use and operation of the egress control devices used by the facility, the protection of clients' personal rights, wandering behavior and acceptable methods of redirection, and emergency evacuation procedures for persons with dementia.

(4) All admissions to the facility shall continue to be voluntary on the part of the client or with the lawful consent of the client's conservator or a person who has the authority to act on behalf of the client. Persons who have the authority to act on behalf of a client may include the client's spouse, relative or relatives, or designated care giver or care givers.

(5) Any client entering a facility pursuant to this section who does not have a conservator or does not have a person with the authority to act on his or her behalf shall sign a statement of voluntary entry. The facility shall retain the original statement in the client's file at the facility.

(6) The use of egress control devices or secured perimeter fences shall not substitute for adequate staff. Staffing ratios shall at all times meet the requirements of applicable regulations.

(7) Emergency fire and earthquake drills shall be conducted at least once every three months, or more frequently as required by a county or city fire department or local fire prevention district. The drills shall include all facility staff and volunteers providing client care and supervision.

(8) The facility shall develop a plan of operation approved by the department that includes a description of how the facility is to be equipped with egress control devices that are consistent with regulations adopted by the State Fire Marshal pursuant to Section 13143. The plan shall include, but not be limited to, all of the following:

(A) A description of how the facility will provide training to staff regarding the use and operation of the egress control device utilized by the facility.

(B) A description of how the facility will ensure the protection of the residents' personal rights consistent with Sections 4502, 4503, and 4504 of the Welfare and Institutions Code.

(C) A description of the facility's emergency evacuation procedures for persons with Alzheimer's disease and other dementias.

(d) This section does not require an adult day program to use secured perimeters or egress control devices in providing care for persons with Alzheimer's disease or other dementias.

(e) The department shall adopt regulations to implement this section in accordance with those provisions of the Administrative Procedure Act contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The State Fire Marshal may also adopt regulations to implement this section.

CHAPTER 774

An act to amend, repeal, and add Section 51852, repeal, and add the Education Code, and to amend Sections 15242, 34520, 34623, and 34624 of, and to amend, repeal, and add Section 11101 of, the Vehicle Code, relating to driving, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 51852 of the Education Code is amended to read:

51852. A course of instruction in the laboratory phase of driver education shall include, for each student enrolled in the class, instruction under one of the following plans:

(a) Plan One. A minimum of 12 hours allocated as follows:

(1) A minimum of six hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) A minimum of six hours in a dual-control automobile with a qualified instructor for the purposes of observation. Practice driving on an off-street multiple-car driving range approved by the department under the supervision of a qualified instructor may be substituted for all or part of the observation time.

(b) Plan Two. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Six hours in a dual-control automobile with a qualified instructor for the purposes of observation. Practice driving on an off-street multiple-car driving range approved by the department under the

supervision of a qualified instructor may be substituted for all or part of the observation time.

(3) Twelve hours of instruction by a qualified instructor in a driving simulator approved by the department.

(4) At least three additional hours of instruction specified in one or more of paragraphs 1 to 3, inclusive, of this subdivision.

(c) Plan Three. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Six hours in a dual-control automobile with a qualified instructor for the purpose of observation.

(3) Twelve hours of instruction by a qualified instructor on an off-street multiple-car driving range.

(4) At least three additional hours of instruction specified in one or more of paragraphs 1 to 3, inclusive, of this subdivision.

(d) Plan Four. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Three hours in a dual-control automobile with a qualified instructor for the purpose of observation.

(3) Eighteen hours of instruction by a qualified instructor in a driving simulator approved by the department and on an off-street multiple-car driving range. The governing board of the district shall establish the proportion of time to be utilized in simulators and on the off-street multiple-car driving range.

(e) Plan Five.

(1) Competency-based driver training which means a program in which each student receives a minimum of three hours of on-street behind-the-wheel practice driving instruction, a minimum of one hour of behind-the-wheel pretesting, and a minimum of one hour of behind-the-wheel posttesting. The pretest and posttest for public school programs shall include basic skill evaluation by the instructor, as adopted by the Superintendent of Public Instruction pursuant to paragraph (2). The one hour posttest shall be conducted by an instructor other than the instructor who conducted the three hours of behind-the-wheel practice driving instruction or the pretest. Each student shall receive at least one additional hour of either behind-the-wheel practice driving instruction or observation time.

(2) The Superintendent of Public Instruction shall adopt rules, regulations, and basic skill requirements for public school programs pursuant to this subdivision.

(3) Local district superintendents offering this program shall annually report to the Superintendent of Public Instruction, on a form

developed by the State Department of Education, on student completion of instruction pursuant to paragraph (1).

(f) For purposes of this section, one hour means 60 minutes including passing time.

(g) Any deviation from the standard use of a simulator or off-street multiple-car driving range, or both, shall have prior approval by the Department of Education before the school district, county superintendent of schools, the California Youth Authority, or the Department of Education can be reimbursed for the students trained.

(h) Nothing in this chapter shall be construed to direct or restrict courses of instruction in the classroom phase or the laboratory phase of driver education offered by private elementary and secondary schools or to require the use of credentialed or certified instructors in the laboratory phase of driver education offered by private elementary and secondary schools, except that each student enrolled in a course shall satisfactorily complete a minimum of six hours of on-street behind-the-wheel driving instruction. This chapter shall not be construed to limit eligibility for a provisional driver's license for pupils who have completed driver education or driver training courses offered in private elementary or secondary schools.

(i) For the purposes of this section, private elementary or secondary schools are those subject to the provisions of Sections 33190 and 48222.

(j) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 1.5. Section 51852 is added to the Education Code, read:

51852. A course of instruction in the laboratory phase of driver education shall include, for each student enrolled in the class, instruction under one of the following plans:

(a) Plan One. A minimum of 12 hours allocated as follows:

(1) A minimum of six hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) A minimum of six hours in a dual-control automobile with a qualified instructor for the purposes of observation. Practice driving on an off-street multiple-car driving range approved by the department under the supervision of a qualified instructor may be substituted for all or part of the observation time.

(b) Plan Two. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Six hours in a dual-control automobile with a qualified instructor for the purposes of observation. Practice driving on an off-street

multiple-car driving range approved by the department under the supervision of a qualified instructor may be substituted for all or part of the observation time.

(3) Twelve hours of instruction by a qualified instructor in a driving simulator approved by the department.

(4) At least three additional hours of instruction specified in one or more of paragraphs 1 to 3, inclusive, of this subdivision.

(c) Plan Three. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Six hours in a dual-control automobile with a qualified instructor for the purpose of observation.

(3) Twelve hours of instruction by a qualified instructor on an off-street multiple-car driving range.

(4) At least three additional hours of instruction specified in one or more of paragraphs 1 to 3, inclusive, of this subdivision.

(d) Plan Four. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Three hours in a dual-control automobile with a qualified instructor for the purpose of observation.

(3) Eighteen hours of instruction by a qualified instructor in a driving simulator approved by the department and on an off-street multiple-car driving range. The governing board of the district shall establish the proportion of time to be utilized in simulators and on the off-street multiple-car driving range.

(e) Plan Five.

(1) Competency-based driver training which means a program in which each student receives a minimum of three hours of on-street behind-the-wheel practice driving instruction, a minimum of one hour of behind-the-wheel pretesting, and a minimum of one hour of behind-the-wheel posttesting. The pretest and posttest for public school programs shall include basic skill evaluation by the instructor, as adopted by the Superintendent of Public Instruction pursuant to paragraph (2). The one hour posttest shall be conducted by an instructor other than the instructor who conducted the three hours of behind-the-wheel practice driving instruction or the pretest. Each student shall receive at least one additional hour of either behind-the-wheel practice driving instruction or observation time.

(2) The Superintendent of Public Instruction shall adopt rules, regulations, and basic skill requirements for public school programs pursuant to this subdivision.

(3) Local district superintendents offering this program shall annually report to the Superintendent of Public Instruction, on a form

developed by the State Department of Education, on student completion of instruction pursuant to paragraph (1).

(f) For purposes of this section, one hour means 60 minutes including passing time.

(g) Any deviation from the standard use of a simulator or off-street multiple-car driving range, or both, shall have prior approval by the Department of Education before the school district, county superintendent of schools, the California Youth Authority, or the Department of Education can be reimbursed for the students trained.

(h) Nothing in this section shall be construed to direct or restrict courses of instruction in the classroom phase or the laboratory phase of driver education offered by private elementary and secondary schools or to require the use of credentialed or certified instructors in the laboratory phase of driver education offered by private elementary and secondary schools, except that each student enrolled in a course shall satisfactorily complete a minimum of six hours of on-street behind-the-wheel driving instruction. This section shall not be construed to limit eligibility for a provisional driver's license for pupils who have completed driver education or driver training courses offered in private elementary or secondary schools.

(i) For the purposes of this section, private elementary or secondary schools are those subject to the provisions of Sections 33190 and 48222.

(j) This section shall become operative on July 1, 2004.

SEC. 2. Section 11101 of the Vehicle Code is amended to read:

11101. (a) The provisions of this chapter shall not apply to any of the following:

(1) Public schools or educational institutions in which driving instruction is part of the curriculum.

(2) Nonprofit public service organizations offering instruction without a tuition fee.

(3) Nonprofit organizations engaged exclusively in giving off-the-highway instruction in the operation of motorcycles, if the course of instruction is approved by the National Highway Traffic Safety Administration and is not designed to prepare students for examination by the department for a class 4 drivers license.

(4) Commercial schools giving only off-the-highway instruction in the operation of special construction equipment, as defined in this code.

(5) Vehicle dealers or their salesmen giving instruction without charge to purchasers of motor vehicles.

(6) Employers giving instruction to their employees.

(7) Commercial schools engaged exclusively in giving off-the-highway instruction in the operation of racing vehicles or in advanced driving skills to persons holding valid drivers' licenses, except

whenever such instruction is given to persons who are being prepared for examination by the department for any class of driver's license.

(b) For purposes of this section, ''racing vehicle'' means a motor vehicle of a type which is used exclusively in a contest of speed and which is not intended for use on the highways.

(c) (1) Nothing in this chapter shall be construed to direct or restrict courses of instruction in driver education offered by private secondary schools or to require the use of credentialed or certified instructors in driver education courses offered by private secondary schools.

(2) For the purposes of this section, private secondary schools are those subject to the provisions of Sections 33190 and 48222 of the Education Code.

(d) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2.5. Section 11101 is added to the Vehicle Code, to read:

11101. (a) The provisions of this chapter shall not apply to any of the following:

(1) Public schools or educational institutions in which driving instruction is part of the curriculum.

(2) Nonprofit public service organizations offering instruction without a tuition fee.

(3) Nonprofit organizations engaged exclusively in giving off-the-highway instruction in the operation of motorcycles, if the course of instruction is approved by the National Highway Traffic Safety Administration and is not designed to prepare students for examination by the department for a class 4 drivers license.

(4) Commercial schools giving only off-the-highway instruction in the operation of special construction equipment, as defined in this code.

(5) Vehicle dealers or their salesmen giving instruction without charge to purchasers of motor vehicles.

(6) Employers giving instruction to their employees.

(7) Commercial schools engaged exclusively in giving off-the-highway instruction in the operation of racing vehicles or in advanced driving skills to persons holding valid drivers' licenses, except whenever such instruction is given to persons who are being prepared for examination by the department for any class of driver's license.

(b) For purposes of this section, ''racing vehicle'' means a motor vehicle of a type which is used exclusively in a contest of speed and which is not intended for use on the highways.

(c) This section shall become operative on July 1, 2004.

SEC. 3. Section 15242 of the Vehicle Code is amended to read:

15242. (a) A person who is self-employed as a commercial motor vehicle driver shall comply with both the requirements of this chapter pertaining to employers and those pertaining to employees.

(b) Notwithstanding subdivision (a), any motor carrier that engages an owner-operator meeting the requirements of subdivision (b) of Section 34624 to provide transportation services under the direction and control of that motor carrier is responsible for the compliance of that owner-operator with this chapter and for purposes of the regulations adopted by the department pursuant to Section 34501 during the period of that direction and control.

(c) For the purposes of subdivision (b), ''direction and control'' means either of the following:

(1) The owner-operator is operating under the United States Department of Transportation interstate operating authority of the motor carrier.

(2) The owner-operator has performed transportation services for a minimum of 60 calendar days within the past 90 calendar days for the motor carrier and has been on duty for that carrier for no less than 36 hours within any week in which transportation services were provided.

(d) Subdivision (b) shall not be construed to change the definition of ''employer,'' ''employee,'' or ''independent contractor'' for any purpose.

SEC. 4. Section 34520 of the Vehicle Code is amended to read:

34520. (a) Motor carriers and drivers shall comply with the controlled substances and alcohol use, transportation, and testing requirements of the United States Secretary of Transportation as set forth in Part 382 (commencing with Section 382.101) of, and Sections 392.5(a)(1) and 392.5(a)(3) of, Title 49 of the Code of Federal Regulations.

(b) (1) Every motor carrier shall make available for inspection, upon the request of an authorized employee of the department, copies of all results and other records pertaining to controlled substances and alcohol use and testing conducted pursuant to federal law, as specified in subdivision (a), including those records contained in individual driver qualification files.

(2) For the purposes of complying with the return-to-duty alcohol or controlled substances test requirements, or both, of Section 382.309 of Title 49 of the Code of Federal Regulations and the followup alcohol or controlled substances test requirements, or both, of Section 382.311 of that title, the department may use those test results to monitor drivers who are motor carriers.

(3) No evidence derived from a positive test result in the possession of a motor carrier shall be admissible in a criminal prosecution

concerning unlawful possession, sale, or distribution of controlled substances.

(c) Any drug or alcohol testing consortium, as defined in Section 382.107 of Title 49 of the Code of Federal Regulations, shall mail a copy of all drug and alcohol positive test result summaries to the department within three days of the test. This requirement applies only to drug and alcohol positive tests of those drivers employed by motor carriers who operate terminals within this state.

(d) A transit agency receiving federal financial assistance under Section 3, 9, or 18 of the Federal Transit Act, or under Section 103(e)(4) of Title 23 of the United States Code, shall comply with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as set forth in Part 655 (commencing with Section 655.1) of Title 49 of the Code of Federal Regulations.

(e) The owner-operator shall notify all other motor carriers with whom he or she is under contract when the owner-operator has met the requirements of subdivision (c) of Section 15242. Notwithstanding subdivision (i), a violation of this subdivision is an infraction.

(f) Except as provided in Section 382.301 of Title 49 of the Code of Federal Regulations, an applicant for employment as a commercial driver or an owner-operator seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until a preemployment test for controlled substances and alcohol use meeting the requirements of the federal regulations referenced in subdivision (a) have been completed and a negative test result has been reported.

(g) An applicant for employment as a commercial driver or an owner-operator, seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until the motor carrier has completed a full investigation of the driver's employment history meeting the requirements of the federal regulations cited under subdivision (a). Every motor carrier, whether making or receiving inquiries concerning a driver's history, shall document all activities it has taken to comply with this subdivision.

(h) A motor carrier that utilizes a preemployment screening service to review applications is in compliance with the employer duties under subdivisions (e) and (f) if the preemployment screening services that are provided satisfy the requirements of state and federal law and the motor carrier abides by any findings that would, under federal law, disqualify an applicant from operating a commercial vehicle.

(i) It is a misdemeanor punishable by imprisonment in the county jail for six months and a fine not to exceed five thousand dollars ($5,000), or by both the imprisonment and fine, for any person to willfully violate

this section. As used in this subdivision, ''willfully'' has the same meaning as defined in Section 7 of the Penal Code.

(j) This section does not apply to a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, who is authorized to drive vehicles described in Section 34500 if that peace officer is participating in a substance abuse detection program within the scope of his or her employment.

SEC. 5. Section 34623 of the Vehicle Code is amended to read:

34623. (a) The Department of the California Highway Patrol has exclusive jurisdiction for the regulation of safety of operation of motor carriers of property.

(b) The motor carrier permit of a motor carrier of property may be suspended for failure to do any of the following:

(1) Maintain any vehicle of the carrier in a safe operating condition or to comply with this code or with applicable regulations contained in Title 13 of the California Code of Regulations, if that failure is either a consistent failure or presents an imminent danger to public safety.

(2) Enroll all drivers in the pull notice system as required by Section 1808.1.

(3) Submit any application or pay any fee required by subdivision (e) or (h) of Section 34501.12 within the timeframes set forth in that section.

(c) The motor carrier permit of a motor carrier of property shall be suspended for failure to either (1) comply with the requirements of federal law described in subdivision (a) of Section 34520 of the Vehicle Code, or (2) make copies of results and other records available as required by subdivision (b) of that section. The suspension shall be as follows:

(1) For a serious violation, which is a willful failure to perform substance abuse testing in accordance with state or federal law:

(A) For a first offense, a mandatory five-day suspension.

(B) For a second offense within three years of a first offense, a mandatory three-month suspension.

(C) For a third offense within three years of a first offense, a mandatory one year suspension.

(2) For a nonserious violation, the time recommended to the department by the Department of the California Highway Patrol.

(3) For the purposes of this subdivision, ''willful failure'' means any of the following:

(A) An intentional and uncorrected failure to have a controlled substances and alcohol testing program in place.

(B) An intentional and uncorrected failure to enroll an employed driver into the controlled substances and alcohol testing program.

(C) A knowing use of a medically disqualified driver, including the failure to remove the driver from safety-sensitive duties upon notification of the medical disqualification.

(D) An attempt to conceal legal deficiencies in the motor carrier's controlled substances and alcohol testing program.

(d) The department, pending a hearing in the matter pursuant to subdivision (f), may suspend a carrier's permit.

(e) (1) A motor carrier whose motor carrier permit is suspended pursuant to subdivision (b) may obtain a reinspection of its terminal and vehicles by the Department of the California Highway Patrol by submitting a written request for reinstatement to the department and paying a reinstatement fee as required by Section 34623.5.

(2) A motor carrier whose motor carrier permit is suspended for failure to submit any application or to pay any fee required by Section 34501.12 shall present proof of having submitted that application or have paid that fee to the Department of the California Highway Patrol before applying for reinstatement of its motor carrier permit.

(3) The department shall deposit all reinstatement fees collected from motor carriers of property pursuant to this section in the fund. Upon receipt of the fee, the department shall forward a request to the Department of the California Highway Patrol, which shall perform a reinspection within a reasonable time, or shall verify receipt of the application or fee or both the application and fee. Following the term of a suspension imposed under Section 34670, the department shall reinstate a carrier's motor carrier permit suspended under subdivision (b) upon notification by the Department of the California Highway Patrol that the carrier's safety compliance has improved to the satisfaction of the Department of the California Highway Patrol, or that the required application or fees have been received by the Department of the California Highway Patrol, unless the permit is suspended for another reason or has been revoked.

(f) Whenever the department suspends the permit of any carrier pursuant to subdivision (b), (c), or paragraph (3) of subdivision (i), the department shall furnish the carrier with written notice of the suspension and shall provide for a hearing within a reasonable time, not to exceed 21 days, after a written request is filed with the department. At the hearing, the carrier shall show cause why the suspension should not be continued. Following the hearing, the department may terminate the suspension, continue the suspension in effect, or revoke the permit. The department may revoke the permit of any carrier suspended pursuant to subdivision (b) at any time that is 90 days or more after its suspension if the carrier has not filed a written request for a hearing with the department or has failed to submit a request for reinstatement pursuant to subdivision (e).

(g) Notwithstanding any other provision of this code, no hearing shall be provided when the suspension of the motor carrier permit is based solely upon the failure of the motor carrier to maintain satisfactory proof of financial responsibility as required by this code, or failure of the motor carrier to submit an application or to pay fees required by Section 34501.12.

(h) A motor carrier of property may not operate a commercial motor vehicle on any public highway in this state during any period its motor carrier of property permit is suspended pursuant to this division.

(i) (1) A motor carrier of property whose motor carrier permit is suspended pursuant to this section or Section 34505.6, which suspension is based wholly or in part on the failure of the motor carrier to maintain any vehicle in safe operating condition, may not lease, or otherwise allow, another motor carrier to operate the vehicles of the carrier subject to the suspension, during the period of the suspension.

(2) A motor carrier of property may not knowingly lease, operate, dispatch, or otherwise utilize any vehicle from a motor carrier of property whose motor carrier permit is suspended, which suspension is based wholly or in part on the failure of the motor carrier to maintain any vehicle in safe operating condition.

(3) The department may immediately suspend the motor carrier permit of any motor carrier that the department determines to be in violation of paragraph (2).

SEC. 6. Section 34624 of the Vehicle Code is amended to read:

34624. (a) The department shall establish a classification of motor carrier of property known as owner-operators.

(b) As used in this section and in Sections 1808.1 and 34501.12, an owner-operator is a person who meets all of the following requirements:

(1) Holds a class A or class B driver's license or a class C license with a hazardous materials endorsement.

(2) Owns, leases, or otherwise operates not more than one power unit and not more than three towed vehicles.

(3) Is required to obtain a permit as a motor carrier of property by the department under this division.

(c) (1) As used in this section, ''power unit'' is a motor vehicle described in subdivision (a), (b), (g), (f), or (k) of Section 34500, or a motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, but does not include those vehicles operated by household goods carriers, as defined in Section 5109 of the Public Utilities Code or persons providing transportation of passengers. A ''towed vehicle'' is a nonmotorized vehicle described in subdivision (d), (e), (f), (g), or (k) of that section.

(2) As used in this section, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating of the

towing vehicle exceeds 11,500 pounds, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous materials for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which a hazardous waste transporter registration is required pursuant to Section 25163 of the Health and Safety Code.

(d) The department, upon suspending or revoking the driving privilege of an owner-operator shall also suspend the owner-operator's motor carrier permit, unless the owner-operator, within 15 days, shows good cause why the permit should not be suspended.

(e) Every motor carrier who is within the classification established by this section is responsible for notifying all other motor carriers with whom he or she is under contract when the status of the motor carrier changes so that he or she is no longer within the classification established by this section.

(f) This section shall not be construed to change the definition of ''employer,'' ''employee,'' or ''independent contractor'' for any other purpose.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 8. 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 appropriate compliance with federal and state regulations regarding drug and alcohol testing relative to motor carriers, owner-operators, and drivers, it is necessary that this statute take immediate effect.

CHAPTER 775

An act to amend Sections 62, 62.1, 62.2, 63.1, 69.5, 75.51, 75.55, 172, 172.1, 181, 194, 197, 237, 254, 270, 271, 276, 276.1, 441, 441.5, 480.4, 482, 531.1, 755, 756, 1603, 2611.6, 5801, 5802, 5803, 5811, 5812, 5813, 5831, and 7205.1 of, to amend the heading of Chapter 2.6 (commencing with Section 172) of Part 1 of Division 1 of, to amend and

repeal Sections 276.2 and 276.3 of, to add Sections 259.13 and 531.9 to, and to repeal Section 620.5 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980–81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one entity to the same type of entity),

provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(*l*) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, ''eligible dwelling unit'' means the dwelling unit that was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision (e) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars ($20,000) in the year in which the transfer occurs. As used in this subdivision, ''child'' or ''ward'' includes a minor or an adult. As used in this subdivision, ''eligible dwelling unit'' means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

(o) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

SEC. 2. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. (a) Change in ownership shall not include the following:

(1) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park, provided that, with respect to any transfer of a mobilehome park on or after January 1, 1989, subject to this paragraph, the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. If, on or after January 1, 1998, a park is acquired by an entity that did not attain an initial tenant participation level of at least 51 percent on the date of the transfer, the entity shall have up to one year after the date of the transfer to attain a tenant participation level of at least 51 percent. If an individual tenant notifies the county assessor of the intention to comply with the conditions set forth in the preceding sentence, the mobilehome park may not be reappraised by the assessor during that period. However, if a tenant participation level of at least 51 percent is not attained within the one-year period, the county assessor shall thereafter levy escape assessments for the mobilehome park transfer.

(2) Any transfer or transfers on or after January 1, 1985, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (*l*) of Section 50781 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, an individual tenant or tenants notify the county assessor of the intention to comply with the conditions set forth in the preceding sentence, any mobilehome park rental space that is purchased by an individual tenant in that mobilehome park during that period shall not be reappraised by the assessor. However, if all of the conditions set forth in the first sentence of this paragraph are not satisfied, the county assessor shall thereafter levy escape assessments for the spaces so transferred. This paragraph shall apply only to those rental mobilehome parks that have been in operation for five years or more.

(b) (1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to paragraph (1) of subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity that acquired the park in accordance with paragraph (1) of subdivision (a) shall be a change in

ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1.

(2) For the purposes of this subdivision, ''pro rata portion of the real property'' means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity that acquired the park in accordance with paragraph (1) of subdivision (a).

(3) Any pro rata portion or portions of real property that changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10.

(4) (A) Notwithstanding any other provision of law, after an exclusion under subdivision (a), the assessor may not levy any escape or supplemental assessment with respect to any change in ownership of a pro rata portion of the real property of the mobilehome park that occurred between January 1, 1989, and January 1, 2002, and for which the assessor did not, prior to January 1, 2000, levy any assessments. However, commencing with the January 1, 2002, lien date, the assessor shall correct the base year value of the pro rata portion of the real property of the park to properly reflect these changes in ownership. A mobilehome park shall provide information requested by the assessor that is necessary to correct the base year value of the property for purposes of this paragraph.

(B) When an assessor corrects the base year value of the real property of the park pursuant to subparagraph (A), the assessor shall notify parks that residents may be eligible for property tax assistance programs offered by either the Controller or the Franchise Tax Board for senior citizens, or blind or disabled persons.

(C) Any outstanding taxes that were levied between January 1, 2000, and January 1, 2002, as a result of a pro rata change in ownership as described in subparagraph (A) shall be canceled. However, there shall be no refund of taxes, as so levied, that were paid prior to January 1, 2002.

(5) A mobilehome park that does not utilize recorded deeds to transfer ownership interest in the spaces or lots shall file, by February 1 of each year, a report with the county assessor's office containing all of the following information:

(A) The full name and mailing address of each owner, stockholder, or holder of an ownership interest in the mobilehome park.

(B) The situs address, including space number, of each unit.

(C) The date that the ownership interest was acquired.

(D) If the unit is a manufactured home, the Department of Housing and Community Development decal number or serial number, or both, and whether the manufactured home is subject to the vehicle license fee or the local property tax.

(6) Within 30 days of a change in ownership, the new resident owner or other purchaser or transferee of a manufactured home within a mobilehome park that does not utilize recorded deeds to transfer ownership interest in the spaces or lots shall file a change in ownership statement described in either Section 480 or 480.2.

(7) Failure to comply with the reporting requirement described in paragraph (5) shall result in a penalty pursuant to Section 482.

(c) It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, paragraph (1) of subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985.

SEC. 3. Section 62.2 of the Revenue and Taxation Code is amended to read:

62.2. (a) (1) Subject to paragraph (2), change in ownership shall not include any transfer on or after January 1, 1989, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, tenant-in-common ownership group, or any other entity, including a governmental entity, if, within 18 months after the transfer, the mobilehome park is transferred by that corporation or other entity, including a governmental entity, to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of the mobilehome park in a transaction that is excluded from change in ownership by paragraph (1) of subdivision (a) of Section 62.1, or at least 51 percent of the mobilehome park rental spaces are transferred to the individual tenants of those spaces in a transaction excluded from change in ownership by paragraph (2) subdivision (a) of Section 62.1.

(2) (A) Any mobilehome park that was initially transferred on or after January 1, 1993, to a nonprofit corporation, stock cooperative corporation, tenant-in-common ownership group, or any other entity, including a governmental entity, that is subsequently transferred within 36 months of that initial transfer as provided in paragraph (1), shall qualify for the exclusion from change in ownership pursuant to this subdivision. In applying the 36-month limit specified in the preceding sentence to the subsequent transfer to an individual tenant, as provided in paragraph (1), of a rental space in a mobilehome park that was initially transferred on or after January 1, 1995, to a nonprofit corporation, stock cooperative corporation, tenant-in-common ownership group, or any other entity, the execution of a purchase contract and the opening of a

bona fide purchase escrow with a licensed escrow agent shall be deemed to transfer the rental space in compliance with that 36-month limit, provided that both of the following conditions are met:

(i) The escrow is opened prior to the expiration of the 36-month time period.

(ii) The escrow closes on a date no later than six months after the end of the 36-month time period.

(B) A mobilehome park located within a disaster area that was initially transferred on or after October 1, 1991, and before October 31, 1991, to a nonprofit corporation, stock cooperative corporation, or other entity, that is subsequently transferred within 76 months of that initial transfer as provided in paragraph (1), shall qualify for the exclusion from change in ownership pursuant to this subdivision. For purposes of the preceding sentence, ''mobilehome park located within a disaster area'' means a mobilehome park that is located in the County of Los Angeles in an area for which both of the following apply:

(i) The Governor, as a result of the January 17, 1994, Northridge earthquake, has declared the area to be in a state of disaster and certified the area's need for assistance.

(ii) The President of the United States has, pursuant to federal law, determined the area to be in a state of major disaster.

The exclusion from change in ownership pursuant to this subdivision of a mobilehome park located within a disaster area shall be effective commencing with the 1995–96 fiscal year, and shall not require any affected county to refund any amount of property tax levied with respect to a mobilehome park for the period from October 1, 1991, to June 30, 1995, inclusive.

(b) With respect to any transfer of any mobilehome park on or after January 1, 1989, subject to this section, the individual tenants who are renting at least a majority of the spaces in the mobilehome park prior to the transfer to the entity formed by the tenants for the acquisition of the park shall participate in the transaction through the ownership of an aggregate of at least a majority of voting stock of, or other ownership or membership interest in, that entity.

(c) This section shall not apply if any fees charged the mobilehome park tenants in connection with either the first or second transfer exceed 15 percent of the total consideration paid for the mobilehome park in the first transfer, plus any accrued interest and taxes.

(d) If the assessor is notified in writing at the time the transferee files the change in ownership statement that the transferee intends to qualify the transfer under this section, the mobilehome park shall not be reappraised pending satisfaction of the relevant conditions set forth in this section for exclusion from change in ownership. If the transferee fails to satisfy those conditions, the assessor shall reappraise the

mobilehome park and levy escape assessments or supplemental assessments, as appropriate. For escape or supplemental assessments levied pursuant to the preceding sentence with respect to a mobilehome park located within a disaster area, both of the following conditions shall apply:

(1) The limitations period shall be that period specified in either subdivision (b) of Section 532 or subdivision (d) of Section 75.11, as applicable.

(2) For purposes of applying the limitations periods specified in paragraph (1), the expiration date of the 76-month period specified in subdivision (a) shall be deemed to be the date upon which the initial transfer of the mobilehome park was reported to the assessor.

SEC. 4. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(3) (A) Subject to subparagraph (B), the purchase or transfer of real property described in paragraphs (1) and (2) of subdivision (a) occurring on or after March 27, 1996, between grandparents and their grandchild or grandchildren, if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1) of subdivision (a). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (2) of subdivision (a) and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence shall be included in applying, for purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) full cash value limit specified in paragraph (2) of subdivision (a).

(b) (1) For purposes of paragraph (1) of subdivision (a), ''principal residence'' means a dwelling for which a homeowners' exemption or a

disabled veterans' residence exemption has been granted in the name of the eligible transferor. ''Principal residence'' includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) ''Purchase or transfer between parents and their children'' means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children. For purposes of this section, the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986.

(2) ''Purchase or transfer of real property between grandparents and their grandchild or grandchildren'' means a purchase or transfer on or after March 27, 1996, from a grandparent or grandparents to a grandchild or grandchildren if all of the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of the transfer. For purposes of this section, the date of any transfer between grandparents and their grandchildren under a will or by intestate succession shall be the date of the decedent's death.

(3) ''Children'' means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(4) ''Grandchild'' or ''grandchildren'' means any child or children of the child or children of the grandparent or grandparents.

(5) ''Full cash value'' means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(6) ''Eligible transferor'' means a grandparent, parent, or child of an eligible transferee.

(7) ''Eligible transferee'' means a parent, child, or grandchild of an eligible transferor.

(8) ''Real property'' means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(9) ''Transfer'' includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(10) ''Social security number'' also includes a taxpayer identification number issued by the Internal Revenue Service in the case in which the taxpayer is a foreign national who cannot obtain a social security number.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate, signed and made under penalty of perjury that the transferee is a

grandparent, parent, child, or grandchild of the transferor and that the transferor is his or her parent, child, or grandparent. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate, signed and made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee and that the transferor is seeking the exclusion under this section and will not file a claim to transfer the base year value of the property under Section 69.5.

(C) A written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the social security number of each eligible transferor, and the names of the eligible transferees of that property.

(D) If there are multiple transferees, the certification and signature may be made by any one of the transferees, if both of the following conditions are met:

(i) The transferee has actual knowledge that, and the certification signed by the transferee states that, all of the transferees are eligible transferees within the meaning of this section.

(ii) The certification is signed by the transferee as a true statement made under penalty of perjury.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the

transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (d) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

(e) (1) The State Board of Equalization shall design the form for claiming eligibility. Except as provided in paragraph (2), any claim under this section shall be filed:

(A) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

(B) For transfers of real property between parents and their children occurring on or after September 30, 1990, and for the purchase or transfer of real property between grandparents and their grandchildren occurring on or after March 27, 1996, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

(C) Notwithstanding subparagraphs (A) and (B), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued as a result of the purchase or transfer of real property for which the claim is filed.

(2) In the case in which the real property subject to purchase or transfer has not been transferred to a third party, a claim for exclusion under this section that is filed subsequent to the expiration of the filing periods set forth in paragraph (1) shall be considered by the assessor, subject to all of the following conditions:

(A) Any exclusion granted pursuant to that claim shall apply commencing with the lien date of the assessment year in which the claim is filed.

(B) Under any exclusion granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (A) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (A) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.

(3) (A) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(B) Paragraph (2) shall apply to purchases or transfers between parents and their children that occurred on or after November 6, 1986, and to purchases or transfers between grandparents and their grandchildren that occurred on or after March 27, 1996.

(4) For purposes of this subdivision, a transfer of real property to a parent or child of the transferor shall not be considered a transfer to a third party.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the social security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the general principle that transfers by reason of death occur at the time of death.

(h) (1) Except as provided in paragraph (2), this section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

(2) This section shall apply to purchases or transfers of real property between grandparents and their grandchildren occurring on or after March 27, 1996, and, with respect to purchases or transfers of real property between grandparents and their grandchildren, shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

SEC. 5. Section 69.5 of the Revenue and Taxation Code is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of

Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with all of the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base year value.

(D) It provides that its provisions are operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated that is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section, except that this paragraph shall not apply to any person who becomes severely and permanently disabled subsequent to being granted, as a claimant, the property tax relief provided by this section for any person over the age of 55 years. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format that is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A manufactured home or a manufactured home and any land owned by the claimant on which the manufactured home is situated. For purposes of this paragraph, ''land owned by the claimant'' includes a pro rata interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(A) If the manufactured home or the manufactured home and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base year value of the manufactured home or the base year value of the manufactured home and the land on which it is situated, as appropriate. If the manufactured home dwelling that constitutes the original property of the claimant includes an interest in a resident-owned mobilehome park, the assessor shall transfer to the claimant's replacement dwelling the base year value of the claimant's manufactured home and his or her pro rata portion of the real property of the park. No transfer of base year value shall be made by the assessor of that portion of land that does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g).

(B) If the manufactured home or the manufactured home and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base year value of the claimant's original property either to the manufactured home or the manufactured home and the land on which it is situated, as appropriate. If the manufactured home dwelling that constitutes the replacement dwelling of the claimant includes an interest in a resident-owned mobilehome park, the assessor shall transfer the base year value of the claimant's original property to the manufactured home of the claimant and his or her pro rata portion of the park. No transfer of base year value shall be made by the assessor to that portion of land that does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership that either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of

the replacement dwelling was completed subject to subdivision (k) or (m).

(g) For purposes of this section:

(1) ''Person over the age of 55 years'' means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) ''Base year value of the original property'' means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant, or in the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, determined as of the date immediately prior to the misfortune or calamity.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, ''base year value of the original property'' also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the ''base year value of the original property'' shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(3) ''Replacement dwelling'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, and ''land owned by the claimant'' includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling. For purposes of this paragraph, ''area of reasonable size that is used as a site for a residence'' includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site. For purposes of this paragraph, ''land owned by the claimant'' includes an ownership interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(4) ''Original property'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of

residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size that is used as a site for a residence, and ''land owned by the claimant'' includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property. For purposes of this paragraph, ''area of reasonable size that is used as a site for a residence'' includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site. For purposes of this paragraph, ''land owned by the claimant'' includes an ownership interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(5) ''Equal or lesser value'' means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the ''replacement dwelling is purchased or newly constructed'' is the date of purchase or the date of completion of construction, whichever is later.

(6) ''Full cash value of the replacement dwelling'' means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) ''Full cash value of the original property'' means, either:

(A) Its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(B) In the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, its full cash value, as determined in accordance with Section 110, immediately prior to its substantial damage or destruction by misfortune or calamity, as determined by the county assessor of the county in which the property is located, without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1, for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) ''Sale'' means any change in ownership of the original property for consideration.

(9) ''Claimant'' means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) ''Property that is eligible for the homeowner's exemption'' includes property that is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) ''Person'' means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) ''Severely and permanently disabled'' means any person described in subdivision (b) of Section 74.3.

(13) For the purposes of this section property is ''substantially damaged or destroyed by misfortune or calamity'' if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes that were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), and the assessor shall grant the rescission, if a written notice of rescission is delivered to the office of the assessor as follows:

(1) A written notice of rescission signed by the original filing claimant or claimants is delivered to the office of the assessor in which the original claim was filed.

(2) (A) Except as otherwise provided in this paragraph, the notice of rescission is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement

dwelling, consistent with relief granted under this section, are delinquent.

(B) Notwithstanding any other provision in this division, any time the notice of rescission is delivered to the office of the assessor within six years after relief was granted, provided that the replacement property has been vacated as the claimant's principal place of residence within 90 days after the original claim was filed, regardless of whether the property continues to receive the homeowner's exemption. If the rescission increases the base year value of a property, or the homeowners' exemption has been incorrectly allowed, appropriate escape assessments or supplemental assessments, including interest as provided in Section 506, shall be imposed. The limitations periods for any escape assessments or supplemental assessments shall not commence until July 1 of the assessment year in which the notice of rescission is delivered to the office of the assessor.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3) or (4), shall apply to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, except as provided in paragraph (4), this section shall apply to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(4) The amendments made to subdivision (e) by the act adding this paragraph shall apply only to replacement dwellings under Section 69 that are acquired or newly constructed on or after October 20, 1991, and shall apply commencing with the 1991–92 fiscal year.

(k) (1) In the case in which a county adopts an ordinance pursuant to paragraph (2) of subdivision (a) that establishes an applicable date which is more than three years prior to the date of adoption of the ordinance,

those potential claimants who purchased or constructed replacement dwellings more than three years prior to the date of adoption of the ordinance and who would, therefore, be precluded from filing a timely claim, shall be deemed to have timely filed a claim if the claim is filed within three years after the date that the ordinance is adopted. This paragraph may not be construed as a waiver of any other requirement of this section.

(2) In the case in which a county assessor corrects a base year value to reflect a pro rata change in ownership of a resident-owned mobilehome park that occurred between January 1, 1989, and January 1, 2002, pursuant to paragraph (4) of subdivision (b) of Section 62.1, those claimants who purchased or constructed replacement dwellings more than three years prior to the correction and who would, therefore, be precluded from filing a timely claim, shall be deemed to have timely filed a claim if the claim is filed within three years of the date of notice of the correction of the base year value to reflect the pro rata change in ownership. This paragraph may not be construed as a waiver of any other requirement of this section.

(3) This subdivision does not apply to a claimant who has transferred his or her replacement dwelling prior to filing a claim.

(4) The property tax relief provided by this section, but filed under this subdivision, shall apply prospectively only, commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.

(*l*) No escape assessment may be levied if a transfer of base year value under this section has been erroneously granted by the assessor pursuant to an expired ordinance authorizing intercounty transfers of base year value.

(m) (1) The amendments made to subdivisions (b) and (g) of this section by Chapter 613 of the Statutes of 2001 shall apply:

(A) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(B) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but not to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

(C) With respect to the transfer of base year value by a severely and permanently disabled person, to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(2) The property tax relief provided by this section in accordance with this subdivision shall apply prospectively only commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed. Notwithstanding subdivision (f), a claim shall be deemed to be timely filed if it is filed within four years after the operative date of the act adding this paragraph.

SEC. 6. Section 75.51 of the Revenue and Taxation Code is amended to read:

75.51. The tax collector shall mail or electronically transmit a supplemental tax bill to the assessee, including the following information either on the bill or in a separate statement accompanying the bill:

(a) The information supplied by the assessor to the auditor pursuant to Section 75.40.

(b) The amount of the supplemental taxes due.

(c) The date the notice is mailed.

(d) The date on which the taxes will become delinquent and the penalties for delinquency.

(e) A statement that the supplemental taxes were determined in accordance with Article XIII A of the California Constitution which generally requires reappraisal of property whenever a change in ownership occurs or property is newly constructed.

(f) The tax rates or the dollar amounts of taxes levied by each revenue district and taxing agency on the property covered by the tax bill.

(g) All of the following:

(1) Information specifying that if the taxpayer disagrees with a change in the assessed value as shown on the tax bill, the taxpayer has the right to an informal assessment review by contacting the assessor's office.

(2) (A) Except as provided in subparagraph (B), information specifying that if the taxpayer and the assessor are unable to agree on proper assessed value pursuant to an informal assessment review, the taxpayer has the right to file an application for reduction in assessment for the following year with the county board of equalization or the assessment appeals board, as applicable, and the time period during which the application will be accepted.

(B) For counties in which the board of supervisors has adopted the provisions of subdivision (c) of Section 1605, information advising that the assessee has a right to appeal the supplemental assessment, and that the appeal is required to be filed within 60 days of the date of the mailing

or electronic transmittal of the tax bill. For the purposes of equalization proceedings, the supplemental assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(3) The address of the clerk of the county board of equalization or the assessment appeals board, as applicable, at which forms for an application for reduction may be obtained.

SEC. 7. Section 75.55 of the Revenue and Taxation Code is amended to read:

75.55. (a) A county board of supervisors may, by ordinance, provide for the cancellation of any supplemental tax bill in which the amount of taxes to be billed is less than the cost of assessing and collecting them. In no event shall any supplemental tax bill be canceled pursuant to this subdivision if the amount of taxes on that bill exceeds fifty dollars ($50).

(b) Except where a county board of supervisors has adopted an ordinance pursuant to subdivision (a), a county board of supervisors may, by ordinance, provide for the cancellation by the assessor of any supplemental assessment where that assessment would result in an amount of taxes due which is less than the cost of assessing and collecting them. In no event shall any supplemental assessment be canceled pursuant to this subdivision if the amount of taxes resulting from that supplemental assessment would exceed fifty dollars ($50).

(c) Notwithstanding this section, no taxable real property shall be exempt from property taxes assessed on the lien date, as provided in Section 2192, unless the property is otherwise exempt under this division.

SEC. 8. The heading of Chapter 2.6 (commencing with Section 172) of Part 1 of Division 1 of the Revenue and Taxation Code is amended to read:

CHAPTER 2.6. DISASTER RELIEF FOR MANUFACTURED HOMES

SEC. 9. Section 172 of the Revenue and Taxation Code is amended to read:

172. Whenever a manufactured home is destroyed on or after January 1, 1982, as the result of a disaster declared by the Governor, the owner shall be entitled to relief from local property taxation or vehicle license fees in accordance with the provisions of this chapter.

SEC. 10. Section 172.1 of the Revenue and Taxation Code is amended to read:

172.1. (a) To claim tax relief in accordance with the provisions of this chapter, the owner shall execute a declaration under penalty of perjury that the replaced manufactured home was destroyed by a disaster

declared by the Governor and shall furnish with that declaration any other information, prescribed by the Department of Housing and Community Development after consultation with the California Assessors' Association, as is necessary to establish eligibility for relief under this chapter.

To be eligible for relief under this chapter, the replacement manufactured home must be comparable in size, utility, and location, as determined by the county assessor, with the destroyed manufactured home.

For purpose of this section, ''destroyed'' means damaged to such an extent that the cost of repair to the manufactured home would exceed its value at that time immediately preceding its destruction, or the manufactured home is declared a total loss for insurance purposes.

(b) If the replacement manufactured home is subject to local property taxation, the affidavit and documentation required by subdivision (a) shall be forwarded to the assessor of the county of situs. If the assessor determines that the owner of the replacement manufactured home is eligible for tax relief in accordance with the provisions of this chapter, the assessor shall, notwithstanding any other provision of law, do either of the following:

(1) If the destroyed manufactured home was subject to the vehicle license fee, enroll the replacement manufactured home with an assessed valuation so that the local property taxes paid shall be the same amount as the vehicle license fee and registration fee due on the destroyed manufactured home for the year prior to its destruction.

(2) If the destroyed manufactured home was subject to local property taxation, enroll the replacement manufactured home at a taxable value equal to the taxable value of the destroyed manufactured home at the time of its destruction.

(c) If the assessor determines that the owner of the replacement manufactured home is not eligible for tax relief in accordance with the provisions of this chapter, the replacement manufactured home shall be assessed in accordance with Part 13 (commencing with Section 5800).

(d) If the replacement manufactured home is subject to the vehicle license fee, the affidavit and documentation required by subdivision (a) shall be forwarded to the Department of Housing and Community Development. If the department determines that the owner is eligible for tax relief in accordance with the provisions of this chapter, the department shall do either of the following:

(1) If the destroyed manufactured home was subject to the vehicle license fee, assign an in-lieu taxation classification and rating year for determination of depreciation such that the owner of the replacement manufactured home will be charged registration and license fees no

greater than those he or she would have been charged for the destroyed manufactured home.

(2) If the destroyed manufactured home was subject to local property taxation, assign an in-lieu taxation classification and rating year for determination of depreciation such that the owner of the replacement manufactured home will be charged registration and license fees equal to local property taxes paid on the destroyed manufactured home for the year prior to its destruction.

(e) If the department determines that a replacement manufactured home subject to the vehicle license fee is not eligible for tax relief in accordance with the provisions of this chapter, the vehicle license fee for the replacement manufactured home shall be determined in accordance with the provisions of Sections 18115 and 18115.5 of the Health and Safety Code.

(f) If the tax on a replacement manufactured home determined in accordance with subdivision (b) or (d) is greater than the tax would be if determined without reference to this chapter, the lesser amount shall be levied.

(g) If a manufactured home subject to tax relief in accordance with the provisions of this chapter is subsequently sold or transferred to another party, the subsequent owner shall not receive this tax relief unless he or she is eligible in his or her own right for that relief.

SEC. 11. Section 181 of the Revenue and Taxation Code is amended to read:

181. As used in this chapter:

(a) ''Eligible county'' means a county which meets both of the following requirements:

(1) Has been proclaimed by the Governor to be in a state of disaster as a result of storms and floods occurring during February 1986.

(2) Has adopted an ordinance providing for property reassessment pursuant to Section 170.

(b) ''Eligible property'' means real property and any manufactured home which has received the homeowners' exemption or is eligible for the homeowners' exemption as of March 1, 1986, and which is located in an eligible county.

(c) ''Property tax deferral claim'' means a claim filed by the owner of eligible property in conjunction with or in addition to the filing of an application for reassessment of that property pursuant to Section 170, which enables the owner to defer payment of the April 10, 1986, installment of taxes on property on the regular secured roll for the 1985–86 fiscal year, as provided in Section 185.

SEC. 12. Section 194 of the Revenue and Taxation Code is amended to read:

194. As used in this chapter:

(a) ''Eligible county'' means a county that meets both of the following requirements:

(1) Has been proclaimed by the Governor to be in a state of emergency.

(2) Has adopted an ordinance providing property tax relief for disaster victims as provided in Section 170.

(b) ''Eligible property'' means real property and any manufactured home, including any new construction that was completed or any change in ownership that occurred prior to the date of the disaster that meets both of the following requirements:

(1) Is located in an eligible county.

(2) Has sustained substantial disaster damage and the disaster resulted in the issuance of a state of emergency proclamation by the Governor.

''Eligible property'' does not include any real property or any manufactured home, whether or not it otherwise qualifies as eligible property, if that real property or manufactured home was purchased or otherwise acquired by a claimant for relief under this chapter after the last date on which the disaster occurred.

(c) ''Fair market value'' means ''full cash value'' or ''fair market value'' as defined in Section 110.

(d) ''Next property tax installment payment date'' means December 10 or April 10, whichever date occurs first after the last date on which the eligible property was damaged.

(e) ''Property tax deferral claim'' means a claim filed by the owner of eligible property in conjunction with, or in addition to, the filing of an application for reassessment of that property pursuant to Section 170, that enables the owner to defer payment of the next installment of taxes on property on the regular secured roll for the current fiscal year, as provided in Section 194.1 or to defer payment of taxes on property on the supplemental roll for the current fiscal year, as provided in Section 194.9.

(f) ''Substantial disaster damage,'' as to real property located in a county declared to be a disaster by the Governor, means, with respect to real property and any manufactured home that has received the homeowners' exemption or is eligible for the exemption as of the most recent lien date, damage amounting to at least 10 percent of its fair market value or five thousand dollars ($5,000), whichever is less; and, with respect to other property, damage to the parcel of at least 20 percent of its fair market value immediately preceding the disaster causing the damage.

SEC. 13. Section 197 of the Revenue and Taxation Code is amended to read:

197. As used in this chapter:

(a) ''Eligible county'' means a county which meets both of the following requirements:

(1) Has been proclaimed by the Governor to be in a state of disaster as a result of the earthquake and aftershocks which occurred in California during October 1989.

(2) Has adopted an ordinance providing property tax relief for earthquake, aftershock, and fire disaster victims as provided in Section 170.

(b) ''Eligible property'' means real property and any manufactured home, including any new construction which was completed or any change in ownership which occurred prior to October 17, 1989, which meets both of the following requirements:

(1) Is located in an eligible county.

(2) Has sustained substantial disaster damage due to the earthquake or aftershocks occurring during 1989, which earthquake and aftershocks resulted in the issuance of disaster proclamations by the Governor.

''Eligible property'' does not include any real property or any manufactured home, whether or not it otherwise qualifies as eligible property, if that real property or manufactured home was purchased or otherwise acquired by a claimant for relief under this chapter after October 17, 1989.

(c) ''Substantial disaster damage,'' as to real property located in a county declared to be a disaster by the Governor as a result of the earthquake and aftershocks occurring in October 1989, means, with respect to real property and any manufactured home which has received the homeowners' exemption or is eligible for the exemption as of March 1, 1989, damage amounting to at least 10 percent of its fair market value or five thousand dollars ($5,000), whichever is less; and, with respect to other property, damage to the parcel of at least 20 percent of its fair market value immediately preceding the disaster causing the damage.

(d) ''Fair market value'' means ''full cash value'' or ''fair market value'' as defined in Section 110.

(e) ''Property tax deferral claim'' means a claim filed by the owner of eligible property in conjunction with or in addition to the filing of an application for reassessment of that property pursuant to Section 170, which enables the owner to defer payment of the December 10, 1989, installment of taxes on property on the regular secured roll for the 1989–90 fiscal year, as provided in Section 197.1, or to defer payment of taxes on property on the supplemental roll for the 1989–90 fiscal year, as provided in Section 197.9.

SEC. 14. Section 237 of the Revenue and Taxation Code is amended to read:

237. (a) (1) Subject to the requirements set forth in paragraph (2), there is exempt from taxation under this part that portion of the assessed

value of property, owned and operated by a federally recognized Indian tribe or its tribally designated housing entity, that corresponds to that portion of the property that is continuously available to, or occupied by, lower income households, as defined in Section 50079.5 of the Health and Safety Code or applicable federal, state, or local financing agreements, at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or rents that do not exceed those prescribed by the terms of the applicable federal, state, or local financing agreements or financial assistance agreements.

(2) The exemption set forth in subdivision (a) applies only if the property and entity meet the following requirements:

(A) At least 30 percent of the property's housing units are either continuously available to, or occupied by, lower income households, as defined in Section 50079.5 of the Health and Safety Code or applicable federal, state, or local financing agreements, at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or rents that do not exceed those prescribed by the terms of the applicable federal, state, or local financing agreements or financial assistance agreements.

(B) The housing entity is nonprofit.

(C) No part of the net earnings of the housing entity inure to the benefit of any private shareholder or individual.

(b) In lieu of the tax imposed by this part, a tribe or tribally designated housing entity may agree to make payments to a county, city, city and county, or political subdivision of the state for services, improvements, or facilities provided by that entity for the benefit of a low-income housing project owned and operated by the tribe or tribally designated housing entity. Any payments in lieu of tax may not exceed the estimated cost to the city, county, city and county, or political subdivision of the state of the services, improvements, or facilities to be provided.

(c) A tribe or tribally designated housing entity applying for an exemption under this section shall provide the following documents to the assessor:

(1) Documents establishing that the designating tribe is federally recognized.

(2) Documents establishing that the housing entity has been designated by the tribe.

(3) Documents establishing that there is a deed restriction, agreement, or other legally binding document requiring that the property be used in compliance with subparagraph (A) of paragraph (2) of subdivision (a).

(d) This exemption shall be known as the ''tribal housing exemption.''

SEC. 15. Section 254 of the Revenue and Taxation Code is amended to read:

254. Any person claiming the church, cemetery, college, exhibition, welfare, veterans' organization, free public libraries, free museums, aircraft of historical significance, tribal housing, or public schools property tax exemption and anyone claiming the classification of a vessel as a documented vessel eligible for assessment under Section 227, shall submit to the assessor annually an affidavit, giving any information required by the board.

SEC. 16. Section 259.13 is added to the Revenue and Taxation Code, to read:

259.13. (a) Affidavits for the tribal housing exemption shall be filed on or before February 15 of each year with the assessor. Affidavits of claimants shall be accompanied by:

(1) The documents required by subdivision (c) of Section 237.

(2) A description of the property for which the exemption is claimed, including the entire project property and the portion for which exemption is claimed. If the property includes units which do not qualify for the exemption, the description must list the qualifying and nonqualifying units.

(3) An annual affidavit by the claimant that the property for which exemption is claimed meets the income and rental requirements for the exemption and listing the number of occupants in each unit for which the exemption is claimed and the income and rental limits applicable for each household. Annual tenant affidavits verifying household size and income should be on file with the claimant for each exempt unit.

(b) Once the exemption has been granted in a particular county to a particular tribe or tribally designated housing entity, documents establishing that the tribe is federally recognized and that the housing entity has been designated by the tribe need not be resubmitted for additional years or additional properties of that tribe or tribally designated housing entity in the same county.

(c) Once the exemption has been granted for a particular property, it is not necessary to resubmit documents establishing that there is a legally binding restriction on the use of that property in succeeding years for as long as the legally binding restriction is in effect.

(d) Upon any indication that a tribal housing exemption has been incorrectly allowed, the assessor shall make a redetermination of eligibility for the tribal housing exemption. If the assessor determines that the property or any portion thereof is no longer eligible for the exemption, he or she shall immediately cancel the exemption on so much of the property as is no longer eligible for exemption.

(e) If a tribal housing exemption has been incorrectly allowed, an escape assessment as allowed by Article 4 (commencing with Section

531) of Chapter 3 in the amount of the exemption with interest as provided in Section 506 shall be made, together with a penalty for failure to notify the assessor, where applicable, in the amount of 10 percent of the assessment.

SEC. 17. Section 270 of the Revenue and Taxation Code is amended to read:

270. (a) With respect to property as to which the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, public schools, community colleges, state colleges, state universities, tribal housing, or welfare exemption was available but for which a timely application for exemption was not filed:

(1) Ninety percent of any tax or penalty or interest thereon shall be canceled or refunded provided an appropriate application for exemption is filed on or before the lien date in the calendar year next succeeding the calendar year in which the exemption was not claimed by a timely application.

(2) If the application is filed after the date specified in paragraph (1), 85 percent of any tax or penalty or interest thereon shall be canceled or refunded provided an appropriate application for exemption is filed and relief is not authorized under Section 214.01 or 271.

(b) Notwithstanding the provisions of subdivision (a), any tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount shall be canceled or refunded provided it is imposed upon property entitled to relief under subdivision (a) for which an appropriate claim for exemption has been filed.

(c) With respect to property as to which the welfare exemption or veterans' organization exemption was available, all provisions of Section 254.5, other than the specified dates for the filing of affidavits and other acts, are applicable to this section.

SEC. 18. Section 271 of the Revenue and Taxation Code is amended to read:

271. (a) Provided that an appropriate application for exemption is filed on or before the lien date in the calendar year next succeeding the calendar year in which the property was acquired, any tax or penalty or interest imposed upon:

(1) Property owned by any organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization, tribal housing, or welfare exemption that is acquired by that organization during a given calendar year, after the lien date but prior to the first day of the fiscal year commencing within that calendar year, when the property is of a kind that would have been qualified for the college, cemetery, church, religious, exhibition, veterans' organization, tribal housing, or welfare exemption if it had been owned by the organization on the lien date, shall be canceled or refunded.

(2) Property owned by any organization that would have qualified for the college, cemetery, church, religious, exhibition, veterans' organization, tribal housing, or welfare exemption had the organization been in existence on the lien date, that was acquired by it during that calendar year after the lien date in that year but prior to the commencement of that fiscal year, and of a kind that presently qualifies for the exemption and that would have so qualified for that fiscal year had it been owned by the organization on the lien date and had the organization been in existence on the lien date, shall be canceled or refunded.

(3) Property acquired after the beginning of any fiscal year by an organization qualified for the college, cemetery, church, religious, exhibition, veterans' organization, tribal housing, or welfare exemption and the property is of a kind that would have qualified for an exemption if it had been owned by the organization on the lien date, whether or not that organization was in existence on the lien date, shall be canceled or refunded in the proportion that the number of days for which the property was so qualified during the fiscal year bears to 365.

(b) Eighty-five percent of any tax or penalty or interest thereon imposed upon property that would be entitled to relief under subdivision (a) or Section 214.01, except that an appropriate application for exemption was not filed within the time required by the applicable provision, shall be canceled or refunded provided that an appropriate application for exemption is filed after the last day on which relief could be granted under subdivision (a) or Section 214.01.

(c) Notwithstanding subdivision (b), any tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount shall be canceled or refunded provided it is imposed upon property entitled to relief under subdivision (b) for which an appropriate claim for exemption has been filed.

(d) With respect to property acquired after the beginning of the fiscal year for which relief is sought, subdivisions (b) and (c) shall apply only to that pro rata portion of any tax or penalty or interest thereon which would have been canceled or refunded had the property qualified for relief under paragraph (3) of subdivision (a).

SEC. 19. Section 276 of the Revenue and Taxation Code is amended 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. Cancellations made under this paragraph are subject to the provisions of Article 1 (commencing with Section 4895) of Chapter 4. Refunds issued under this paragraph are subject to the limitations periods on refunds as described in Article 1 (commencing with Section 5096) of Chapter 5.

(b) If a late filed claim for the sixty-thousand-dollar ($60,000) exemption is filed in conjunction with a timely filed claim for the forty-thousand-dollar ($40,000) exemption, or if a late filed claim for the one-hundred-fifty-thousand-dollar ($150,000) exemption is filed in conjunction with a timely filed claim for the 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. 20. Section 276.1 of the Revenue and Taxation Code is amended to read:

276.1. For property for which the disabled veterans' exemption described in Section 205.5 would have been available but for the taxpayer's failure to receive a timely disability rating from the United States Department of Veterans Affairs (USDVA), there shall be canceled or refunded the amount of any taxes, including any interest and penalties thereon, subject to the provisions regarding cancellations in Article 1 (commencing with Section 4985) of Chapter 4 and the limitations

periods on refunds as described in Article 1 (commencing with Section 5096) of Chapter 5, levied on that portion of the assessed value of the property that would have been exempt under a timely and appropriate claim, provided that the claimant meets both of the following conditions:

(a) The claimant had an application pending with the USDVA for a disability rating and subsequently received a rating that qualifies the claimant for the disabled veterans' exemption described in Section 205.5.

(b) The claimant subsequently files an appropriate claim for the disabled veterans' exemption described in Section 205.5 the later of 30 days of receipt of the disability rating from the USDVA or on or before the next following lien date.

SEC. 21. Section 276.2 of the Revenue and Taxation Code, as added by Section 3 of Chapter 922 of the Statutes of 2000, is repealed.

SEC. 22. Section 276.2 of the Revenue and Taxation Code, as added by Section 6 of Chapter 1085 of the Statutes of 2000, is amended 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 the exemption only after the lien date, or but for that property being owned by a person eligible for the exemption on the lien date but not residing on the property on that 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 or resided in as the principal place of residence, there shall be canceled or refunded the amount of any taxes, including any interest and 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. 23. Section 276.3 of the Revenue and Taxation Code, as added by Section 4 of Chapter 922 of the Statutes of 2000, is repealed.

SEC. 24. Section 276.3 of the Revenue and Taxation Code, as added by Section 7 of Chapter 1085 of the Statutes of 2000, is amended to read:

276.3. (a) 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.

(b) In the event that property receiving a disabled veterans' exemption as described in Section 205.5 is no longer used by a claimant as his or her principal place of residence, the exemption shall cease to apply on the date the claimant terminates his or her residency at that location.

(c) Termination of the exemption under this section shall result in an escape assessment of the property pursuant to Section 531.1.

SEC. 25. Section 441 of the Revenue and Taxation Code is amended to read:

441. (a) Each person owning taxable personal property, other than a manufactured home subject to Part 13 (commencing with Section 5800), having an aggregate cost of one hundred thousand dollars ($100,000) or more for any assessment year shall file a signed property statement with the assessor. Every person owning personal property that does not require the filing of a property statement or real property shall, upon request of the assessor, file a signed property statement. Failure of the assessor to request or secure the property statement does not render any assessment invalid.

(b) The property statement shall be declared to be true under the penalty of perjury and filed annually with the assessor between the lien date and 5 p.m. on April 1. The penalty provided by Section 463 applies for property statements not filed by May 7. If May 7 falls on a Saturday, Sunday, or legal holiday, a property statement that is mailed and postmarked on the next business day shall be deemed to have been filed between the lien date and 5 p.m. on May 7. If, on the dates specified in this subdivision, the county's offices are closed for the entire day, that day is considered a legal holiday for purposes of this section.

(c) The property statement may be filed with the assessor through the United States mail, properly addressed with postage prepaid. For purposes of determining the date upon which the property statement is deemed filed with the assessor, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope containing the application, shall control. This subdivision shall be applicable to every taxing agency, including, but not limited to, a chartered city and county, or chartered city.

(d) At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.

(e) In the case of a corporate owner of property, the property statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign the statements on behalf of the corporation.

(f) In the case of property owned by a bank or other financial institution and leased to an entity other than a bank or other financial institution, the property statement shall be submitted by the owner bank or other financial institution.

(g) The assessor may refuse to accept any property statement he or she determines to be in error.

(h) If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of the continuance.

(i) Notwithstanding any other provision of law, every person required to file a property statement pursuant to this section shall be permitted to amend that property statement until May 31 of the year in which the property statement is due, for errors and omissions not the result of willful intent to erroneously report. The penalty authorized by Section 463 shall not apply to an amended statement received prior to May 31, provided the original statement is not subject to penalty pursuant to subdivision (b). The amended property statement shall otherwise conform to the requirements of a property statement as provided in this article.

(j) This subdivision shall apply to the oil, gas, and mineral extraction industry only. Any information that is necessary to file a true, correct, and complete statement shall be made available by the assessor, upon request, to the taxpayer by mail or at the office of the assessor by February 28. For each business day beyond February 28 that the information is unavailable, the filing deadline in subdivision (b) shall be extended in that county by one business day, for those statements affected by the delay. In no case shall the filing deadline be extended beyond June 1 or the first business day thereafter.

(k) The assessor may accept the filing of a property statement by the use of electronic media. In lieu of the signature required by subdivision (a) and the declaration under penalty of perjury required by subdivision (b), property statements filed using electronic media shall be authenticated pursuant to methods specified by the assessor and approved by the board. Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, and facsimile machine.

SEC. 26. Section 441.5 of the Revenue and Taxation Code is amended to read:

441.5. In lieu of completing the property statement as printed by the assessor pursuant to Section 452, the information required of the taxpayer may be furnished to the assessor as attachments to the property statement provided that the attachments shall be in a format as specified by the assessor and: (a) one copy of the property statement, as printed by the assessor, is signed by the taxpayer and carries appropriate

reference to the data attached; or (b) the statement is filed electronically and authenticated as provided in subdivision (k) of Section 441.

SEC. 27. Section 480.4 of the Revenue and Taxation Code is amended to read:

480.4. (a) The preliminary change of ownership report referred to in Section 480.3 shall be in substantially the following form:

PRELIMINARY CHANGE OF OWNERSHIP REPORT

(To be completed by transferee (buyer) prior to transfer of subject property in accordance with Section 480.3 of the Revenue and Taxation Code.)

FOR RECORDER: Recorded Book , Page , Date Document No.

SELLER:
BUYER:
A.P. #(s):
LEGAL DESCRIPTION:
ADDRESS (if improved):
MAIL TAX INFORMATION TO: Name: _____
Address: _____

FOR ASSESSOR'S USE ONLY:

NOTICE: A lien for property taxes applies to your property on January 1 of each year for the taxes owing in the following fiscal year, July 1 through June 30. One-half of these taxes is due November 1, and one-half is due February 1. The first installment becomes delinquent on December 10, and the second installment becomes delinquent on April 10. One tax bill is mailed before November 1 to the owner of record. If this transfer occurs after January 1 and on or before December 31, you may be responsible for the second installment of taxes due February 1.

The property which you acquired may be subject to a supplemental tax assessment in an amount to be determined by the (name of county) County Assessor. For further information on your supplemental roll tax obligation, please call the (name of county) County Assessor at (phone number).

1. Transfer Information:

A. Was this transfer solely between husband & wife, addition of a spouse, death of a spouse, divorce settlement, etc.? a. ( ) YES b. ( ) NO

B. Was this transaction only a correction of the name(s) of the person(s) holding title to the property? a. ( ) YES b. ( ) NO

C. Was this document recorded to create, terminate, or reconvey a lender's interest in the property? a. ( ) YES b. ( ) NO

D. Was this document recorded to substitute a trustee under a deed of trust, mortgage, or other similar document? a. ( ) YES b. ( ) NO

E. Did this transfer result in the creation of a joint tenancy in which the seller (transferor) remains as one of the joint tenants? a. ( ) YES b. ( ) NO

F. Return of property to person who created the joint tenancy? a. ( ) YES b. ( ) NO

G. Is this transfer of property:

a. to a trust for the benefit of the grantor? a. ( ) YES b. ( ) NO

b. to a revocable trust? a. ( ) YES b. ( ) NO

c. to a trust from which the property reverts to the grantor within 12 years? a. ( ) YES b. ( ) NO

H. If this property is the subject of a lease, is the lease for a term of less than 35 years including written options? a. ( ) YES b. ( ) NO

I. If the conveying document constitutes an exclusion from a change in ownership as defined in Section 62 of the Revenue & Taxation Code for any reason other than those listed above, set forth the specific exclusion claimed: _____

* IF YOU HAVE ANSWERED "NO" TO QUESTIONS A THROUGH H, INCLUSIVE, AND HAVE NOT CLAIMED ANY OTHER EXCLUSIONS UNDER I, PLEASE COMPLETE BALANCE OF FORM. OTHERWISE SIGN AND DATE.

Preliminary Change of Ownership Report Page Two

2. Type of property transferred:
   a. ( ) Single-family residence
   b. ( ) Multiple-family residence (no. of units: _____)
   c. ( ) Co-op
   d. ( ) Condo
   e. ( ) Manufactured home
   f. ( ) Unimproved lot
   g. ( ) Commercial/Industrial
   h. ( ) Other (description: _____)
3. Intended as principal residence? a. ( ) YES b. ( ) NO
4. Transfer is by:
   a. ( ) Deed; b. ( ) Contract of sale;
   c. ( ) Other—explain: _____
5. Is less than 100% of property being transferred? a. ( ) YES b. ( ) NO
6. a. ( ) Date of transfer or; b. ( ) If an inheritance,
   date of death _____
7. Is or will, the property produce(ing) income? a. ( ) YES b. ( ) NO
8. If answer to Question 4 is yes, is income pursuant to:
   a. ( ) Lease; b. ( ) Contract; c. ( ) Mineral rights;
   d. ( ) Other—explain: _____
9. Did the transfer of this property involve the trade or exchange of other real property? a. ( ) YES b. ( ) NO
10. a. Total Purchase Price or Acquisition Price, If Exchanged: $ _____
    b. Cash Downpayment or Value of Trade (excluding closing costs): $ _____
    c. 1st Deed of Trust $ _____
       at _____ % interest for _____ years.
       New Loan ( ); Assumed Existing Loan Balance ( );
       FHA ( ); Cal-Vet ( ); VA ( ); Bank ( ); Finance Co. ( );
       Savings & Loan ( ); Loan Carried By Seller ( );
       All Inclusive ( ); Balloon Payment:
       Yes ( ) No ( ).
    d. 2nd Deed of Trust $ _____
       at _____ % interest for _____ years.
       New Loan ( ); Assumed Existing Loan Balance ( );
       Loan Carried By Seller ( ); Balloon Payment:
       Yes ( ) No ( ).
    e. Was other type of financing involved not covered in (c) or (d), above? a. ( ) YES b. ( ) NO
    f. Improvement Bond: Yes ( ) No ( ); Outstanding Balance $ _____
11. Was any personal property involved in purchase other than a mobilehome on real property? a. ( ) YES b. ( ) NO c. AMOUNT _____

I certify that the foregoing is true, correct, and complete to the best of my knowledge and belief.

Signed _____ Date: _____
(New Owner/Corporate Officer)

Address if other than above _____

Phone No. Where You Are Available From 8:00 am–5:00 pm: ( ) _____
(NOTE: The Assessor may contact you for further information.)

(b) The State Board of Equalization may revise the preliminary change of ownership report, as necessary, for the purpose of maintaining statewide uniformity in the contents of the report.

(c) This section shall become operative on July 1, 1991.

SEC. 28. Section 482 of the Revenue and Taxation Code is amended to read:

482. (a) If a person or legal entity required to file a statement described in Section 480 fails to do so within 45 days from the date of a written request by the assessor, a penalty of either: (1) one hundred dollars ($100), or (2) 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property or manufactured home, whichever is greater, but not to exceed two thousand five hundred dollars ($2,500) if the failure to file was not willful, shall, except as otherwise provided in this section, be added to the assessment made on the roll. The penalty shall apply for failure to file a complete change in ownership statement notwithstanding the fact that the assessor determines that no change in ownership has occurred as defined in Chapter 2 (commencing with Section 60) of Part 0.5. The penalty may also be applied if after a request the transferee files an incomplete statement and does not supply the missing information upon a second request.

(b) If a person or legal entity required to file a statement described in Section 480.1 or 480.2 fails to do so within 45 days from the date of a written request by the State Board of Equalization, a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership of the real property owned by the corporation, partnership, or legal entity, or 10 percent of the current year's taxes on that property if no change in control or change in ownership occurred, shall be added to the assessment made on the roll. The penalty shall apply for failure to file a complete statement notwithstanding the fact that the board determines that no change in control or change in ownership has occurred as defined in subdivision (c) or (d) of Section 64. The penalty may also be applied if after a request the person or legal entity files an incomplete statement and does not supply the missing information upon a second request. That penalty shall be in lieu of the penalty provisions of subdivision (a). However, the penalty added by this subdivision shall be automatically extinguished if the person or legal entity files a complete statement described in Section 480.1 or 480.2 no later than 60 days after the date on which the person or legal entity is notified of the penalty.

(c) The penalty for failure to file a timely statement pursuant to Sections 480, 480.1, and 480.2 for any one transfer may be imposed only one time, even though the assessor may initiate a request as often as he or she deems necessary.

(d) The penalty shall be added to the roll in the same manner as a special assessment and treated, collected, and subject to the same penalties for the delinquency as all other taxes on the roll in which it is entered.

(1) When the transfer to be reported under this section is of a portion of a property or parcel appearing on the roll during the fiscal year in which the 45-day period expires, the current year's taxes shall be prorated so the penalty will be computed on the proportion of property which has transferred.

(2) Any penalty added to the roll pursuant to this section between January 1 and June 30 may be entered either on the unsecured roll or the roll being prepared. After January 1, the penalty may be added to the current roll only with the approval of the tax collector.

(3) If the property is transferred or conveyed to a bona fide purchaser for value or becomes subject to a lien of a bona fide encumbrancer for value after the transfer of ownership resulting in the imposition of the penalty and before the enrollment of the penalty, the penalty shall be entered on the unsecured roll in the name of the transferee whose failure to file the change in ownership statement resulted in the imposition of the penalty.

(e) When a penalty imposed pursuant to this section is entered on the unsecured roll, the tax collector may immediately file a certificate authorized by Section 2191.3.

(f) Notice of any penalty added to either the secured or unsecured roll pursuant to this section shall be mailed by the assessor to the transferee at his or her address contained in any recorded instrument or document evidencing a transfer of an interest in real property or manufactured home or at any address reasonably known to the assessor.

SEC. 29. Section 531.1 of the Revenue and Taxation Code is amended to read:

531.1. Upon the termination of an exemption pursuant to Section 276.3, upon receipt of a notice pursuant to Section 284, or upon indication from any audit or other source that an exemption has been incorrectly allowed, the assessor shall make a redetermination of eligibility for the exemption. If an exemption or any portion of an exemption has been terminated or has been incorrectly allowed, an escape assessment in the amount of the exemption, or that portion of the exemption that has been terminated or erroneously allowed, with interest as provided in Section 506, shall be made; except that where the exemption was terminated pursuant to Section 276.3 or where the exemption or a portion of the exemption was allowed as the result of an assessor's error, the amount of interest shall be forgiven. If the exemption was incorrectly allowed because of erroneous or incorrect information submitted by the claimant with knowledge that the

information was erroneous or incomplete, the penalty provided in Section 504 shall be added to the assessment.

SEC. 30. Section 531.9 is added to the Revenue and Taxation Code, to read:

531.9. A county board of supervisors may, by ordinance, prohibit an assessor from making an escape assessment of an appraisal unit where that assessment would result in an amount of taxes due which is less than the cost of assessing and collecting them. In no event may the ordinance apply to any escape assessment of an appraisal unit if the amount of taxes resulting from the escape assessment would exceed fifty dollars ($50).

SEC. 31. Section 620.5 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 755 of the Revenue and Taxation Code is amended to read:

755. (a) On or before July 15, the board shall transmit to each county auditor an estimate of the total unitary value and operating nonunitary value of state-assessed property in the county and of nonunitary state-assessed property in each revenue district in the county. An estimate need not be made for a revenue district that did not levy a tax or assessment during the preceding year unless the board receives on or before January 1 preceding the fiscal year for which the levy is to be made a notice in writing of the proposed levy. The estimate shall be regarded as establishing the total assessed value of state-assessed property in the county and each revenue district in the county for the purpose of determining tax rates, subject only to those changes as may be transmitted on or prior to July 31. All information furnished pursuant to this section is at all times during office hours open to inspection by any interested person or entity.

(b) Notwithstanding subdivision (a), in making the estimate referred to in subdivision (a), the unitary value and nonunitary value of the property of regulated railway companies and property subject to subdivisions (i), (j), and (k) of Section 100 shall be allocated by revenue district.

SEC. 33. Section 756 of the Revenue and Taxation Code is amended to read:

756. (a) On or before July 31, the board shall transmit to each county auditor a roll showing the unitary and operating nonunitary assessments made by the board in the county and the nonoperating nonunitary assessments made by the board in each city and revenue district in the county; provided, however, that the roll need not show the assessments made by the board in a revenue district which did not levy a tax or assessment during the preceding year. The roll is at all times, during office hours, open to the inspection of any person representing any taxing agency or revenue district, or any district described in Section

2131. If the roll does not show the assessments in a revenue district as herein provided and a notice of a proposed levy is furnished the board in writing, on or before January 1 preceding the fiscal year for which the levy is to be made, the board shall furnish an estimate of the total assessed value of nonoperating nonunitary state-assessed property in the district and shall transmit thereafter to the county auditor a statement of roll change showing the nonoperating nonunitary assessments made by the board in the district.

(b) Notwithstanding subdivision (a), in making the roll referred to in subdivision (a), the unitary value and nonunitary value of the property of regulated railway companies and property subject to subdivisions (i), (j), and (k) of Section 100 shall be enrolled by revenue district.

SEC. 34. Section 1603 of the Revenue and Taxation Code is amended to read:

1603. (a) A reduction in an assessment on the local roll shall not be made unless the party affected or his or her agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property. The form for the application shall be prescribed by the State Board of Equalization.

(b) (1) The application shall be filed within the time period from July 2 to September 15, inclusive. An application that is mailed and postmarked September 15 or earlier within that period shall be deemed to have been filed within the time period beginning July 2 and continuing through and including September 15.

(2) Notwithstanding paragraph (1), if the taxpayer does not receive the notice of assessment described in Section 619 at least 15 calendar days prior to the deadline to file the application described in this subdivision, the party affected, or his or her agent, may file an application within 60 days of receipt of the notice of assessment or within 60 days of the mailing of the tax bill, whichever is earlier, along with an affidavit declaring under penalty of perjury that the notice was not timely received.

(3) Notwithstanding paragraph (1), the last day of the filing period shall be extended to November 30 in the case of an assessee or party affected with respect to all property located in a county where the county assessor does not provide, by August 1, a notice, as described in Section 619, to all assessees of real property on the local secured roll of the assessed value of their real property as it shall appear or does appear on the completed local roll, including the annual increases in assessed value caused solely by increases in the valuation of property that reflect the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution.

(A) The county assessor shall notify the clerk of the county board of equalization and the county tax collector by April 1 of each year as to whether the notice specified in this paragraph will be provided by August 1.

(B) The clerk shall certify the last day of the filing period and shall immediately notify the State Board of Equalization as to whether the last day of the filing period for the county will be September 15 or November 30.

(C) The State Board of Equalization shall maintain a statewide listing of the time period to file an application in each county.

(D) The provisions of Section 621 may not be substituted as a means of providing the notice specified in this paragraph.

(4) If a final filing date specified in this subdivision falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed to have been filed within the requisite time period specified in this subdivision. If on any final filing date specified in this subdivision, the county's offices are closed for business prior to 5 p.m. or for that entire day, that day shall be considered a legal holiday for purposes of this section.

(c) The application may be filed within 12 months following the month in which the assessee is notified of the assessment, if the party affected or his or her agent and the assessor stipulate that there is an error in the assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and assessed value is filed in accordance with Section 1607.

(d) Upon the recommendation of the assessor and the clerk of the county board of equalization, the board of supervisors may adopt a resolution providing that an application may be filed within 60 days of the mailing of the notice of the assessor's response to a request for reassessment pursuant to paragraph (2) of subdivision (a) of Section 51, if all of the following conditions are met:

(1) The request for reassessment was submitted in writing to the assessor in the form prescribed by the State Board of Equalization and includes all information that is prescribed by the State Board of Equalization.

(2) The request for reassessment was made on or before the immediately preceding March 15.

(3) The assessor's response to the request for reassessment was mailed on or after September 1 of the calendar year in which the request for reassessment was made.

(4) The assessor did not reduce the assessment in question in the full amount as requested.

(5) The application for changed assessment is filed on or before December 31 of the year in which the request for reassessment was filed.

(6) The application for reduction in assessment is accompanied by a copy of the assessor's response to the request for reassessment.

(e) In the form provided for making an application pursuant to this section, there shall be a notice that written findings of facts of the local equalization hearing will be available upon written request at the requester's expense and, if not so requested, the right to those written findings is waived. The form shall provide appropriate space for the applicant to request written findings of facts as provided by Section 1611.5.

(f) The form provided for making an application pursuant to this section shall contain the following language in the signature block:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am (1) the owner of the property or the person affected (i.e., a person having a direct economic interest in the payment of the taxes on that property—''The Applicant,'' (2) an agent authorized by the applicant under Item 2 of this application, or (3) an attorney licensed to practice law in the State of California, State Bar No. ____, who has been retained by the applicant and has been authorized by that person to file this application.

SEC. 35. Section 2611.6 of the Revenue and Taxation Code is amended to read:

2611.6. The following information shall be included in each county tax bill, whether mailed or electronically transmitted, or in a separate statement accompanying the bill:

(a) The full value of locally assessed property, including assessments made for irrigation district purposes in accordance with Section 26625.1 of the Water Code.

(b) The tax rate required by Article XIII A of the California Constitution.

(c) The rate or dollar amount of taxes levied in excess of the 1-percent limitation to pay for voter-approved indebtedness incurred before July 1, 1978, or bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

(d) The amount of any special taxes and special assessments levied.

(e) The amount of any tax rate reduction pursuant to Section 96.8, with the notation: ''Tax reduction by (name of jurisdiction).''

(f) The amount of any exemptions. Exemptions reimbursable by the state shall be shown separately.

(g) The total taxes due and payable on the property covered by the bill.

(h) Instructions on tendering payment, including the name and mailing address of the tax collector.

(i) The billing of any special purpose parcel tax as required by paragraph (2) of subdivision (b) of Section 53087.4 of the Government Code, or any successor to that paragraph.

(j) Information specifying all of the following:

(1) That if the taxpayer disagrees with the assessed value as shown on the tax bill, the taxpayer has the right to an informal assessment review by contacting the assessor's office.

(2) That if the taxpayer and the assessor are unable to agree on a proper assessed value pursuant to an informal assessment review, the taxpayer has the right to file an application for reduction in assessment for the following year with the county board of equalization or the assessment appeals board, as applicable, and the time period during which the application will be accepted.

(3) The address of the clerk of the county board of equalization or the assessment appeals board, as applicable, at which forms for an application for reduction in assessment may be obtained.

SEC. 36. Section 5801 of the Revenue and Taxation Code is amended to read:

5801. (a) As used in Part 0.5 (commencing with Section 50), Part 1 (commencing with Section 101), Part 2 (commencing with Section 201), and this part, ''manufactured home'' means a manufactured home as defined in Section 18007 of the Health and Safety Code or a mobilehome as defined in Section 18008 of the Health and Safety Code which:

(1) Was first sold new on or after July 1, 1980.

(2) Was, at the request of the owner, and following his or her notification of the Department of Housing and Community Development and the assessor, made subject to taxation under this part.

(b) (1) ''Manufactured home,'' as used in this part, does not include a manufactured home which has become real property by being affixed to land on a permanent foundation system pursuant to Section 18551 of the Health and Safety Code and is taxed as all other real property is taxed.

(2) Except as provided in paragraph (1), a manufactured home, otherwise subject to taxation pursuant to this part, shall not be classified as real property for property taxation purposes that would be excluded from taxation pursuant to this part.

SEC. 36.5. Section 5802 of the Revenue and Taxation Code is amended to read:

5802. (a) Except as provided in subdivisions (b), (c), and (d), ''base year value'' as used in this part means the full cash value of a

manufactured home on the date the manufactured home is purchased or changes ownership. If the manufactured home undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a manufactured home for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

(c) The base year value of a manufactured home converted pursuant to Section 18119 of the Health and Safety Code from taxation under Part 5 (commencing with Section 10701) of Division 2 to taxation under this part shall be its full cash value on the lien date for the fiscal year in which that manufactured home is first enrolled. A manufactured home that has been converted is not subject to supplemental assessment pursuant to Section 75.5 by reason of the conversion.

(d) The base year value of a manufactured home that changes ownership in the same calendar year after a conversion in the same calendar year, shall be its full cash value on the date of the change in ownership and its value shall be enrolled on the next lien date. The change in ownership is not subject to supplemental assessment as provided in Section 75.5.

(e) This section shall become operative on January 1, 1999.

SEC. 37. Section 5803 of the Revenue and Taxation Code is amended to read:

5803. (a) ''Full cash value'' means the ''full cash value'' or the ''fair market value,'' as determined pursuant to Section 110, of a manufactured home similarly equipped and installed, including any value attributable to a manufactured home accessory building or structure as defined in Section 18008.5 of the Health and Safety Code which is sold along with the manufactured home, giving recognition, however, to the exemption provided in subdivision (m) of Section 3 of Article XIII of the Constitution.

(b) The Legislature finds and declares that, because owners of manufactured homes subject to property taxation on rented or leased land do not own the land on which the manufactured home is located and are subject to having the manufactured home removed upon termination of tenancy, ''full cash value'' for purposes of subdivision (a) does not include any value attributable to the particular site where the manufactured home is located on rented or leased land which would make the sale price of the manufactured home at that location different from its price at some other location on rented or leased land. In determining the ''full cash value'' of a manufactured home on rented or leased land, the assessor shall take into consideration, among other relevant factors, cost data issued pursuant to Section 401.5 or sales prices

listed in recognized value guides for manufactured homes, including, but not limited to, the Kelley Blue Book Official Manufactured Housing Guide and the National Automobile Dealers Association's Manufactured Housing Appraisal Guide.

SEC. 38. Section 5811 of the Revenue and Taxation Code is amended to read:

5811. The amount of local property tax on a manufactured home shall be determined by applying the appropriate assessment ratio and tax rate to the taxable value of the manufactured home. The "appropriate tax rate" is the rate determined under Section 93 for the tax rate area in which the manufactured home is situated.

SEC. 39. Section 5812 of the Revenue and Taxation Code is amended to read:

5812. (a) The base year value of a manufactured home which is purchased or which changed ownership shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership. The value of any new construction shall be entered on the roll for the lien date next succeeding the date of completion of the new construction. The value of new construction in progress on the lien date shall be entered on the roll as of the lien date.

(b) Except as provided in subdivisions (c) and (d) of Section 5802, a manufactured home that has changed ownership or had new construction completed is subject to supplemental assessment as provided in Section 75.5.

SEC. 40. Section 5813 of the Revenue and Taxation Code is amended to read:

5813. For each lien date after the lien date for which the base year value is determined, the taxable value of a manufactured home shall be the lesser of:

(a) Its base year value, compounded annually since the base year by an inflation factor, which shall be the percentage change in the cost of living, as defined in Section 51, provided, that any percentage increase shall not exceed 2 percent of the prior year's value; or

(b) Its full cash value, as defined in Section 5803, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, or other factors causing a decline in value; or

(c) If the manufactured home is damaged or destroyed by disaster, misfortune, or calamity, its value determined pursuant to (b) shall be its base year value until the manufactured home is restored, repaired or reconstructed or other provisions of law require establishment of a new base year value.

SEC. 41. Section 5831 of the Revenue and Taxation Code is amended to read:

5831. (a) Except as provided in subdivisions (e) and (f), the assessor shall, upon or prior to completion of the local roll, notify each assessee whose manufactured home's taxable value has increased of the taxable value of that manufactured home as it shall appear on the completed local roll.

(b) The information given by the assessor to the assessee pursuant to subdivision (a) shall include a notification of hearings by the county board of equalization or assessment appeals board, which shall include the period during which assessment protests will be accepted and the place where they may be filed. The information shall also include an explanation of the stipulation procedure set forth in Section 1607 and the manner in which the assessee may request use of this procedure.

(c) The information shall be furnished by the assessor to the assessee personally or by regular United States mail directed to him or her at the latest address known to the assessor.

(d) Neither the failure of the assessee to receive the information nor the failure of the assessor to so inform the assessee shall in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto.

(e) This section shall not apply to annual increases in the valuation of property which reflect the inflation rate, not to exceed 2 percent, pursuant to Section 5813.

(f) This section does not apply to increases in assessed value caused solely by changes in the assessment ratio provided for in Section 401.

SEC. 42. Section 7205.1 of the Revenue and Taxation Code is amended to read:

7205.1. (a) Notwithstanding any other provision of law, in connection with any use tax imposed pursuant to this part with respect to the lease (as described in Sections 371 and 372 of the Vehicle Code) of a new or used motor vehicle as defined in subdivision (d), by a dealer or leasing company, the place of use for the reporting and transmittal of the use tax shall be determined as follows:

(1) If the lessor is a California new motor vehicle dealer (as defined in Section 426 of the Vehicle Code), or a leasing company, the place of use of the leased vehicle shall be deemed to be the city in which the lessor's place of business (as defined in Section 7205 and the regulations promulgated thereunder) is located.

(2) If a lessor, who is not a person described in paragraph (1), purchases the vehicle from a person as so described, the place of use of the leased vehicle shall be deemed to be the city in which the place of business (as defined in Section 7205 and the regulations promulgated thereunder) of the person from whom the lessor purchases the vehicle is located.

(3) The place of use as determined by this subdivision shall be the place of use for the duration of the lease contract, notwithstanding the fact that the lessor may sell the vehicle and assign the lease contract to a third party.

(b) Except as described in subdivision (a), this section shall not apply if the dealer or leasing company entering into the lease agreement is located outside of California.

(c) (1) The provisions of this section that are applicable to a California new motor vehicle dealer shall apply to lease transactions entered into on or after January 1, 1996.

(2) The provisions of this section, applicable to a leasing company, shall apply to lease transactions entered into on or after January 1, 1999.

(d) As used in this section, the following definitions shall apply:

(1) ''City'' means a city, city and county, or county.

(2) ''Motor vehicle'' means any self-propelled passenger vehicle (other than a house car) or pickup truck rated less than one ton.

(3) ''Leasing company'' means a motor vehicle dealer (as defined in Section 285 of the Vehicle Code), that complies with all of the following:

(A) The dealer originates lease contracts, described in subdivision (a), that are continuing sales and purchases.

(B) The dealer does not sell or assign those lease contracts that it originates in accordance with subparagraph (A).

(C) (i) The dealer has annual motor vehicle lease receipts of fifteen million dollars ($15,000,000) or more per location.

(ii) For purposes of this subparagraph, only those periodic payments required by the lease shall be considered in determining whether a lessor has annual receipts of fifteen million dollars ($15,000,000) or more. Amounts received by lessors attributable to capitalized cost reductions or amounts paid by a lessee upon his or her exercising an option shall not be considered in determining whether a lessor has annual lease receipts of fifteen million dollars ($15,000,000) or more.

(e) If the lessor is not a dealer described in paragraph (1) of subdivision (a), or a person who is described in paragraph (2) of subdivision (a) as purchasing from a dealer, the use tax shall be reported to and distributed through the countywide pool of the county in which the lessee resides.

SEC. 43. 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. 44. 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 776

An act to amend Section 19283 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. 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, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends this date.

CHAPTER 777

An act to amend and repeal Section 1789.33 of, and to amend, repeal, and add Sections 1789.31 and 1789.35 of, the Civil Code, to amend Section 25604 of the Corporations Code, and to amend, repeal, and add Section 22050 of, and to add Division 10 (commencing with Section 23000) to, the Financial Code, relating to deferred deposit transactions.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

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

(a) It is the intent of the Legislature in enacting this legislation to provide greater regulatory oversight of the deferred deposit transaction industry. It is the further intent of the Legislature to guarantee that consumers have the disclosures necessary to make informed decisions regarding deferred deposit transactions and to gather the information necessary to inform future legislative activity. Future legislative activity may include, but is not limited to, changes in the fees charged to consumers, specifications regarding the length of time for deferred deposit transactions, maximum amount provided to consumers and the implementation of an installment product in lieu of a deferred deposit transaction.

(b) In enacting this legislation it is the intent of the Legislature that all persons except those who have been exempted from the definition of ''licensee'' contained in this division, who are engaged in the business of deferred deposit transactions including, but not limited to, brokers and agents of financial institutions, are subject to all provisions of this division.

SEC. 2. Section 1789.31 of the Civil Code is amended to read:

1789.31. (a) As used in this title, a ''check casher'' means a person or entity that for compensation engages, in whole or in part, in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. ''Check casher'' does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. ''Check casher'' also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum flat fee not exceeding two dollars ($2) as a service to its customers that is incidental to its main purpose or business.

(b) As used in this title, ''deferred deposit'' means a transaction whereby the check casher refrains from depositing a personal check

written by a customer until a specific date, pursuant to a written agreement, as provided in Section 1789.33.

(c) This section shall become inoperative on March 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 1789.31 is added to the Civil Code, to read:

1789.31. (a) As used in this title, a ''check casher'' means a person or entity that for compensation engages, in whole or in part, in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. ''Check casher'' does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. ''Check casher'' also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a fee not exceeding two dollars ($2) as a service to its customers that is incidental to its main purpose or business.

(b) This section shall become operative March 1, 2004.

SEC. 4. Section 1789.33 of the Civil Code is amended to read:

1789.33. (a) A check casher may defer the deposit of a personal check written by a customer for up to 30 days, pursuant to the provisions of this section. The face amount of the check shall not exceed three hundred dollars ($300). Each deferred deposit shall be made pursuant to a written agreement that has been signed by the customer and by the check casher or an authorized representative of the check casher. The written agreement shall contain a statement of the total amount of any fees charged for the deferred deposit, expressed both in United States currency and as an annual percentage rate (APR). The written agreement shall authorize the check casher to defer deposit of the personal check until a specific date not later than 30 days from the date the written agreement was signed and executed. The written agreement shall not permit the check casher to accept collateral.

(b) A customer who enters into a deferred deposit agreement and offers a personal check to a check casher pursuant to that agreement shall not be subject to any criminal penalty for the failure to comply with the terms of that agreement.

(c) This section shall become inoperative on March 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 1789.35 of the Civil Code is amended to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the

provision of identification, of the face amount of the check, or three dollars ($3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license, a California identification card, or a valid United States military identification card.

(b) A check casher may charge a fee of no more than ten dollars ($10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars ($5).

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) Subject to the limitations of Section 1789.33, a check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate deposit in an amount not to exceed 12 percent of the face value of the check or for deferred deposit in an amount not to exceed 15 percent of the face value of the check.

(e) A check casher shall not enter into an agreement for a deferred deposit with a customer during the period of time that an earlier written agreement for a deferred deposit for the same customer is in effect.

(f) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to, or governed by, Section 1719.

(g) For a transaction pursuant to Section 1789.33, a fee not to exceed fifteen dollars ($15) may be charged for the return of a dishonored check by a depositary institution. The fee may be collected by a check casher who holds a valid permit issued pursuant to Section 1789.37, when acting under the authority of that permit.

(h) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a check casher pursuant to a deferred deposit agreement.

(i) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars ($2,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General in any court of competent jurisdiction. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(j) A willful violation of this section is a misdemeanor.

(k) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to

this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(*l*) This section shall become inoperative on March 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 1789.35 is added to the Civil Code, to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the provision of identification, of the face amount of the check, or three dollars ($3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license, a California identification card, or a valid United States military identification card.

(b) A check casher may charge a fee of no more than ten dollars ($10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars ($5).

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) A check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate deposit in an amount not to exceed 12 percent of the face value of the check.

(e) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars ($2,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General in any court of competent jurisdiction. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(f) A willful violation of this section is a misdemeanor.

(g) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in

its discretion, may award punitive damages in addition to the amounts set forth above.

(h) This section shall become operative March 1, 2004.

SEC. 7. Section 25604 of the Corporations Code is amended to read:

25604. The administration and enforcement of, and the education of the public relative to, the laws and programs of the Department of Corporations shall be supported from the State Corporations Fund. Funds appropriated from the State Corporations Fund and made available for expenditure for any law or program of the department may come from fees collected from the following:

(a) Section 25608, except for fees collected pursuant to subdivisions (o) to (r), inclusive, of Section 25608.

(b) Section 25608.1.

SEC. 8. 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 casher 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.

(g) This section shall become inoperative on March 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 22050 is added to the Financial Code, 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 check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit, and shall not apply to a person holding a valid license issued pursuant to Section 23005 of the Financial Code when acting under the authority of that license.

(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 broker-dealer acting pursuant to a certificate then in effect and issued pursuant to Section 25211 of the Corporations Code.

(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.

(g) This section shall become operative March 1, 2004.

SEC. 10. Division 10 (commencing with Section 23000) is added to the Financial Code, to read:

DIVISION 10. CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW

CHAPTER 1. GENERAL PROVISIONS

Article 1. Construction and Definitions

23000. This division shall be known and may be cited as the ''California Deferred Deposit Transaction Law.''

23001. As used in this division, the following terms have the following meanings:

(a) ''Deferred deposit transaction'' means a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement, as provided in Section 23035.

(b) ''Commissioner'' means the Commissioner of Corporations.

(c) ''Department'' means the Department of Corporations.

(d) ''Licensee'' means any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. However, ''licensee'' does not include a state or federally chartered bank, thrift, savings association, or industrial loan company. ''Licensee'' also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum fee not exceeding two dollars ($2) as a service to its customers that is incidental to its main purpose or business. ''Licensee'' also does not include an employee regularly employed by a licensee at the licensee's place of business. An employee, when acting under the scope of the employee's employment, shall be exempt from any other law from which the employee's employer is exempt.

(e) ''Person'' means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government entity, or a political subdivision of a government entity.

(f) ''Deferred deposit originator'' means a person who offers, originates, or makes a deferred deposit transaction.

Article 2. Licensing and Exemptions

23005. (a) No person shall offer, originate, or make a deferred deposit transaction, arrange a deferred deposit transaction for a deferred deposit originator, act as an agent for a deferred deposit originator, or assist a deferred deposit originator in the origination of a deferred deposit transaction without first obtaining a license from the commissioner and complying with the provisions of this division. The requirements of this subdivision shall not apply to persons or entities that are excluded from the definition of ''licensee'' as set forth in Section 23001. Nothing in this division shall be construed to require the commissioner to create separate classes of licenses.

(b) An application for a license under this division shall be in the form and contain the information that the commissioner may by rule require and shall be filed upon payment of the fee specified in Section 23006.

(c) A licensee with one or more licensed locations seeking an additional location license may file a short form license application as

may be established by the commissioner pursuant to subdivision (b) of this section.

23006. At the time of filing the application, the applicant shall pay to the commissioner the sum of one hundred dollars ($100) as a fee for investigating the application, the sum of two hundred dollars ($200) as an application fee, and the cost of fingerprint processing. The investigation fee and application fee are not refundable if an application is denied or withdrawn.

23007. The applicant shall file with the application financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars ($25,000). A licensee, regardless of the number of licensed locations, shall maintain a net worth of at least twenty-five thousand dollars ($25,000) at all times.

23008. Upon the filing of an application pursuant to Section 23005 and the payment of fees pursuant to Section 23006, the commissioner shall investigate the applicant, and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests if the applicant is a partnership. If the applicant is a corporation, trust, or association, including an unincorporated organization, the commissioner shall investigate its officers, directors, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial under Section 23011, the commissioner shall issue and deliver a license to the applicant.

23009. The license shall state the name of the licensee, and if the licensee is a partnership, the names of its general partners, and if a corporation or an association, the date and place of its incorporation or organization, and the address of the licensee's principal business location. On the approval and licensing of a location pursuant to Section 23008, the commissioner shall issue an original license endorsed to show the address of the authorized location.

23010. The commissioner may by regulation require licensees to file, at the times that the commissioner may specify, the information that the commissioner may reasonably require regarding any changes in the information provided in any application filed pursuant to this division.

23011. (a) Upon reasonable notice and the opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) Any false statement of material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding

interests or equity securities of the applicant has, within the last 10 years (A) been convicted of or pleaded nolo contendere to a crime, or (B) committed any act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, or general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license and the payment of required fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

23012. The proceedings for denial of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner has all the powers granted therein.

23013. (a) A licensee shall maintain a surety bond in accordance with this subdivision in the amount of twenty-five thousand dollars ($25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner for review and approval within 10 days of execution. For licensees with multiple licensed locations, only one surety bond in the amount of twenty-five thousand dollars ($25,000) is required. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by consumers as the result of a licensee's noncompliance with the requirements of this division.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

23014. In any proceeding under this division, the burden of proving an exemption or exception is upon the person claiming it.

Article 3. Administration and Operations

23015. The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

23016. (a) Each licensee shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The assessment will be based on the number of locations.

(b) On or before the 20th day of May 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 30 days thereafter. If payment is not made within 30 days, the commissioner may 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.

(c) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

23017. All money paid or collected under this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund upon appropriation by the Legislature.

23018. (a) A license, along with any currently effective order of the commissioner approving a different name pursuant to Section 23023, shall be conspicuously posted in the place of business authorized by the licensee.

(b) A license is not transferable or assignable. A license issued to a partnership or limited partnership is not transferred or assigned within the meaning of this section by the death, withdrawal, or admission of a

partner, general partner, or limited partner, unless the death, withdrawal, or admission dissolves the partnership to which the license was issued.

23019. Every licensee shall post a complete, detailed, and unambiguous schedule of fees. The information required by this section shall be clear, legible, and in letters not less than one-half inch in height. The information shall be posted in a conspicuous location in the unobstructed view of the public within the licensee's location.

23020. A licensee shall maintain only one place of business under an original or amended license issued pursuant to Section 23008. The commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this division governing an original issuance of a license.

23021. (a) If a licensee desires to change its place of business to a street address other than that designated in its license, the licensee shall give written notice to the commissioner at least 10 days prior to the change. The commissioner shall then provide written approval of the change and the date of the approval. A new application shall not be required for a change in the address of an existing business location previously licensed pursuant to this division.

(b) If notice is not given at least 10 days prior to the change, as required by subdivision (a), the commissioner may assess a civil penalty on the licensee not to exceed five hundred dollars ($500).

23023. No licensee shall transact the business licensed or make any transaction provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business.

23024. Each licensee shall keep and use books, accounts, and records that will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations promulgated by the commissioner. Each licensee shall maintain any other records as required by the commissioner. The commissioner or a designee of the commissioner may examine those records at any reasonable time. Upon the request of the commissioner, a licensee shall file an authorization for disclosure of financial records of the licensed businesses pursuant to Section 7473 of the Government Code. All records shall be kept for two years following the last entry on a deferred deposit transaction and shall enable an examiner to review the recordkeeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's deferred deposit transaction file records.

23025. The department shall maintain a toll-free telephone number for deferred deposit transaction customers to make complaints and express concerns regarding the product or a specific licensee.

23026. On or before March 15 of each year, beginning March 2005, each licensee shall file an annual report with the commissioner pursuant to procedures that the commissioner shall establish. The licensee's annual report shall be kept confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and any regulations adopted thereunder. The annual consolidated report shall be prepared by the commissioner and made available to the public. For the previous calendar year, these reports shall include the following:

(a) The total number and dollar amount of deferred deposit transactions made by the licensee.

(b) The total number of individual customers who entered into deferred deposit transactions.

(c) The minimum, maximum, and average amount of deferred deposit transactions.

(d) The average annual percentage rate of deferred deposits.

(e) The average number of days of deferred deposit transactions.

(f) The total number and dollar amount of returned checks.

(g) The total number and dollar amount of checks recovered.

(h) The total number and dollar amount of checks charged off.

23027. (a) No licensee shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed or broadcast, in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating deferred deposit transactions, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive.

(b) No licensee shall place an advertisement disseminated primarily in this state for a deferred deposit transaction unless the licensee discloses in the printed text of the advertisement, or the oral text in the case of a radio or television advertisement, that the licensee is licensed by the department pursuant to this division.

(c) The commissioner may require that rates of charges or fees, if stated by the licensee, be stated fully and clearly in the manner that the commissioner deems necessary to give adequate information to, or to prevent misunderstanding by, prospective customers.

(d) No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval.

(e) The commissioner may require licensees to maintain a file of all advertising copy for a period of 90 days from the date of its use. The file shall be available to the commissioner upon request.

CHAPTER 2. DEFERRED DEPOSIT TRANSACTIONS

23035. (a) A licensee may defer the deposit of a customer's personal check for up to 31 days, pursuant to the provisions of this section. The face amount of the check shall not exceed three hundred dollars ($300). Each deferred deposit transaction shall be made pursuant to a written agreement as described in subdivision (e) that has been signed by the customer and by the licensee or an authorized representative of the licensee.

(b) A customer who enters into a deferred deposit transaction and offers a personal check to a licensee pursuant to an agreement shall not be subject to any criminal penalty for the failure to comply with the terms of that agreement.

(c) Before entering into a deferred deposit transaction, licensees shall distribute to customers a notice that shall include, but not be limited to, the following:

(1) Information about charges for deferred deposit transactions.

(2) That if the customer's check is returned unpaid, the customer may be charged an additional fee of up to fifteen dollars ($15).

(3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.

(4) The department's toll-free telephone number for receiving calls regarding customer complaints and concerns.

(5) That the licensee may not accept any collateral in conjunction with a deferred deposit transaction.

(6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height:

(1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction.

(2) The schedule of all charges and fees to be charged on those deferred deposit transactions with an example of all charges and fees that would be charged on at least a one-hundred-dollar ($100) and a two-hundred-dollar ($200) deferred deposit transaction, payable in 14 days and 30 days, respectively, giving the corresponding annual percentage rate. The information may be provided in a chart as follows:

Amount Provided	Fee	Amount of Check	14–day APR	30–day APR
$100	XX	XXX	XXX	XXX
$200	XX	XXX	XXX	XXX

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

(1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States currency and as an APR as required under the Federal Truth In Lending Act and its regulations.

(2) A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations.

(3) The name, address, and telephone number of the licensee.

(4) The customer's name and address.

(5) The date to which deposit of check has been deferred (due date).

(6) The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.

(7) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect.

(10) That the licensee cannot accept collateral in connection with the transaction.

(11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

(12) Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

(13) Any other information that the commissioner shall deem necessary by regulation.

(f) The notice required by subdivision (c) shall be written and available in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement and shall be in at least 10-point type.

(g) The written agreement required by subdivision (e) shall be written in the same language principally used in any oral discussions or negotiations leading to execution of the deferred deposit agreement;

shall not be vague, unclear, or misleading and shall be in at least 10-point type.

(h) Under no circumstances shall a deferred deposit transaction agreement include any of the following:

(1) A hold harmless clause.

(2) A confession of judgment clause or power of attorney.

(3) Any assignment of or order for payment of wages or other compensation for services.

(4) Any acceleration provision.

(5) Any unconscionable provision.

(i) If the licensee sells or otherwise transfers the debt at a later date, the licensee shall clearly disclose in a written agreement that any debt or checks held or transferred pursuant to a deferred deposit transaction made pursuant to Section 23035 are not subject to the provisions of Section 1719 of the Civil Code and that no customer may be required to pay treble damages if the check or checks are dishonored.

23036. (a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.

(b) A licensee may allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction but may not charge any additional fee or charge of any kind in conjunction with the extension or payment plan. A licensee that complies with the provisions of this subdivision shall not be deemed to be in violation of subdivision (g) of Section 23037.

(c) A licensee shall not enter into an agreement for a deferred deposit transaction with a customer during the period of time that an earlier written agreement for a deferred deposit transaction for the same customer is in effect.

(d) A licensee who enters into a deferred deposit transaction agreement, or any assignee of that licensee, shall not be entitled to recover damages for that transaction in any action brought pursuant to, or governed by, Section 1719 of the Civil Code.

(e) A fee not to exceed fifteen dollars ($15) may be charged for the return of a dishonored check by a depositary institution in a deferred deposit transaction. A single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

(f) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a licensee pursuant to a deferred deposit transaction.

(g) A licensee shall be subject to the provisions of Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code.

23037. In no case shall a licensee do any of the following:

(a) Accept or use the same check for a subsequent transaction, or permit a customer to pay off all or a portion of one deferred deposit transaction with the proceeds of another.

(b) Accept any collateral for a deferred deposit transaction.

(c) Make any deferred deposit transaction contingent on the purchase of insurance or any other goods or services.

(d) Enter into a deferred deposit transaction with a person lacking the capacity to contract.

(e) Alter the date or any other information on a check.

(f) Engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

(g) Accept more than one check for a single deferred deposit transaction.

(h) Take any check, instrument, or form in which blanks are left to be filled in after execution.

(i) Offer, arrange, act as an agent for, or assist a deferred deposit originator in any way in the making of a deferred deposit transaction unless the deferred deposit originator complies with all applicable federal and state laws and regulations, including the provisions of this division.

(1) The prohibition specified in this subdivision does not apply to the arranger, agent, or assistant to a state or federally chartered bank, thrift, savings association, or industrial loan company where the state or federally chartered bank, thrift, savings association, or industrial loan company satisfies all of the following:

(A) It initially advances the loan proceeds to the customer.

(B) It does not sell, assign, or transfer a preponderant economic interest in the deferred deposit transaction to the arranger, agent, or assistant, or an affiliate or subsidiary of the state or federally chartered bank, thrift, savings association, or industrial loan company, unless selling, assigning, or transferring a preponderant economic interest is expressly permitted by the primary regulator of the state or federally chartered bank, thrift, savings association, or industrial loan company.

(C) It develops the deferred deposit transaction product or products on its own.

(2) If a licensee offers, arranges, acts as an agent for, or assists a state or federally chartered bank, thrift, savings association, or industrial loan company in any way in the making of a deferred deposit transaction and the state or federally chartered bank, thrift, savings association, or industrial loan company meets the standards set forth in paragraph (1), the licensee shall comply with all other provisions in this division to the extent they are not preempted by other state and federal laws.

CHAPTER 3. ENFORCEMENT

Article 1. Administrative Actions

23045. (a) Licenses issued under this division remain in effect until they are surrendered, revoked, or suspended.

(b) The surrender of a license becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time that the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, the surrender of a license becomes effective at the time and upon the conditions that the commissioner determines.

(c) The power of investigation and examination by the commissioner is not terminated by the surrender, suspension, or revocation of any license issued by the commissioner.

(d) Whenever the commissioner deems it necessary for the general welfare of the public, the commissioner shall have continuous authority to exercise the powers set forth in this division whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked.

(e) The commissioner may, upon three days' notice and a hearing, suspend any license for a period not exceeding 30 days, pending investigation, where the commissioner believes that a person subject to this division is conducting business in an unsafe or injurious manner.

(f) Any licensee may surrender any license by delivering to the commissioner written notice that the licensee surrenders that license pursuant to subdivision (b). The surrender of the license does not affect the licensee's civil or criminal liability for acts committed prior to the surrender of the license.

23046. (a) For the purpose of discovering violations of this division or securing information required by the commissioner in the administration and enforcement of this division, the commissioner may at any time, but not less than once every two years, investigate the business of deferred deposits, and examine the books, accounts, records, and files used in the business of deferred deposit transactions, of every person engaged in the business of deferred deposit transactions, whether the person acts or claims to act as a principal or an agent, or under or without the authority of this division. For the purpose of examination, the commissioner and the commissioner's representatives shall have

free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all these persons.

(b) The cost of each examination of a licensee or a 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 the cost in any court of competent jurisdiction. In determining the cost of an examination, the commissioner may use the estimated average hourly cost for all persons performing examinations of licensees or other persons subject to this division for the fiscal year.

23047. (a) In making any examination or investigation, the commissioner may, for a reasonable time not to exceed 30 days, take possession of the books, records, accounts, and other papers pertaining to the business. The commissioner may place a keeper in exclusive charge and custody of the books, records, accounts, and other papers in the office or place where they are usually kept. During possession by the keeper, no person shall remove or attempt to remove any of the books, accounts, papers, records, files, safes, and vaults, or any part thereof, except in compliance with a court order or written consent of the commissioner.

(b) The officers, employees, partners, directors, and stockholders may inspect and examine the books, accounts, papers, records, files, safes, and vaults while they are in the custody of the commissioner. Employees may make entries in these documents reflecting current operations or transactions.

23048. (a) The commissioner may require the attendance of witnesses and examine under oath all persons whose testimony the commissioner requires relative to transactions or business regulated by this division or to the subject matter of any examination, investigation, or hearing.

(b) The commissioner may require the production for examination in this state of all books, records, and supporting data used by the licensee in the preparation of reports to the commissioner. The books, records, and supporting data shall be made available for examination by the commissioner in this state within 10 days after a written demand.

23049. After an examination, investigation, or hearing under this division, if the commissioner deems it of public interest or advantage, the commissioner may certify a record to the proper prosecuting official of the city, county, or city and county in which the act complained of, examined, or investigated occurred. The data and records shall be kept confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and any regulations adopted thereunder.

23050. Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in

this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If within 30 days, after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

23051. (a) Whenever the commissioner believes from evidence satisfactory to the commissioner that any person has violated or is about to violate a provision of this division, or a provision of any order, license, decision, demand, requirement, or any regulation adopted pursuant to this division, the commissioner may, in the commissioner's discretion, bring an action in the name of the people of the State of California against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

(c) Any person who violates any provision of this division, or who violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(d) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

23052. The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

23053. The commissioner may by order summarily suspend or revoke the license of any licensee if that person fails to file the report required by Section 23026 within 10 days after notice by the commissioner that the report is due and not filed. If, after an order is made, a request for hearing is filed in writing within 30 days and the hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date.

23054. The revocation, suspension, expiration, or surrender of any license does not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

23055. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all cases the commissioner has all the powers granted therein.

23056. Every order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with law.

23057. On December 1, 2006, the commissioner shall report to the Governor and the Legislature on its implementation of this division. The report shall include, at a minimum, information regarding the demand for deferred deposit transactions, the growth and trends in the industry, common practices for conducting the business of deferred deposit transactions and any other information the commissioner deems necessary to inform the Governor and the Legislature regarding potential legislation that may be necessary to protect the people of the State of California. The commissioner's recommendations for future action may include, but are not limited to, changes in the fees charged to consumers, specifications regarding the length of time for deferred deposit transactions, maximum amount provided to consumers and the implementation of an installment loan product in lieu of a deferred deposit transaction as described in this division.

As the commissioner conducts this study, licensees shall be required to supply all information the commissioner deems necessary. The study shall be made public and may not include any proprietary information.

23058. (a) If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of this division or any rule or order thereunder, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two

thousand five hundred dollars ($2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

Article 2. Penalties for Misconduct

23060. (a) If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

(b) If any provision of this division is willfully violated in the making or collection of a deferred deposit transaction, the deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

23061. (a) If any amount other than, or in excess of, the charges permitted by this division is charged, contracted for, or received in connection with a deferred deposit transaction, for any reason other than a willful act of the licensee, the licensee shall forfeit all charges and fees on the deferred deposit transaction and may collect or receive only the principal amount of the transaction.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid that error, and (2) within 60 days of discovering the error the licensee notifies the

customer of the error and makes whatever adjustments in the account are necessary to correct the error.

23062. (a) If any provision of this division is violated in the making or collection of a deferred deposit transaction, for any reason other than a willful act of the licensee, the licensee shall forfeit all charges and fees on the deferred deposit and may collect or receive only the principal amount.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notified the customer of the error and rectified the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.

23063. No provision imposing liability under this division, including the provisions of subdivision (a) of Section 23061 and subdivision (a) of Section 23062, shall apply to any act done or omitted in good faith in conformity with any written general rule, regulation, or specific ruling of the commissioner, notwithstanding that after the act or omission has occurred, the written general rule, regulation, or specific ruling is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Article 3. Civil Damages

23064. Any person who is injured by any violation of this division may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above. Upon application, the court may also grant any equitable relief that it deems proper, including, but not limited to, a claim for restitution and disgorgement.

23064.5. The rights, remedies, and penalties established by this division are cumulative to the rights, remedies, or penalties established under other laws. It is not necessary to exhaust administrative remedies in order to pursue the civil remedies provided for in this act.

Article 4. Crimes

23065. Any person, including a partner or officer of an entity that is a licensee, who willfully violates any provision of this division or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority in Article 1 (commencing with Section 23045).

Article 5. Transition Provisions

23070. (a) The Legislature finds and declares that it is in the public interest for the administration and enforcement of this division to be undertaken by the Department of Corporations.

(b) It is therefore the intent of the Legislature to transfer the existing responsibilities relating to administration and enforcement of check cashers that engage in activities subject to this division from the Department of Justice to the Department of Corporations.

23071. The Commissioner of Corporations and the Department of Corporations shall succeed to, and are vested with, all duties, powers, purposes, responsibilities, and jurisdiction of the Department of Justice as they relate to check cashers who engage in the activities subject to this division.

23072. The Department of Corporations may use the unexpended balance of funds available for use in connection with the performance of duties of the Department of Justice to which the Department of Corporations succeeds pursuant to Section 23071.

23073. All officers and employees of the Department of Justice who, on the operative date of this division, are performing any duty, power, purpose, responsibility, or jurisdiction to which the Department of Corporations succeeds, and who are serving in the civil service, other than as temporary employees or persons in positions exempted from civil service, shall be transferred to the Department of Corporations. The status, position, and rights of those persons shall not be affected by the transfer and shall be retained by those persons as officers and employees of the Department of Corporations, pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code.

23074. The Department of Corporations shall have possession and control of all records, criminal history information, papers, equipment, supplies, moneys, funds, appropriations, licenses, permits, contracts,

claims, judgments, land, and other property, real or personal, connected with the administration of, or held for the benefit or use of, the Department of Justice for the performance of the functions transferred to the Department of Corporations pursuant to Section 23071.

Article 6. Miscellaneous

23100. (a) Check cashers that hold a valid permit prior to January 1, 2003, issued pursuant to Section 1789.37 of the Civil Code, and that have been making deferred deposits prior to January 1, 2003, shall do the following prior to engaging in the business of deferred deposits on or after March 1, 2004:

(1) Pay the assessment on or before May 15, 2003, pursuant to the provisions of this division for the 2003–04 fiscal year.

(2) On or before May 15, 2003, submit a license application and pay a license fee pursuant to Article 2 (commencing with Section 23005).

(b) Any person that intends to engage in the business of deferred deposits after March 1, 2004, and that holds a check cashing permit from the Attorney General on or before January 2003 and fails to submit a license application or pay a license fee as provided in this subdivision, shall upon the request of the commissioner and applying for a license forfeit to the people of the state a sum of twenty-five dollars ($25) for every day or part of a day that the submission or payment is delayed or withheld. Applications will be processed in the order of the date received by the commissioner.

(c) The commissioner shall issue a license to a licensee under this division upon receiving payment of the assessment for the 2003–04 fiscal year, the license application, and fee and any additional information the commissioner may require in the application to demonstrate compliance with provisions of this division. The amount collected shall be deposited in the State Corporations Fund and shall be subject to appropriation by the Legislature for the 2003–04 fiscal year.

23101. Regulations of the commissioner adopted prior to June 30, 2003, to implement this division shall be adopted as emergency regulations. Upon receipt of the regulations, the Office of Administrative Law shall file the regulations with the Secretary of State for immediate effectiveness.

23102. The deferred deposits made pursuant to a permit issued under Section 1789.37 of the Civil Code prior to March 1, 2004, shall be subject to and enforced to the extent valid under Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if those sections were not repealed. Any regulation, order, or other action adopted, prescribed, taken, or performed by the Department of Justice or by an officer of that department in connection with deferred deposit transactions made prior

to March 1, 2004, shall continue to apply to those transactions. No suit, action, or other proceeding lawfully commenced by or against the Department of Justice or any other officer of the state in relation to deferred deposit transactions made prior to March 1, 2004, shall abate by reason of the transfer of authority concerning deferred deposit transactions to the Department of Corporations pursuant to Section 23071.

23103. It is the intent of the Legislature that this division shall be administered and enforced with sufficient program resources and funding including personnel to examine licensees as often as the commissioner deems necessary and appropriate but at least once every two years, and to authorize enforcement actions that are necessary and appropriate to protect the public. This act should be administered and enforced only to the extent funds are appropriated by the Legislature and made available for this purpose.

23104. Except as provided in this article, the provisions of this division shall become effective on January 1, 2003, and shall become operative on March 1, 2004. However, the commissioner shall have the power and authority to implement the provisions of this division prior to March 1, 2004.

23105. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

23106. This division creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 778

An act to amend Section 17538.9 of the Business and Professions Code, relating to prepaid calling cards and services.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 17538.9 of the Business and Professions Code is amended to read:

17538.9. (a) For the purposes of this section:

(1) ''Company'' refers to any entity providing prepaid calling services to the public using its own or a resold telecommunications network.

(2) ''Prepaid calling services'' or ''services'' refers to any prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

(3) ''Prepaid calling card'' or ''card'' means any object containing an access number and authorization code that enables a consumer to use prepaid calling services. It does not include any object of that type used for promotional purposes.

(4) ''Cellular telephone services'' means facilities-based, commercial mobile telephone services.

(b) The following standards and requirements for consumer disclosure and services shall apply to the advertising and sale of prepaid calling cards and prepaid calling services:

(1) Any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services shall include a disclosure of any geographic limitation to the advertised price, rate, or unit value, as well as a disclosure of any additional surcharges, call setup charges, or fees or surcharges applicable to the advertised price, rate, or unit value.

(2) The following information shall be legibly printed on the card:

(A) The name of the company.

(B) A toll-free customer service number.

(C) A toll-free network access number, if required to access service.

(D) The authorization code, if required to access service.

(E) The expiration date or policy, if applicable, except where paragraph (8) applies.

(3) The company shall print legibly on the card or packaging, and the vendor shall make available clearly and conspicuously in a prominent area immediately proximate to the point of sale of the prepaid calling card or prepaid calling services the following information:

(A) The value of the card and any surcharges, taxes, or fees, including monthly or other periodic fees, maintenance fees, per-call access fees, surcharges for calls made on pay telephones, or surcharges for the first minute or other period of use that may be applicable to the use of the prepaid calling card or prepaid calling services within the United States.

(B) Any surcharges for international calls or, in lieu of disclosing each surcharge, the highest surcharge for any international calls applicable on that card and any additional or different prices, rates, or unit values applicable to international usage of the prepaid calling card or prepaid calling services.

(C) The minimum charge per call, such as a three-minute minimum charge, if any.

(D) The definition of the term ''unit,'' if applicable.

(E) The billing decrement.

(F) The name of the company.

(G) The recharge policy, if any.

(H) The refund policy, if any.

(I) The expiration policy, if any.

(J) The 24-hour customer service toll-free telephone number required in paragraph (6).

(4) If a language other than English is used on the card or packaging to provide dialing instructions to place a call or to contact customer service, the information required by paragraph (3) shall also be disclosed in that language in the point of sale disclosure in the manner described in paragraph (3).

(5) If a language other than English is used in the advertising or promotion of the card or prepaid calling services or is used on the card or packaging other than for dialing instructions, the information required by paragraph (3) shall also be disclosed in that language on the card or packaging and in the point of sale disclosure in the manner described in paragraph (3).

(6) A company shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:

(A) A live operator shall answer incoming calls to the telephone number 24 hours a day, seven days a week.

(B) The telephone number shall have sufficient capacity and staffing to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue wait. The company shall provide customer service in each language used on a prepaid calling card or its packaging and in the advertising or promotion of the prepaid calling card or prepaid calling services.

(C) The telephone number shall allow consumers to lodge complaints and obtain information on all of the following:

(i) All rates, surcharges, and fees.

(ii) The company's recharge, refund, and expiration policies.

(iii) The balance of use available in the consumer's account, if applicable.

(D) A company shall not impose a fee or surcharge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.

A company offering prepaid cellular telephone services shall be deemed to be in compliance with the requirements of this paragraph if, when a request for information is made outside of normal business hours, that company provides the information requested on the next business day.

(7) A company that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card, and shall be provided to the consumer within 60 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

(8) Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of purchase, or if recharged, from the date of the last recharge.

(9) In the case of prepaid calling cards or services utilized at a pay phone, the company may provide voice prompt notification of any applicable pay phone surcharges, in lieu of providing notice of surcharges as required by paragraph (1) and by subparagraph (A) of paragraph (3), provided that the company provides users of prepaid calling cards or services with reasonable time to terminate the call after notification of applicable pay phone surcharges without incurring any charge for the call.

(10) A company shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

(11) A company may not impose any fee or surcharge that is not disclosed as required by this section or that exceeds the amount disclosed by the company.

(12) A company may not impose any charges if the consumer is not connected to the number called. For the purpose of this paragraph, the customer shall not be considered connected to the number called if the customer receives a busy signal or the call is unanswered.

(13) The value of the card and the amount of the various charges, however denominated, that are required to be disclosed by paragraph (3), shall be expressed in the same format. If the value of a card is expressed in minutes, the minutes shall be identified as domestic or international

and the identification shall be printed on the same line or next line as the value of the card in minutes.

SEC. 2. Notwithstanding any other provision of this act, prepaid calling cards in compliance with the disclosure requirements of paragraphs (2) and (3) of subdivision (b) of Section 17538.9 of the Business and Professions Code as it existed immediately prior to the effective date of this act may continue to be sold to the public until July 1, 2003.

CHAPTER 779

An act to amend Sections 12100 and 12103 of, to repeal and add Section 12104 of, and to add Sections 12105, 12106, 12107, and 12108 to, the Financial Code, and to amend Section 13978.6 of the Government Code, relating to credit counseling.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 12100 of the Financial Code is amended to read:

12100. This division does not apply to any of the following:

(a) Persons or their authorized agents doing business under license and authority of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99), or under any law of this state or of the United States relating to banks, trust companies, building or savings associations, industrial loan companies, personal property brokers, credit unions, title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code), escrow agents subject to Division 6 (commencing with Section 17000), or finance lenders subject to Division 9 (commencing with Section 22000).

(b) (1) Any person licensed under Chapter 14A (commencing with Section 1851) of Division 1 or any agent of such person when selling any traveler's check (as defined in Section 1852) which is issued by such person.

(2) Any person licensed under Division 16 (commencing with Section 33000) or any agent of the person, when selling any payment instrument (as defined in Section 33059) which is issued by the person.

(c) The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an

attorney-at-law, and the fees and disbursements of such person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly with the prorater or check seller.

(d) Any transaction in which money or other property is paid to a ''joint control agent'' for disbursal or use in payment of the cost of labor, materials, services, permits, fees, or other items of expense incurred in construction of improvements upon real property.

(e) A merchant-owned credit or creditors association, or a member-owned or member-controlled or member-directed association whose principal function is that of servicing the community as a reporting agency.

(f) Any person licensed under Chapter 1 of Part 6 of Division 2 of the Labor Code, when acting in any capacity for which he or she is licensed under that part.

(g) Any person licensed under Part 1, Division 4, of the Business and Professions Code, when acting in any capacity for which he or she is licensed under that part.

(h) A common law or statutory assignment for the benefit of creditors or the operation or liquidation of property or a business enterprise under supervision of a creditor's committee.

(i) The services of a person licensed as a certified public accountant or a public accountant in this state, when the person renders services in a course of his or her practice as a certified public accountant or a public accountant, and the fees and disbursements of the person, whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller.

(j) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1 or any agent of such person, when selling any check or draft which is drawn by the person and which is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(k) Any group of banks each of which is organized under the laws of a nation other than the United States and one or more of which are licensed by the Commissioner of Financial Institutions of the State of California under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1, or any agent of such group, when selling any foreign currency traveler's check (as defined in Section 1852) issued by such group, provided that each bank that is a member of the group is jointly and severally liable to pay such foreign currency traveler's check.

(*l*) Any transaction of the type described in Section 1854.1.

SEC. 2. Section 12103 of the Financial Code is amended to read:

12103. Whenever in the opinion of the commissioner any person is engaged in business as a check seller as defined in this division without a license from the commissioner, or any person or licensee is violating any provision of this division, the commissioner may order the person or licensee to desist and to refrain from engaging in such business or further violating this division. If, after such an order is made, a request for a hearing is filed in writing and no hearing is held within 30 days thereafter, the order shall be deemed to have been rescinded.

SEC. 3. Section 12104 of the Financial Code is repealed.

SEC. 4. Section 12104 is added to the Financial Code, to read:

12104. A nonprofit community service organization that meets all of the following criteria shall be exempt from any requirements imposed on prorators pursuant to this division:

(a) The nonprofit community service organization incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code or the Nonprofit Mutual Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(b) The nonprofit community service organization limits its membership to retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employer and employee organizations, and related groups that serve educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes.

(c) The nonprofit community service organization has as its principal functions the following:

(1) Consumer credit education.

(2) Counseling on consumer credit problems and family budgets.

(3) Arranging or administering debt management plans. ''Debt management plan'' means a method of paying debtor's obligations in installments on a monthly basis.

(4) Arranging or administering debt settlement plans. ''Debt settlement plans'' means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

(d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars ($50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 6.5 percent of the money disbursed monthly, or twenty dollars ($20) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt

forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to subdivision (d) of Section 12104 shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management plan or a debt settlement plan.

(e) The nonprofit community service organization maintains and keeps current and accurate books, records, and accounts relating to its business in accordance with generally accepted accounting principles, and stores them in a readily accessible place for a period of no less than five years from the end of the fiscal year in which any transactions occurred.

(f) The nonprofit community service organization deposits any money received from a debtor for the services described in subdivision (c) in a noninterest-bearing trust account in a federally insured state or federal bank, savings bank, savings and loan association, or credit union. The nonprofit community service organization shall provide the commissioner the following prior to engaging in business in this state and claiming this exemption:

(1) A written notice with the name, address, and telephone number of the bank, savings bank, savings and loan association, or credit union where the trust account is maintained, and the name of the account and the account number. The account information required in this paragraph shall be kept confidential pursuant to the laws governing disclosure of public records, including the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and the rules adopted thereunder.

(2) An irrevocable written consent providing that upon the commissioner taking possession of the property and business of the nonprofit community service organization, all books, records, property and business, including trust accounts and any other accounts holding debtors' funds, shall be immediately turned over to the commissioner or receiver appointed pursuant to this division. The consent shall be signed by the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union where the trust account is maintained. The consent shall be binding upon the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union, and any objection to it must be raised pursuant to the laws of the State of California and only in the forum in which the proceeding to take possession or appointment of the receiver has been filed. The nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union shall

further consent to the jurisdiction of the commissioner for the purpose of any investigation or proceeding under Sections 12105 and 12106 or any other provision of this division. The consent required by this paragraph shall include the name, title, and signature of an official of the bank, savings bank, savings and loan association, or credit union holding the authority to consent on behalf of such institution, and the name, title, and signature of the chief executive officer or president of the nonprofit community service organization.

(g) The nonprofit community service organization maintains at all times a surety bond in the amount of twenty-five thousand dollars ($25,000), issued by an insurer licensed in this state. The bond shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of Section 12104 of the Financial Code, honestly and faithfully applying all funds received, honestly and faithfully performing all obligations and undertakings required under this section, and paying to the state and to any person all money that becomes due and owing to the state or to any person owed by the obligor of the bond.

(h) The nonprofit community service organization reports all of the following to the debtor at least once every three months, or upon the debtor's request, for any debt management plan or debt settlement plan:

(1) Total amount received from the debtor.

(2) Total amount paid to each creditor.

(3) Total amount any creditor has agreed to accept as payment in full on any debt owed by the debtor.

(4) Any amount paid to the organization by the debtor.

(5) Any amount held in reserve.

(i) The nonprofit community service organization submits to the commissioner, at the organization's expense, an audit report containing audited financial statements covering the calendar year or, if the organization has an established fiscal year, then for that fiscal year, within 120 days after the close of the calendar or fiscal year.

(j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure, is executed by an official authorized by the board of the organization, and that states that the organization complies with this section. The annual financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number of the organization.

(k) The nonprofit community service organization maintains accreditation by an independent accrediting organization, including either the Council on Accreditation or the International Standards Organization, with sector certification.

(*l*) The nonprofit community service organization does not engage in any act or practice in violation of Section 17200 or 17500 of the Business and Professions Code.

(m) The nonprofit community service organization inserts the following statement, in not less than 10-point type, in its debt management plan and debt settlement plan agreements: ''Complaints related to this agreement may be directed to the California Department of Corporations. This nonprofit community service organization has adopted best practices for debt management plans and debt settlement plans, and a copy will be provided upon request.''

(n) The nonprofit community service organization adopts and implements on a continuous basis policies or procedures of best practices that are designed to prevent improper debt management or debt settlement practices and prevent theft and misappropriation of funds. Failure to do the following shall constitute improper debt management or debt settlement practices, as applicable:

(1) Obtain counselor certification conducted by a nationally recognized third party certification program that certifies that all of the agency's counselors receive proper training and are qualified to provide financial assistance prior to performing counseling services in this state.

(2) Disburse funds no later than 15 days after receipt of valid funds, or by a scheduled reimbursement date, whichever is the greater amount of time.

(3) Transmit funds utilizing electronic payment processing when available.

(4) Implement an inception date policy, which shall include an agreement that a consumer's first disbursement pursuant to a debt management plan shall be received within six weeks of agreeing to the debt management plan service. The debt management plan shall include all items described in subdivision (h) and shall be provided to the consumer at the inception date of the plan. A description of best practices of the agency and of the consumer complaint resources shall be issued no later than the first payment date.

(5) Respond to and research any complaint initiated by a consumer within five business days of receipt of the complaint.

(6) Prohibit a policy requiring debt management plan consumers from being required to utilize additional ancillary services.

(7) Provide consumer access to debt management plan services regardless of the consumer's ability to pay fees related to the debt management plan, lack of creditor participation, or the amount of the consumer's outstanding debt.

(o) The nonprofit community service organization provides a copy of the best practices described in subdivision (n) to its debtor, upon request.

(p) The nonprofit community service organization resolves in a prompt and reasonable manner complaints from debtors relating to the organization's debt management plans or debt settlement plans.

(q) The nonprofit community service organization provides written notice to the commissioner within 30 days of dissolution or termination of engaging in the activities of a prorater, as defined in Section 12002.1.

SEC. 5. Section 12105 is added to the Financial Code, to read:

12105. (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division, or any rule or order promulgated pursuant to this division, the commissioner may, at his or her discretion, bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance. Upon a proper showing, a permanent or preliminary injunction, a regaining order, or a writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant's assets.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action under this division a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative or civil court shall have jurisdiction to award an additional relief.

(c) The commissioner may, after appropriate notice and opportunity for hearing, levy administrative penalties against any person or licensee who violates any provision of this division, or rule or order promulgated pursuant to this division, in an amount not to exceed two thousand five hundred dollars ($2,500) per violation. Any hearing shall be held in accordance with the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under this act. If no hearing is requested within 30 days from the date of service of the order, the order shall become final.

(d) Any licensee or person who willfully violates any provision of this division, or any rule or order thereunder, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(e) In any action brought under this division, the commissioner is entitled to receive costs, which in the discretion of the administrative or civil court shall include an amount representing reasonable attorney's fees and any related expenses for services rendered.

SEC. 6. Section 12106 is added to the Financial Code, to read:

12106. (a) The commissioner may do the following, at his or her discretion:

(1) Make public or private investigations within or outside of this state necessary to determine whether any person has violated, or is about to violate, any provision of this division or any rule or order promulgated pursuant to this division, or to aid in the enforcement of the law.

(2) Make public any information concerning any violation of this division or any rule or order promulgated pursuant to this division.

(b) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records the commissioner deems relevant or material to the inquiry.

(c) In case of refusal to obey a subpoena issued to a person, the superior court may upon application by the commissioner issue to the person an order requiring the person to appear before the commissioner, or an officer designated by the commissioner, and produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(d) No person is excused from attending or testifying, or from producing any document or record, before the commissioner or in obedience of a subpoena of the commissioner, or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence required of the person may incriminate the person or subject the person to a penalty or forfeiture. However, after validly claiming the privilege against self-incrimination, no individual may be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing for which the person is compelled to testify or produce pursuant to this section, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) The cost of any review, examination, audit, or investigation made by the commissioner under this section shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses, including overhead reasonably incurred in the performance of the work.

SEC. 7. Section 12107 is added to the Financial Code, to read:

12107. (a) If, upon inspection or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in business without a license, or a person or licensee is violating any provision of this division or any rule or order promulgated pursuant to this division, the department may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars ($2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation, the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application shall include a certified copy of the final order of the department and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

SEC. 8. Section 12108 is added to the Financial Code, to read:

12108. (a) The remedies available to the commissioner pursuant to this division are not exclusive and may be sought and employed in any combination deemed advisable by the commissioner to enforce the provisions of this division.

(b) Any amounts collected by the commissioner in any action shall be paid into the State Corporations Fund.

SEC. 9. Section 13978.6 of the Government Code is amended to read:

13978.6. (a) The Secretary of the Business, Transportation and Housing Agency shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. The secretary shall review and approve the proposed budget of each department, office, or other unit. The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other unit. The secretary shall review the operations and evaluate the performance at appropriate intervals of each

department, office, or other unit, and shall seek continually to improve the organization structure, the operating policies, and the management information systems of each department, office, or other unit.

(b) There is in the Business, Transportation, and Housing Agency a Department of Corporations, which has the responsibility for administering various laws. In order to effectively support the Department of Corporations in the administration of these laws, there is hereby established the State Corporations Fund. All expenses and salaries of the Department of Corporations shall be paid out of the State Corporations Fund. Therefore, notwithstanding any provision of any law administered by the Department of Corporations declaring that fees, reimbursements, assessments, or other money or amounts charged and collected by the Department of Corporations under these laws are to be delivered or transmitted to the Treasurer and deposited to the credit of the General Fund, on and after July 1, 1992, all fees, reimbursements, assessments, and other money or amounts charged and collected under these laws and attributable to the 1992–93 fiscal year and subsequent fiscal years shall be delivered or transmitted to the Treasurer and deposited to the credit of the State Corporations Fund.

(c) Funds appropriated from the State Corporations Fund and made available for expenditure for any law or program of the Department of Corporations may come from the following:

(1) Fees and any other amounts charged and collected pursuant to Section 25608 of the Corporations Code, except for fees and other amounts charged and collected pursuant to subdivisions (o) to (r), inclusive, of Section 25608 of the Corporations Code.

(2) Fees collected pursuant to subdivisions (a), (b), (c), and (d) of Section 25608.1 of the Corporations Code.

SEC. 10. It is the intent of the Legislature in passing Sections 1 to 8, inclusive, of this act to clarify and enhance consumer protections applicable to nonprofit consumer credit counseling organizations that claim the exemption from licensure as proraters when engaging in debt management or debt settlement plans, to expand the enforcement powers and remedies of the Department of Corporations to help ensure compliance by proraters and other persons licensed or exempt from licensure, and to provide the department with authority to recover its costs directly from those persons who are subject to the department's actions in enforcing existing law. Section 9 of this act is intended to provide flexibility to fund all of the Department of Corporation's laws and programs using specified fees and other amounts charged and collected pursuant to the Corporate Securities Law of 1968.

SEC. 11. The Department of Corporations shall conduct a study of the consumer credit counseling industry in California and make recommendations to the Legislature on or before March 1, 2003,

regarding the establishment of fees for debt management plans and debt settlement plans. This study shall be conducted in consultation with the consumer credit counseling industry and consumer organizations.

CHAPTER 780

An act to add Chapter 4 (commencing with Section 1400) to Part 4 of Division 2 of the Labor Code, relating to employment.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Chapter 4 (commencing with Section 1400) is added to Part 4 of Division 2 of the Labor Code, to read:

CHAPTER 4. RELOCATIONS, TERMINATIONS, AND MASS LAYOFFS

1400. The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:

(a) ''Covered establishment'' means any industrial or commercial facility or part thereof that employs, or has employed within the preceding 12 months, 75 or more persons.

(b) ''Employer'' means any person, as defined by Section 18, who directly or indirectly owns and operates a covered establishment. A parent corporation is an employer as to any covered establishment directly owned and operated by its corporate subsidiary.

(c) ''Layoff'' means a separation from a position for lack of funds or lack of work.

(d) ''Mass layoff'' means a layoff during any 30-day period of 50 or more employees at a covered establishment.

(e) ''Relocation'' means the removal of all or substantially all of the industrial or commercial operations in a covered establishment to a different location 100 miles or more away.

(f) ''Termination'' means the cessation or substantial cessation of industrial or commercial operations in a covered establishment.

(g) (1) This chapter does not apply where the closing or layoff is the result of the completion of a particular project or undertaking of an employer subject to Wage Order 11, regulating the Broadcasting Industry, Wage Order 12, regulating the Motion Picture Industry, or Wage Order 16, regulating Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries, of the Industrial

Welfare Commission, and the employees were hired with the understanding that their employment was limited to the duration of that project or undertaking.

(2) This chapter does not apply to employees who are employed in seasonal employment where the employees were hired with the understanding that their employment was seasonal and temporary.

(h) ''Employee'' means a person employed by an employer for at least 6 months of the 12 months preceding the date on which notice is required.

1401. (a) An employer may not order a mass layoff, relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the employer gives written notice of the order to the following:

(1) The employees of the covered establishment affected by the order.

(2) The Employment Development Department, the local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs.

(b) An employer required to give notice of any mass layoff, relocation, or termination under this chapter shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

(c) Notwithstanding the requirements of subdivision (a), an employer is not required to provide notice if a mass layoff, relocation, or termination is necessitated by a physical calamity or act of war.

1402. (a) An employer who fails to give notice as required by paragraph (1) of subdivision (a) of Section 1401 before ordering a mass layoff, relocation, or termination is liable to each employee entitled to notice who lost his or her employment for:

(1) Back pay at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(2) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

(b) Liability under this section is calculated for the period of the employer's violation, up to a maximum of 60 days, or one-half the number of days that the employee was employed by the employer, whichever period is smaller.

(c) The amount of an employer's liability under subdivision (a) is reduced by the following:

(1) Any wages, except vacation moneys accrued prior to the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

(2) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation.

(3) Any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution pension plan, on behalf of and attributable to the employee for the period of the violation.

1402.5. (a) An employer is not required to comply with the notice requirement contained in subdivision (a) of Section 1401 if the department determines that all of the following conditions exist:

(1) As of the time that notice would have been required, the employer was actively seeking capital or business.

(2) The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination.

(3) The employer reasonably and in good faith believed that giving the notice required by subdivision (a) of Section 1401 would have precluded the employer from obtaining the needed capital or business.

(b) The department may not determine that the employer was actively seeking capital or business under subdivision (a) unless the employer provides the department with both of the following:

(1) A written record consisting of all documents relevant to the determination of whether the employer was actively seeking capital or business, as specified by the department.

(2) An affidavit verifying the contents of the documents contained in the record.

(c) The affidavit provided to the department pursuant to paragraph (2) of subdivision (b) shall contain a declaration signed under penalty of perjury stating that the affidavit and the contents of the documents contained in the record submitted pursuant to paragraph (1) of subdivision (b) are true and correct.

(d) This section does not apply to notice of a mass layoff as defined by subdivision (d) of Section 1400.

1403. An employer who fails to give notice as required by paragraph (2) of subdivision (a) of Section 1401 is subject to a civil penalty of not more than five hundred dollars ($500) for each day of the employer's violation. The employer is not subject to a civil penalty under this section, however, if the employer pays to all applicable employees the amounts for which the employer is liable under Section 1402 within three weeks from the date the employer orders the mass layoff, relocation, or termination.

1404. A person, including a local government or an employee representative, seeking to establish liability against an employer may bring a civil action on behalf of the person, other persons similarly situated, or both, in any court of competent jurisdiction. The court may award reasonable attorney's fees as part of costs to any plaintiff who prevails in a civil action brought under this chapter.

1405. If the court determines that an employer conducted a reasonable investigation in good faith, and had reasonable grounds to believe that its conduct was not a violation of this chapter, the court may reduce the amount of any penalty imposed against the employer under this chapter.

1406. In any investigation or proceeding under this chapter, the Labor Commissioner has, in addition to all other powers granted by law, the authority to examine the books and records of an employer.

1407. (a) Payments to a person under subdivision (a) of Section 1402 by an employer who has failed to provide the advance notice of facility closure required by this chapter or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.) may not be construed as wages or compensation for personal services under Article 2 (commencing with Section 926) of Chapter 4 of Part 1 of Division 1 of the Unemployment Insurance Code.

(b) Benefits payable under Chapter 5 (commencing with Section 1251) of Part 1 of Division 1 of the Unemployment Insurance Code may not be denied or reduced because of the receipt of payments related to an employer's violation of this chapter or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

1408. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 781

An act to amend Section 4939 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. It is the intent of the Legislature:

(a) In the event that Senate Bill 1951 is enacted in the Statutes of 2002, to consider for implementation the recommendations of the Milton Marks ''Little Hoover'' Commission on California State Government Organization and Economy to increase curriculum hours for the licensure of acupuncturists in excess of 3,000 hours up to 4,000 hours to fully and effectively provide health services under their scope of practice.

(b) That the commission shall provide recommendations for reviewing the competence of licensed acupuncturists who are not subject to the 3,000 hour minimum curriculum requirement, and shall provide recommendations for training, testing, or continuing education that would be required for these individuals to meet the standards for continued licensure.

SEC. 2. Section 4939 of the Business and Professions Code is amended to read:

4939. (a) On or before January 1, 2004, the board shall establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist, including standards for the faculty in those schools and colleges and tutorial programs, completion of which will satisfy the requirements of Section 4938.

(b) Standards for the approval of training programs shall include a minimum of 3,000 hours of study in curriculum pertaining to the practice of an acupuncturist. This subdivision shall apply to all students entering programs on or after January 1, 2005.

(c) Within three years of initial approval by the board, each program so approved by the board shall receive full institutional approval under Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code in the field of traditional oriental medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code, or the board's approval of the program shall automatically lapse.

CHAPTER 782

An act to amend Sections 33333.4, 33333.6, 33333.8, 33333.10, 33333.11, 33334.2, 33334.3, 33334.4, 33334.14, 33334.22, 33411.3, 33413, 33487, 33490, 33492.13, 50052.5, 50053, 50079.5, and 50105 of, to amend and renumber Section 33413.5 of, to add and repeal Sections 33334.28 and 33413.8 of, and to repeal Sections 33333.13 and 33411.5 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 21, 2002. Filed with
Secretary of State September 22, 2002.]

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

SECTION 1. Section 33333.4 of the Health and Safety Code is amended to read:

33333.4. (a) Every legislative body that adopted a final redevelopment plan prior to October 1, 1976, that contains the provisions set forth in Section 33670 but does not contain all of the limitations required by Section 33333.2, shall adopt an ordinance on or before December 31, 1986, that contains all of the following:

(1) A limitation on the number of dollars of taxes that may be divided and allocated to the redevelopment agency pursuant to the plan, including any amendments to the plan. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond that limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit on the establishing of loans, advances, and indebtedness to finance in whole, or in part, the redevelopment project. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond the time limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(3) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area.

(b) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(c) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to eliminate project deficits created under subdivision (g) of Section 33334.6 in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficit or to comply with subdivision (a) of Section 33333.8. In the event of a conflict between these limitations and the obligations under Section 33334.6 or subdivision (a) of Section 33333.8, the legislative body shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6, to permit compliance

with subdivision (a) of Section 33333.8, and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with Section 33334.3. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (b).

(d) This section shall not be construed to allow the impairment of any obligation or indebtedness incurred by the legislative body or the agency pursuant to this part.

(e) In any litigation to challenge or attack any ordinance adopted pursuant to this section, the court shall sustain the actions of the legislative body and the agency unless the court finds those actions were arbitrary or capricious. The Legislature finds and declares that this is necessary because redevelopment agencies with project areas established prior to October 1, 1976, have incurred existing obligations and indebtedness and have adopted projects, programs, and activities with the authority to receive and pledge the entire allocation of taxes authorized by Section 33670 and that it is necessary to protect against the possible impairment of existing obligations and indebtedness and to allow the completion of adopted projects and programs.

(f) The ordinance adopted by the legislative body in compliance with this section does not relieve any agency of its obligations under Section 33333.8, 33334.2, 33334.3, Article 9 (commencing with Section 33410), or any other requirement contained in this part.

(g) A redevelopment plan adopted on or after October 1, 1976, and prior to January 1, 1994, containing the provisions set forth in Section 33670, shall also contain:

(1) A limitation on the number of dollars of taxes that may be divided and allocated to the agency pursuant to the plan, including any amendments to the plan. Taxes shall not be divided and shall not be allocated to the agency beyond this limitation, except pursuant to amendment of the redevelopment plan, or as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area. This time limit may be extended only pursuant to amendment of the redevelopment plan.

SEC. 2. Section 33333.6 of the Health and Safety Code is amended to read:

33333.6. The limitations of this section shall apply to every redevelopment plan adopted on or before December 31, 1993.

(a) The effectiveness of every redevelopment plan to which this section applies shall terminate at a date that shall not exceed 40 years from the adoption of the redevelopment plan or January 1, 2009, whichever is later. After the time limit on the effectiveness of the

redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness, to comply with Section 33333.8 and to enforce existing covenants, contracts, or other obligations.

(b) Except as provided in subdivisions (f) and (g), a redevelopment agency may not pay indebtedness or receive property taxes pursuant to Section 33670 after 10 years from the termination of the effectiveness of the redevelopment plan pursuant to subdivision (b).

(c) (1) If plans that had different dates of adoption were merged on or before December 31, 1993, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan. If an amendment to a redevelopment plan added territory to the project area on or before December 31, 1993, the time limitations required by this section shall commence, with respect to the redevelopment plan, from the date of the adoption of the redevelopment plan, and, with respect to the added territory, from the date of the adoption of the amendment.

(2) If plans that had different dates of adoption are merged on or after January 1, 1994, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan.

(d) (1) Unless a redevelopment plan adopted prior to January 1, 1994, contains all of the limitations required by this section and each of these limitations does not exceed the applicable time limits established by this section, the legislative body, acting by ordinance on or before December 31, 1994, shall amend every redevelopment plan adopted prior to January 1, 1994, either to amend an existing time limit that exceeds the applicable time limit established by this section or to establish time limits that do not exceed the provisions of subdivision (b) or (c).

(2) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance required by this section, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(e) (1) If a redevelopment plan adopted prior to January 1, 1994, contains one or more limitations required by this section, and the limitation does not exceed the applicable time limit required by this section, this section shall not be construed to require an amendment of this limitation.

(2) A redevelopment plan adopted prior to January 1, 1994, that has a limitation shorter than the terms provided in this section may be

amended by a legislative body by adoption of an ordinance on or after January 1, 1999, but on or before December 31, 1999, to extend the limitation, provided that the plan as so amended does not exceed the terms provided in this section. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6 or Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans. On or after January 1, 2002, a redevelopment plan may be amended by a legislative body by adoption of an ordinance to eliminate the time limit on the establishment of loans, advances, and indebtedness required by this section prior to January 1, 2002. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6 or Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans, except that the agency shall make the payment to affected taxing entities required by Section 33607.7.

(f) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit the allocation of taxes to an agency to the extent required to comply with Section 33333.8. In the event of a conflict between these limitations and the obligations under Section 33333.8, the limitations established in the ordinance shall be suspended pursuant to Section 33333.8.

(g) This section shall not be construed to affect the validity of any bond, indebtedness, or other obligation, including any mitigation agreement entered into pursuant to Section 33401, authorized by the legislative body, or the agency pursuant to this part, prior to January 1, 1994. This section shall not be construed to affect the right of an agency to receive property taxes, pursuant to Section 33670, to pay the bond, indebtedness, or other obligation.

(h) A redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670, with respect to a redevelopment plan adopted prior to January 1, 1994, after the date identified in subdivision (b) or the date identified in the redevelopment plan, whichever is earlier, except as provided in paragraph (2) of subdivision (e), in subdivision (g), or in Section 33333.8.

(i) The Legislature finds and declares that the amendments made to this section by the act that adds this subdivision are intended to add limitations to the law on and after January 1, 1994, and are not intended to change or express legislative intent with respect to the law prior to that date. It is not the intent of the Legislature to affect the merits of any litigation regarding the ability of a redevelopment agency to sell bonds for a term that exceeds the limit of a redevelopment plan pursuant to law that existed prior to January 1, 1994.

(j) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by Section 33333.2.

SEC. 3. Section 33333.8 of the Health and Safety Code is amended to read:

33333.8. (a) Every redevelopment agency shall comply with and fulfill its obligations with regard to the provision of affordable housing as required by this part prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, and before the agency exceeds a limit on the number of dollars of taxes that may be divided and allocated to the redevelopment agency if required by Section 33333.4 or the limit on the number of dollars of taxes in a redevelopment plan. A legislative body may not adopt an ordinance terminating a redevelopment project area if the agency has not complied with its affordable housing obligations. Notwithstanding any other provision of law, this section shall apply to each redevelopment agency and each redevelopment project area established or merged pursuant to this part and Part 1.5 (commencing with Section 34000), including project areas authorized pursuant to this chapter and each individual project area that is authorized pursuant to any other provision of law.

(1) The affordable housing obligations specified in subdivision (a) shall include all of the following:

(A) The obligation to make deposits to and expenditures from the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, 33334.4, 33334.6, 33487, 33492.16, and other similar and related statutes.

(B) The obligation to eliminate project deficits pursuant to Sections 33334.6, 33487, 33492.16, and other similar and related statutes.

(C) The obligation to expend or transfer excess surplus funds pursuant to Section 33334.12 and other similar and related statutes.

(D) The obligation to provide relocation assistance pursuant to Article 9 (commencing with Section 33410), Section 7260 of the Government Code, or other applicable relocation laws.

(E) The obligation to provide replacement housing pursuant to subdivision (a) of Section 33413, Article 9 (commencing with Section 33410), and other similar and related statutes.

(F) The obligation to provide inclusionary housing pursuant to Section 33413 and other similar and related statutes and ordinances.

(2) A redevelopment agency shall not adopt an ordinance terminating a redevelopment project area if the agency has not complied with these obligations.

(b) If, on the date of the time limit on the effectiveness of the redevelopment plan, a redevelopment agency has not complied with subdivision (a), the time limit on the effectiveness of the redevelopment

plan, and, if necessary, the time limit for repayment of indebtedness, shall be suspended until the agency has complied with subdivision (a). In addition, the agency shall receive and use all tax increment funds that are not pledged to repay indebtedness until the agency has fully complied with its obligations.

(c) If, on the date of the time limit on the repayment of indebtedness, the agency has not complied with subdivision (a), the time limit on the repayment of indebtedness shall be suspended until the agency has complied with subdivision (a). In addition, the agency shall receive and use tax increment funds until the agency has fully complied with its obligations.

(d) If, on the date of the time limit on the repayment of indebtedness, the agency has complied with its obligations under subdivision (a) and has moneys remaining in the Low and Moderate Income Housing Fund, the agency shall transfer the remaining moneys to a low and moderate income housing fund or account for a different project area within the agency's jurisdiction, if one exists, or if a different project area does not exist, the agency shall either transfer the remaining moneys to a special fund of the community or to the community or county housing authority. The community, community housing authority, or county housing authority to which the remaining moneys are transferred shall utilize the moneys for the purposes of, and subject to the same restrictions that are applicable to, the redevelopment agency under this part.

(e) If a redevelopment plan provides a limit on the total amount of tax increment funds that may be received by a redevelopment agency for any project area, and if that limit is reached prior to the agency complying with its obligations pursuant to subdivision (a), that limit is suspended until the agency has complied with subdivision (a) and the agency shall receive and use tax increment funds until the agency has fully complied with its obligations.

(f) If an agency fails to comply with its obligations pursuant to this section, any person may seek judicial relief. The court shall require the agency to take all steps necessary to comply with those obligations, including, as necessary, the adoption of ordinances, to incur debt, to obtain tax increments, to expend tax increments, and to enter into contracts as necessary to meet its housing obligations under this part.

SEC. 4. Section 33333.10 of the Health and Safety Code is amended to read:

33333.10. (a) (1) Notwithstanding the time limits in subdivisions (a) and (b) of Section 33333.6, an agency that adopted a redevelopment plan on or before December 31, 1993, may, pursuant to this section, amend that plan to extend the time limit on effectiveness of the plan for up to 10 additional years beyond the limit allowed by subdivision (a) of Section 33333.6.

(2) In addition, the agency may, pursuant to this section, amend that plan to extend the time limit on the payment of indebtedness and receipt of property taxes to be not more than 10 years from the termination of the effectiveness of the redevelopment plan as that time limit has been amended pursuant to paragraph (1).

(b) A redevelopment plan may be amended pursuant to subdivision (a) only after the agency finds, based on substantial evidence, that both of the following conditions exist:

(1) Significant blight remains within the project area.

(2) This blight cannot be eliminated without extending the effectiveness of the plan and the receipt of property taxes.

(c) As used in this section:

(1) ''Blight'' has the same meaning as that term is given in Section 33030.

(2) ''Significant'' means important and of a magnitude to warrant agency assistance.

(3) ''Necessary and essential parcels'' means parcels that are not blighted but are so necessary and essential to the elimination of the blight that these parcels should be included within the portion of the project area in which tax increment funds may be spent. ''Necessary and essential parcels'' are (A) parcels that are adjacent to one or more blighted parcels that are to be assembled in order to create a parcel of adequate size given present standards and market conditions, and (B) parcels that are adjacent or near parcels that are blighted on which it is necessary to construct a public improvement to eliminate the blight.

(d) For purposes of this section, significant blight can exist in a project area even though blight is not prevalent in a project area. The report submitted to the legislative body pursuant to Section 33352 shall identify on a map the portion of the project area in which significant blight remains.

(e) After the limit on the payment of indebtedness and receipt of property taxes that would have taken effect but for the amendment pursuant to this section, except for funds deposited in the Low and Moderate Income Housing Fund pursuant to Section 33334.2 or 33334.6, the agency shall spend tax increment funds only within the portion of the project area that has been identified in the report adopted pursuant to Section 33352 as the area containing blighted parcels and necessary and essential parcels. Except as otherwise limited by subdivisions (f) and (g), agencies may continue to spend funds deposited in the Low and Moderate Income Housing Fund in accordance with this division.

(f) (1) Except as otherwise provided in this subdivision, after the limit on the payment of indebtedness and receipt of property taxes that would have taken effect, but for the amendment pursuant to this section,

agencies shall only spend moneys from the Low and Moderate Income Housing Fund for the purpose of increasing, improving, and preserving the community's supply of housing at affordable housing cost to persons and families of low, very low, or extremely low income, as defined in Sections 50079.5, 50093, 50105, and 50106. During this period, an agency that has adopted an amendment pursuant to subdivision (a) may use moneys from the Low and Moderate Income Housing Fund for the purpose of increasing, improving, and preserving housing at affordable housing cost to persons and families of moderate income as defined in Section 50093. However, this amount shall not exceed, in a five-year period, the amount of moneys from the Low and Moderate Income Housing Fund that are used to increase, improve, and preserve housing at affordable housing cost to persons and families of extremely low income, as defined in Section 50106. In no case shall the amount expended for housing for persons and families of moderate income exceed 15 percent of the annual amount deposited in the Low and Moderate Income Housing Fund during a five-year period and the number of housing units affordable to moderate-income persons shall not exceed the number of housing units affordable to extremely low income persons.

(2) Commencing with the first fiscal year that commences after the date of the adoption of an amendment pursuant to subdivision (a) and until the limit on the payment of indebtedness and receipt of property taxes that would have taken effect but for the amendment pursuant to this section, an agency that has adopted an amendment pursuant to subdivision (a) may use moneys from the Low and Moderate Income Housing Fund for the purpose of increasing, improving, and preserving housing at affordable housing cost to persons and families of moderate income as defined in Section 50093. However, this amount shall not exceed, in a five-year period, 15 percent of the amount of moneys deposited in the Low and Moderate Income Housing Fund during that five-year period and shall only be used to assist housing projects in which no less than 49 percent of the units are affordable to and occupied by persons and families of low, very low, or extremely low income. An agency may spend an additional amount of moneys in the same or other housing projects to assist housing units affordable to and occupied by moderate-income persons. However, this amount shall not exceed the lesser of: the amount of moneys spent to increase, improve, and preserve housing at affordable housing cost to persons and families of extremely low income as defined in Section 50106, or 5 percent of the moneys deposited in the Low and Moderate Income Housing Fund during that five-year period.

(g) (1) Except as provided in paragraph (2) or (3), commencing with the first fiscal year that commences after the date of adoption of an

amendment pursuant to subdivision (a), not less than 30 percent of all taxes that are allocated to the agency pursuant to Section 33670 from the redevelopment project area so amended shall be deposited into that project's Low and Moderate Income Housing Fund for the purposes specified in subdivision (f).

(2) In any fiscal year, the agency may deposit less than the amount required by paragraph (1), but not less than the amount required by Section 33334.2 or 33334.6, into the Low and Moderate Income Housing Fund if the agency finds that the difference between the amount deposited and the amount required by paragraph (1) is necessary to make principal and interest payments during that fiscal year on bonds sold by the agency to finance or refinance the redevelopment project prior to six months before the date of adoption of the amendment pursuant to subdivision (a). Bonds sold by the agency prior to six months before the date of the adoption of the amendment pursuant to subdivision (a) may only be refinanced, refunded, or restructured after the date of the amendment pursuant to subdivision (a). However, for purposes of this section, bonds refinanced, refunded, or restructured after the date of the amendment pursuant to subdivision (a) may only be treated as if sold on the date the original bonds were sold if (A) the net proceeds were used to refinance the original bonds, (B) there is no increase in the amount of principal at the time of refinancing, restructuring, or refunding, and (C) the time during which the refinanced indebtedness is to be repaid does not exceed the date on which the existing indebtedness would have been repaid.

(3) No later than 120 days prior to depositing less than the amount required by paragraph (1) into the Low and Moderate Income Housing Fund, the agency shall adopt, by resolution after a noticed public hearing, a finding that the difference between the amount allocated and the amount required by paragraph (1) is necessary to make payments on bonds sold by the agency to finance or refinance the redevelopment project and identified in the preliminary report adopted pursuant to paragraph (9) of subdivision (e) of Section 33333.11, and specifying the amount of principal remaining on the bonds, the amount of annual payments, and the date on which the indebtedness will be repaid. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation once a week for at least two successive weeks prior to the public hearing. The agency shall make available to the public the proposed resolution no later than the time of the publication of the first notice of the public hearing. A copy of the resolution shall be transmitted to the Department of Housing and Community Development within 10 days after adoption.

(4) Notwithstanding paragraph (1), an agency that sells bonds on or after the date of adoption of an amendment pursuant to subdivision (a),

the repayment of which is to be made from taxes allocated to the agency pursuant to Section 33670 from the project so amended, may elect to subordinate up to $16^2/_3$ percent of its annual 30-percent Low and Moderate Income Housing Fund deposit obligation to the payment of debt service on the bonds. If the agency makes that election and in any year the agency has insufficient tax-increment revenue available to pay debt service on the bonds to which the funds from the Low and Moderate Income Housing Fund are subordinated, the agency may deposit less than the full 100 percent of its annual 30-percent Low and Moderate Income Housing Fund obligation but only to the extent necessary to pay that debt service and in no event shall less than $83^1/_3$ percent of that obligation be deposited into the Low and Moderate Income Housing Fund for that year. The difference between the amount that is actually deposited in the Low and Moderate Income Housing Fund and the full 100 percent of the agency's 30-percent Low and Moderate Income Housing Fund deposit obligation shall constitute a deficit in the Low and Moderate Income Housing Fund subject to repayment pursuant to paragraph (5).

(5) If, pursuant to paragraph (2) or (4), the agency deposits less than 30 percent of the taxes allocated to the agency pursuant to Section 33670 in any fiscal year in the Low and Moderate Income Housing Fund, the amount equal to the difference between 30 percent of the taxes allocated to the agency pursuant to Section 33670 for each affected redevelopment project area and the amount actually deposited in the Low and Moderate Income Housing Fund for that fiscal year shall be established as a deficit in the Low and Moderate Income Housing Fund. Any new tax increment funds not encumbered pursuant to paragraph (2) or (4) shall be utilized to reduce or eliminate the deficit prior to entering into any new contracts, commitments, or indebtedness. The obligations imposed by this section are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency pursuant to Section 33670 and, notwithstanding any other provision of law, shall constitute an indebtedness of the agency with respect to the redevelopment project, and the agency shall continue to receive allocations of taxes pursuant to Section 33670 until the deficit is paid in full.

(h) An agency may not amend its redevelopment plan pursuant to this section unless the agency first adopts a resolution that finds, based on substantial evidence, all of the following:

(1) The community has adopted a housing element that the department has determined pursuant to Section 65585 of the Government Code to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, or if applicable, an eligible

city or county within the jurisdiction of the San Diego Association of Governments has adopted a self-certification of compliance with its adopted housing element pursuant to Section 65585.1 of the Government Code.

(2) During the three fiscal years prior to the year in which the amendment is adopted, the agency has not been included in the report sent by the Controller to the Attorney General pursuant to subdivision (b) of Section 33080.8 as an agency that has a ''major violation'' pursuant to Section 33080.8.

(3) After a written request by the agency and provision of the information requested by the department, the department has issued a letter to the agency, confirming that the agency has not accumulated an excess surplus in its Low and Moderate Income Housing Fund. As used in this section, ''excess surplus'' has the same meaning as that term is defined in Section 33334.12. The department shall develop a methodology to collect information required by this section. Information requested by the department shall include a certification by the agency's independent auditor on the status of excess surplus and submittal of data for the department to verify the status of excess surplus. The independent auditor shall make the required certification based on the Controller's office guidelines which shall include the methodology prescribed by the department pursuant to subparagraph (D) of paragraph (3) of subdivision (g) of Section 33334.12. If the department does not respond to the written request of the agency for this determination within 90 days after receipt of the written request, compliance with this requirement shall be deemed confirmed.

(i) Each redevelopment plan that has been adopted prior to January 1, 1976, that is amended pursuant to subdivision (a) shall also be amended at the same time to make subdivision (b) of Section 33413 applicable to the redevelopment plan in accordance with paragraph (1) of subdivision (d) of Section 33413.

(j) The amendment to the redevelopment plan authorized pursuant to this section shall be made by ordinance pursuant to Article 12 (commencing with Section 33450). The ordinance shall be subject to referendum as prescribed by law for ordinances of the legislative body.

(k) This section shall not apply to a project area that retains its eligibility to incur indebtedness and receive tax increment revenues pursuant to Section 33333.7.

(*l*) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to comply with Section 33333.8. In the event of a conflict between these limitations and the obligations under Section 33333.8, the limitation established in the ordinance shall be suspended pursuant to Section 33333.8.

SEC. 5. Section 33333.11 of the Health and Safety Code is amended to read:

33333.11. (a) In order to adopt an amendment pursuant to Section 33333.10, the redevelopment agency shall also comply with the procedures in this section.

(b) Before adopting an amendment of the plan, the agency shall hold a public hearing on the proposed amendment. The notice of the public hearing shall comply with Section 33452.

(c) Prior to the publication of the notice of the public hearing on the proposed amendment, the agency shall consult with each affected taxing agency with respect to the proposed amendment. At a minimum, the agency shall give each affected taxing agency the opportunity to meet with representatives of the agency for the purpose of discussing the effect of the proposed amendment upon the affected taxing agency and shall notify each affected taxing agency that any written comments from the affected taxing agency will be included in the report to the legislative body.

(d) Prior to the publication of the notice of the public hearing on the proposed amendment, the agency shall consult with and obtain the advice of members of a project area committee, if a project area committee exists, and residents and community organizations and provide to those persons and organizations, including the project area committee, if any, the amendment prior to the agency's submitting the amendment to the legislative body. In addition, the preliminary report prepared pursuant to subdivision (e) shall be made available at no cost to the project area committee, if one exists, and residents and community organizations not later than 120 days prior to holding a public hearing on the proposed amendment.

(e) No later than 120 days prior to holding a public hearing on the proposed amendment, the agency shall send to each affected taxing entity, as defined in Section 33353.2, the Department of Finance, and the Department of Housing and Community Development, a preliminary report that contains all of the following:

(1) A map of the project area that identifies the portion, if any, of the project area that is no longer blighted and the portion of the project area that is blighted and the portion of the project area that contains necessary and essential parcels for the elimination of the remaining blight.

(2) A description of the remaining blight.

(3) A description of the projects or programs proposed to eliminate the remaining blight.

(4) A description of how the project or programs will improve the conditions of blight.

(5) The reasons why the projects or programs cannot be completed without extending the time limits on the effectiveness of the plan and receipt of tax increment revenues.

(6) The proposed method of financing these programs or projects. This description shall include the amount of tax increment revenues that is projected to be generated during the period of the extension, including amounts projected to be deposited into the Low and Moderate Income Housing Fund and amounts to be paid to affected taxing entities. This description shall also include sources and amounts of moneys other than tax increment revenues that are available to finance these projects or programs. This description shall also include the reasons that the remaining blight cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without the use of the tax increment revenues available to the agency because of the proposed amendment.

(7) An amendment to the agency's implementation plan that includes, but is not limited to, the agency's housing responsibilities pursuant to Section 33490. However, the agency shall not be required to hold a separate public hearing on the implementation plan pursuant to subdivision (d) of Section 33490 in addition to the public hearing on the amendment to the redevelopment plan.

(8) A new neighborhood impact report if required by subdivision (m) of Section 33352.

(9) A description of each bond sold by the agency to finance or refinance the redevelopment project prior to six months before the date of adoption of the proposed amendment, and listing for each bond the amount of remaining principal, the annual payments, and the date that the bond will be paid in full.

(f) No later than 120 days prior to holding a public hearing on the proposed amendment, the agency shall send the proposed amendment to the planning commission. If the planning commission does not report upon the amendment within 30 days after its submission by the agency, the planning commission shall be deemed to have waived its report and recommendations concerning the amendment.

(g) No later than 45 days prior to the public hearing on the proposed amendment by the agency or the joint public hearing of the agency and the legislative body, the agency shall notify each affected taxing entity, the Department of Finance, the Department of Housing and Community Development, and each individual and organization that submitted comments on the preliminary report by certified mail of the public hearing, the date of the public hearing, and the proposed amendment. This notice shall be accompanied by the report required to be prepared pursuant to subdivision (h).

(h) No later than 45 days prior to the public hearing on the proposed amendment by the agency or the joint public hearing by the agency and the legislative body, the agency shall adopt a report to the legislative body containing all of the following:

(1) All of the information required to be contained in the preliminary report prepared pursuant to subdivision (e).

(2) The report and recommendation of the planning commission.

(3) A negative declaration, environmental impact report, or other document that is required in order to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code.

(4) A summary of the consultations with the affected taxing entities. If any of the affected taxing entities, a project area committee, if any, residents, or community organizations have expressed written objections or concerns with the proposed amendment as part of these consultations, the agency shall include a response to these concerns.

(5) A summary of the consultation with residents and community organizations, including the project area committee, if any.

(i) After receiving the recommendation of the agency on the proposed amendment, and not sooner than 30 days after the submission of changes to the planning commission, the legislative body shall hold a public hearing on the proposed amendment. The notice of the public hearing shall comply with Section 33452.

(j) As an alternative to the separate public hearing required by subdivision (i), the agency and the legislative body, with the consent of both, may hold a joint public hearing on the proposed amendment. Notice of this public hearing shall comply with Section 33452. When a joint public hearing is held and the legislative body is also the agency, the legislative body may adopt the amended plan with no actions required of the agency. If, after the public hearing, the legislative body determines that the amendment to the plan is necessary or desirable, the legislative body shall adopt an ordinance amending the ordinance adopting the plan thus amended. The ordinance adopting the amendment shall contain findings that both (1) significant blight remains within the project area, and (2) the blight cannot be eliminated without the extension of the effectiveness of the plan and receipt of tax increment revenues.

(k) If an affected taxing entity, the Department of Finance, or the Department of Housing and Community Development believes that significant remaining blight does not exist within the portion of the project area designated as blighted in the report to the legislative body regarding a proposed amendment to be adopted pursuant to Section 33333.10, the affected taxing entity, the Department of Finance, or the Department of Housing and Community Development may request the

Attorney General to participate in the amendment process. The affected taxing entity, the Department of Finance, or the Department of Housing and Community Development shall request this participation within 21 days after receipt of the notice of the public hearing sent pursuant to subdivision (g). The Attorney General shall determine whether or not to participate in the amendment process. The Attorney General may consult with and request the assistance of departments of the state and any other persons or groups that are interested or that have expertise in redevelopment. The Attorney General may participate in the amendment process by requesting additional information from the agency, conducting his or her own review of the project area, meeting with the agency and any affected taxing entity, submitting evidence for consideration at the public hearing, or presenting oral evidence at the public hearing. No later than five days prior to the public hearing on the proposed amendment, the Attorney General shall notify each affected taxing agency, each department that has requested the Attorney General to review the proposed amendment, and the redevelopment agency with regard to whether the Attorney General will participate in the amendment process and, if so, how he or she will participate, on their behalf.

(*l*) The Attorney General may bring a civil action pursuant to Section 33501 to determine the validity of an amendment adopted pursuant to Section 33333.10. The Department of Finance and the Department of Housing and Community Development shall be considered interested persons for the purposes of protecting the interests of the state pursuant to Section 863 of the Code of Civil Procedure in any action brought with regard to the validity of an ordinance adopting a proposed amendment pursuant to Section 33333.10. Either department may request the Attorney General to bring an action pursuant to Section 33501 to determine the validity of an amendment adopted pursuant to Section 33333.10. Actions brought pursuant to this subdivision are in addition to any other actions that may be brought by the Attorney General or other persons.

SEC. 6. Section 33333.13 of the Health and Safety Code is repealed.

SEC. 6.5. Section 33334.2 of the Health and Safety Code, as amended by Section 2.2 of Chapter 738 of the Statutes of 2001, is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Sections 33334.22 and 50052.5, to persons and families of low or moderate income, as defined in Section 50093, lower income households, as defined in Section 50079.5, very low

income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106, that is occupied by these persons and families, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low- or moderate-income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning

agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city, county, or city and county shall be current, and shall have been determined by the department pursuant to Section 65585 to be in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to, and occupied by, persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e) of this section.

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual

obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low-, and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if both (A) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (B) the agency requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, extremely low income households, as defined in Section 50106, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to, and occupied by, low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to, and occupied by, low- or moderate-income persons, any agency assistance may not exceed the amount needed to make the housing affordable to, and occupied by, low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 7. Section 33334.2 of the Health and Safety Code, as amended by Section 2.4 of Chapter 738 of the Statutes of 2001, is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, lower income households, as defined by Section 50079.5, very low income households, as defined in Section 50105, and extremely low income households, as defined by Section 50106, that is occupied by these persons and families, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low- or moderate-income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city, county, or city and county shall be current, and shall have been determined by the department pursuant to Section 65585 to be in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the

housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to, and occupied by, persons and families of low or moderate income and very low income households is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e).

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on the provisions of this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and

moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low-, and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if both (A) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (B) the agency requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, extremely low income households, as defined by Section 50106, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing

outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the Department of Housing and Community Development has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to, and occupied by, low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to, and occupied by, low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to, and occupied by, low- or moderate-income persons.

(iii) The units in the development that are affordable to, and occupied by, low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) This section shall become operative on January 1, 2005.

SEC. 8. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds that are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing and improving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The agency shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the agency which are directly related to the programs and activities authorized under subdivision (e) of Section 33334.2 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the agency's staff or for services provided through interagency agreements,

and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project which are authorized under subdivision (e) of Section 33334.2 and which are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income and very low income and extremely low income households for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(C) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(2) The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.

(g) ''Housing,'' as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of ''lower income households,'' ''very low income households,'' and ''extremely low income households'' in Sections 50079.5, 50105, and 50106 shall apply to this section. ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) ''Increasing, improving, and preserving the community's supply of low- and moderate-income housing,'' as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including extremely low and very low income households, for the longest feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low income households for the longest feasible time but not less than 55 years. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(i) Agencies that have more than one project area may satisfy the requirements of Sections 33334.2 and 33334.6 and of this section by allocating, in any fiscal year, less than 20 percent in one project area, if the difference between the amount allocated and the 20 percent required is instead allocated, in that same fiscal year, to the Low and Moderate Income Housing Fund from tax increment revenues from other project areas. Prior to allocating funds pursuant to this subdivision, the agency shall make the finding required by subdivision (g) of Section 33334.2.

(j) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to

the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed 50 percent of the cost of producing the units, the agency shall find, based on substantial evidence, that the use of the funds is necessary because the agency or owner of the units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity.

SEC. 9. Section 33334.4 of the Health and Safety Code is amended to read:

33334.4. (a) Except as specified in subdivision (d), each agency shall expend over each 10-year period of the implementation plan, as specified in clause (iii) of subparagraph (A) of paragraph (2) of subdivision (a) of Section 33490, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low income and housing for persons of very low income in at least the same proportion as the total number of housing units needed for each of those income groups bears to the total number of units needed for persons of moderate, low, and very low income within the community, as those needs have been determined for the community pursuant to Section 65584 of the Government Code. In determining compliance with this obligation, the agency may adjust the proportion by subtracting from the need identified for each income category, the number of units for persons of that income category that are newly constructed over the duration of the implementation plan with other locally controlled government assistance and without agency assistance and that are required to be affordable to, and occupied by, persons of the income category for at least 55 years for rental housing and 45 years for ownership housing, except that in making an adjustment the agency may not subtract units developed pursuant to a replacement housing obligation under state or federal law.

(b) Each agency shall expend over the duration of each redevelopment implementation plan, the moneys in the Low and Moderate Income Housing Fund to assist housing that is available to all persons regardless of age in at least the same proportion as the population under age 65 years bears to the total population of the community as reported in the most recent census of the United States Census Bureau.

(c) An agency that has deposited in the Low and Moderate Income Housing Fund over the first five years of the period of an implementation plan an aggregate that is less than two million dollars ($2,000,000) shall have an extra five years to meet the requirements of this section.

(d) For the purposes of this section, ''locally controlled'' means government assistance where the community or other local government entity has the discretion and the authority to determine the recipient and

the amount of the assistance, whether or not the source of the funds or other assistance is from the state or federal government. Examples of locally controlled government assistance include, but are not limited to, Community Development Block Grant Program (42 U.S.C. Sec. 5301 and following) funds allocated to a city or county, Home Investment Partnership Program (42 U.S.C. Sec. 12721 and following) funds allocated to a city or county, fees or funds received by a city or county pursuant to a city or county authorized program, and the waiver or deferral of city or other charges.

SEC. 10. Section 33334.14 of the Health and Safety Code is amended to read:

33334.14. (a) The covenants or restrictions imposed by the agency pursuant to subdivision (e) of Section 33334.3 may be subordinated under any of the following alternatives:

(1) To a lien, encumbrance, or regulatory agreement under a federal or state program when a federal or state agency is providing financing, refinancing, or other assistance to the housing units or parcels, if the federal or state agency refuses to consent to the seniority of the agency's covenant or restriction on the basis that it is required to maintain its lien, encumbrance, or regulatory agreement or restrictions due to statutory or regulatory requirements, adopted or approved policies, or other guidelines pertaining to the financing, refinancing, or other assistance of the housing units or parcels.

(2) To a lien, encumbrance, or regulatory agreement of a lender other than the agency or from a bond issuance providing financing, refinancing, or other assistance of owner-occupied units or parcels where the agency makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available.

(3) To an existing lien, encumbrance, or regulatory agreement of a lender other than the agency or from a bond issuance providing financing, refinancing, or other assistance of rental units, where the agency's funds are utilized for rehabilitation of the rental units.

(4) To a lien, encumbrance, or regulatory agreement of a lender other than the agency or from a bond issuance providing financing, refinancing, or other assistance of rental units or parcels where the agency makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available, and where the agency obtains written commitments reasonably designed to protect the agency's investment in the event of default, including, but not limited to, any of the following:

(A) A right of the agency to cure a default on the loan.

(B) A right of the agency to negotiate with the lender after notice of default from the lender.

(C) An agreement that if prior to foreclosure of the loan, the agency takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the agency.

(D) A right of the agency to purchase property from the owner at any time after a default on the loan.

(b) Notwithstanding the definition of ''construction and rehabilitation'' in subdivision (a) of Section 33487, an agency that has merged redevelopment projects pursuant to Article 16 (commencing with Section 33485) of Chapter 4, and that is required to deposit taxes into the Low and Moderate Income Housing Fund pursuant to subdivision (a) of Section 33487, may use any of the funds for the purposes and in the manner permitted by Sections 33334.2 and 33334.3. Nothing in this subdivision shall allow an agency with merged project areas pursuant to Article 16 (commencing with Section 33485) to utilize the provisions of paragraph (1), (2), or (3) of subdivision (a) of Section 33334.2 so as to avoid or reduce its obligations to deposit taxes from merged project areas into the Low and Moderate Income Housing Fund.

SEC. 11. Section 33334.22 of the Health and Safety Code is amended to read:

33334.22. (a) The Legislature finds and declares that in order to avoid serious economic hardships and accompanying blight, it is necessary to enact this section, which shall apply only within Santa Cruz County, and which is enacted for the purpose of providing housing assistance to very low, lower, and moderate-income households.

(b) Notwithstanding Section 50052.5, any redevelopment agency within Santa Cruz County may make assistance available from its low- and moderate-income housing fund directly to a homebuyer for the purchase of an owner-occupied home, and for purposes of that assistance and this section, ''affordable housing cost'' shall not exceed the following:

(1) For very low income households, the product of 40 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 40 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall

be optional for any state or local funding agency to require that the affordable housing cost not exceed 40 percent of the gross income of the household.

(3) For moderate income households, affordable housing cost shall not exceed the product of 40 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 40 percent of the gross income of the household.

(c) Any agency in Santa Cruz County that provides assistance pursuant to this section shall include in the annual report to the Controller, pursuant to Sections 33080 and 33080.1, all of the following information:

(1) The sales prices of homes purchased with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2004, inclusive.

(2) The sales prices of homes purchased and rehabilitated with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2004, inclusive.

(3) The incomes, and percentage of income paid for housing costs, of all households that purchased, and that purchased and rehabilitated, homes with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2004, inclusive.

(d) Except as provided in subdivision (b), all provisions of Section 50052.5, including any definitions, requirements, standards, and regulations adopted to implement those provisions, shall apply to this section.

(e) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 12. Section 33334.28 is added to the Health and Safety Code, to read:

33334.28. (a) Until January 1, 2012, subdivision (b) of Section 33334.4 shall not apply to the Redevelopment Agency of the City of Covina insofar as it exceeds the authorized ratio due exclusively to the use of Low and Moderate Income Housing Fund moneys to continue to provide rental subsidies to households with members over the age of 65 years if those rental subsidies were initially provided to these households prior to January 1, 2002.

(b) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 13. Section 33411.3 of the Health and Safety Code is amended to read:

33411.3. Whenever all or any portion of a redevelopment project is developed with low- or moderate-income housing units and whenever any low- or moderate-income housing units are developed with any agency assistance or pursuant to Section 33413, the agency shall require by contract or other appropriate means that the housing be made available for rent or purchase to the persons and families of low or moderate income displaced by the redevelopment project. Those persons and families shall be given priority in renting or buying that housing. However, failure to give that priority shall not affect the validity of title to real property. The agency shall keep a list of persons and families of low and moderate income displaced by the redevelopment project who are to be given priority, and may establish reasonable rules for determining the order or priority on the list.

SEC. 14. Section 33411.5 of the Health and Safety Code is repealed.

SEC. 15. Section 33413 of the Health and Safety Code, as amended by Section 11.5 of Chapter 741 of the Statutes of 2001, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the or a lower income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available

at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2, 33333.6, and 33333.10 at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost, to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (1), ''substantially rehabilitated dwelling units'' means all units substantially rehabilitated, with agency assistance. Prior to January 1, 2002, ''substantially rehabilitated dwelling units'' shall mean substantially rehabilitated multifamily rented dwelling units with three or more units regardless of whether there is agency assistance, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), ''substantial rehabilitation'' means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of

renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated,

developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for homeownership units, except as set forth in paragraph (2).

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units pursuant to this paragraph, expend funds to make affordable an equal number of units at the same income level as units sold pursuant to this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(4) If land on which the dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section

33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 16. Section 33413 of the Health and Safety Code, as amended by Section 11.6 of Chapter 741 of the Statutes of 2001, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing cost within the territorial jurisdiction of the agency. When dwelling units are

destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost to, and occupied by, persons in the same or a lower income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to, and occupied by, persons in the same or a lower income category (low, very low, or moderate) as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, at least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, at least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have had to be available inside a project area.

(iii) To satisfy the provisions of this paragraph, the agency may aggregate new or rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of long-term

affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase of acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2), (3), and (4) of subdivision (a) of Section 33490.

(c) (1) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for homeownership units, except for the following:

(2) Notwithstanding paragraph (1), the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units under this paragraph, expend funds to make affordable an equal number of units at the same income level as units sold under this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(3) The requirements of this section shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(4) If land on which dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section

33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and rehabilitated or substantially rehabilitated dwelling units, as applicable, for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall become operative on January 1, 2006.

SEC. 17. Section 33413.5 of the Health and Safety Code, as added by Chapter 491 of the Statutes of 2001, is amended and renumbered to read:

33413.6. (a) To satisfy the requirements of paragraphs (1) and (2) of subdivision (b) of Section 33413, the Redevelopment Agency for the City of Lancaster, until January 1, 2006, may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on mobilehome parks in which residents rent spaces and either rent or own the mobilehome occupying their spaces, that restrict the cost of renting or purchasing those units that either: (1) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families; or (2) are not presently available

at affordable housing cost to persons and families of low- or very low income households, as applicable.

(b) The long-term affordability covenants purchased or otherwise acquired on a mobilehome park shall be required to be maintained on the mobilehome park at affordable housing cost for occupancy by persons and families of low and very low income for the longest feasible time, but for not less than 55 years.

The long-term affordability covenants purchased or otherwise acquired on the mobilehome parks shall also comply with the requirements applicable to long-term affordability covenants purchased or acquired pursuant to subparagraphs (B) and (C) of paragraph (2) of subdivision (b) of Section 33413.

(c) For the purposes of this section, affordable housing costs with respect to mobilehome parks shall be determined in the same manner as multifamily rental housing, except that the calculation of the affordable housing cost to persons and families in mobilehome parks shall include the combined cost of all of the following:

(1) All costs for rental or purchase of the mobilehome park space, including homeowners association fees, special assessments, and required space maintenance.

(2) All costs for purchase or lease of the mobilehome coach, including principal and interest on any mortgage, property taxes, vehicle registration, and other fees.

(3) Insurance on the coach, not including its contents.

(4) Utilities.

The long-term affordability covenants with respect to a mobilehome park shall include a provision that space rents shall not be increased in a manner that results in the displacement of any park tenants residing within the mobilehome park at the time of the purchase, acquisition, regulation, or agreement resulting in the long-term affordability covenants.

(d) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 18. Section 33413.8 is added to the Health and Safety Code, to read:

33413.8. (a) To satisfy the requirements of paragraphs (1) and (2) of subdivision (b) of Section 33413, the Redevelopment Agency of the City of Fairfield, until January 1, 2006, may purchase or otherwise acquire, or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on mobilehome parks in which residents rent spaces and either rent or own the mobilehome occupying their spaces, that restrict the cost of renting or purchasing those units if all of the following criteria are met:

(1) On and after January 1, 1990, and based on substantial evidence, the agency provided assistance to a mobilehome park that was then available at affordable housing cost to very low, or low-income persons or families but which could not reasonably be expected to remain affordable to this same group of persons or families.

(2) The agency assistance enabled the residents of the mobilehome park to acquire ownership of the mobilehome park.

(3) At the time of providing the assistance, the agency required that affordability covenants be recorded for the mobilehome park.

(4) On and after January 1, 2003, the agency provides additional assistance to the mobilehome park and the long-term affordability covenants are extended for the longest feasible time, but for not less than 55 years.

(b) The long-term affordability covenants on mobilehome parks, as extended pursuant to subdivision (a), shall also comply with the requirements applicable to long-term affordability covenants purchased or acquired pursuant to subparagraphs (B) and (C) of paragraph (2) of subdivision (b) of Section 33413.

(c) For purposes of this section, affordable housing costs with respect to mobilehome parks shall be determined in the same manner as multifamily rental housing, except that the calculation of the affordable housing cost to persons and families in mobilehome parks shall include the combined cost of all of the following:

(1) All costs for purchase or lease of the mobilehome park space, including homeowners' association fees, special assessments, and required space maintenance.

(2) All costs for purchase or lease of the mobilehome coach, including principal and interest on any mortgage, property taxes, vehicle registration, and other fees.

(3) Insurance on the coach, not including its contents.

(4) Utilities.

(d) The long-term affordability covenants with respect to a mobilehome park shall include a provision that space rents shall not be increased in a manner that results in the displacement of any park tenants residing within the mobilehome park at the time of the purchase, acquisition, regulation, or agreement resulting in the extension of the long-term affordability covenants.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 19. Section 33487 of the Health and Safety Code is amended to read:

33487. (a) Subject to subdivisions (a) and (b) of Section 33486, not less than 20 percent of all taxes that are allocated to the redevelopment

agency pursuant to Section 33670 for redevelopment projects merged pursuant to this article, irrespective of the date of adoption of the final redevelopment plans, shall be deposited by the agency in the Low and Moderate Income Housing Fund established pursuant to Section 33334.3, or which shall be established for purposes of this section. The agency shall use the moneys in this fund to assist in the construction or rehabilitation of housing units that will be available to, or occupied by, persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, for the longest feasible time period but not less than 55 years for rental units and 45 years for owner-occupied units. For the purposes of this subdivision, ''construction and rehabilitation'' shall include acquisition of land, improvements to land; the acquisition, rehabilitation, or construction of structures; or the provision of subsidies necessary to provide housing for persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105.

(b) The agency may use the funds set aside by subdivision (a) inside or outside the project area. However, the agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. This determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is of benefit to a project.

The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(c) If moneys deposited in the Low and Moderate Income Housing Fund pursuant to this section have not been committed for the purposes specified in subdivisions (a) and (b) for a period of six years following deposit in that fund, the agency shall offer these moneys to the housing authority that operates within the jurisdiction of the agency, if activated pursuant to Section 34240, for the purpose of constructing or rehabilitating housing as provided in subdivisions (a) and (b). However, if no housing authority operates within the jurisdiction of the agency, the agency may retain these moneys for use pursuant to this section.

(d) If the agency deposits less than 20 percent of taxes allocated pursuant to Section 33670, due to the provisions of subdivisions (a) and (b) of Section 33486, in any fiscal year, a deficit shall be created in the Low and Moderate Income Housing Fund in an amount equal to the difference between 20 percent of the taxes allocated pursuant to Section 33670 and the amount deposited in that year. The deficit, if any, created pursuant to this section constitutes an indebtedness of the project. The

agency shall eliminate the deficit by expending taxes allocated in years subsequent to creation of the deficit and, until the time when that deficit has been eliminated, an agency shall not incur new obligations for purposes other than those set forth in Section 33487, except to comply with the terms of any resolution or other agreement pledging taxes allocated pursuant to Section 33670 that existed on the date of merger pursuant to this article.

(e) Notwithstanding subdivision (d) of Section 33413, any agency that merges its redevelopment project areas pursuant to this article shall be subject to subdivisions (a) and (c) of Section 33413.

SEC. 20. Section 33490 of the Health and Safety Code is amended to read:

33490. (a) (1) (A) On or before December 31, 1994, and each five years thereafter, each agency that has adopted a redevelopment plan prior to December 31, 1993, shall adopt, after a public hearing, an implementation plan that shall contain the specific goals and objectives of the agency for the project area, the specific programs, including potential projects, and estimated expenditures proposed to be made during the next five years, and an explanation of how the goals and objectives, programs, and expenditures will eliminate blight within the project area and implement the requirements of Section 33333.10, if applicable, and Sections 33334.2, 33334.4, 33334.6, and 33413. After adoption of the first implementation plan, the parts of the implementation plan that address Section 33333.10, if applicable, and Sections 33334.2, 33334.4, 33334.6, and 33413 shall be adopted every five years either in conjunction with the housing element cycle or the implementation plan cycle. The agency may amend the implementation plan after conducting a public hearing on the proposed amendment. If an action attacking the adoption, approval, or validity of a redevelopment plan adopted prior to January 1, 1994, has been brought pursuant to Chapter 5 (commencing with Section 33500), the first implementation plan required pursuant to this section shall be adopted within six months after a final judgment or order has been entered. Subsequent implementation plans required pursuant to this section shall be adopted pursuant to the terms of this section, and as if the first implementation plan had been adopted on or before December 31, 1994.

(B) Adoption of an implementation plan shall not constitute an approval of any specific program, project, or expenditure and shall not change the need to obtain any required approval of a specific program, project, or expenditure from the agency or community. The adoption of an implementation plan shall not constitute a project within the meaning of Section 21000 of the Public Resources Code. However, the inclusion of a specific program, potential project, or expenditure in an implementation plan prepared pursuant to subdivision (c) of Section

33352 in conjunction with a redevelopment plan adoption shall not eliminate analysis of those programs, potential projects, and expenditures in the environmental impact report prepared pursuant to subdivision (k) of Section 33352 to the extent that it would be otherwise required. In addition, the inclusion of programs, potential projects, and expenditures in an implementation plan shall not eliminate review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), at the time of the approval of the program, project, or expenditure, to the extent that it would be otherwise required.

(2) (A) A portion of the implementation plan shall address the agency housing responsibilities and shall contain a section addressing Section 33333.10, if applicable, and Sections 33334.2, 33334.4, and 33334.6, the Low and Moderate Income Housing Fund, and, if subdivision (b) of Section 33413 applies, a section addressing agency-developed and project area housing. The section addressing the Low and Moderate Income Housing Fund shall contain:

(i) The amount available in the Low and Moderate Income Housing Fund and the estimated amounts which will be deposited in the Low and Moderate Income Housing Fund during each of the next five years.

(ii) A housing program with estimates of the number of new, rehabilitated, or price-restricted units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years.

(iii) A description of how the housing program will implement the requirement for expenditures of moneys in the Low and Moderate Income Housing Fund over a 10-year period for various groups as required by Section 33334.4. For project areas to which subdivision (b) of Section 33413 applies, the 10-year period within which Section 33334.4 is required to be implemented shall be the same 10-year period within which subdivision (b) of Section 33413 is required to be implemented. Notwithstanding the first sentence of Section 33334.4 and the first sentence of this clause, in order to allow these two 10-year time periods to coincide for the first time period, the time to implement the requirements of Section 33334.4 shall be extended two years, and project areas in existence on December 31, 1993, shall implement the requirements of Section 33334.4 on or before December 31, 2014, and each 10 years thereafter rather than December 31, 2012. For project areas to which subdivision (b) of Section 33413 does not apply, the requirements of Section 33334.4 shall be implemented on or before December 31, 2014, and each 10 years thereafter.

(iv) This requirement to include a description of how the housing program will implement Section 33334.4 in the implementation plan

shall apply to implementation plans adopted pursuant to subdivision (a) on or after December 31, 2002.

(B) For each project area to which subdivision (b) of Section 33413 applies, the section addressing the agency developed and project area housing shall contain:

(i) Estimates of the number of new, substantially rehabilitated or price-restricted residential units to be developed or purchased within one or more project areas, both over the life of the plan and during the next 10 years.

(ii) Estimates of the number of units of very low, low-, and moderate-income households required to be developed within one or more project areas in order to meet the requirements of paragraph (2) of subdivision (b) of Section 33413, both over the life of the plan and during the next 10 years.

(iii) The number of units of very low, low-, and moderate-income households which have been developed within one or more project areas which meet the requirements of paragraph (2) of subdivision (b) of Section 33413.

(iv) Estimates of the number of agency developed residential units which will be developed during the next five years, if any, which will be governed by paragraph (1) of subdivision (b) of Section 33413.

(v) Estimates of the number of agency developed units for very low, low-, and moderate-income households which will be developed by the agency during the next five years to meet the requirements of paragraph (1) of subdivision (b) of Section 33413.

(C) The section addressing Section 33333.10, if applicable, and Section 33334.4 shall contain all of the following:

(i) The number of housing units needed for very low income persons, low-income persons, and moderate-income persons as each of those needs have been identified in the most recent determination pursuant to Section 65584 of the Government Code, and the proposed amount of expenditures from the Low and Moderate Income Housing Fund for each income group during each year of the implementation plan period.

(ii) The total population of the community and the population under 65 years of age as reported in the most recent census of the United States Census Bureau.

(iii) A housing program that provides a detailed schedule of actions the agency is undertaking or intends to undertake to ensure expenditure of the Low and Moderate Income Housing Fund in the proportions required by Section 33333.10, if applicable, and Section 33334.4.

(iv) For the previous implementation plan period, the amounts of Low and Moderate Income Housing Fund moneys utilized to assist units affordable to, and occupied by, extremely low income households, very low income households, and low-income households; the number, the

location, and level of affordability of units newly constructed with other locally controlled government assistance and without agency assistance and that are required to be affordable to, and occupied by, persons of low, very low, or extremely low income for at least 55 years for rental housing or 45 years for homeownership housing, and the amount of Low and Moderate Income Housing Fund moneys utilized to assist housing units available to families with children, and the number, location, and level of affordability of those units.

(3) If the implementation plan contains a project that will result in the destruction or removal of dwelling units that will have to be replaced pursuant to subdivision (a) of Section 33413, the implementation plan shall identify proposed locations suitable for those replacement dwelling units.

(4) For a project area that is within six years of the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2, 33333.6, 33333.7, or 33333.10, the portion of the implementation plan addressing the housing responsibilities shall specifically address the ability of the agency to comply, prior to the time limit on the effectiveness of the redevelopment plan, with subdivision (a) of Section 33333.8, subdivision (a) of Section 33413 with respect to replacement dwelling units, subdivision (b) of Section 33413 with respect to project area housing, and the disposition of the remaining moneys in the Low and Moderate Income Housing Fund.

(b) For a project area for which a redevelopment plan is adopted on or after January 1, 1994, the implementation plan prepared pursuant to subdivision (c) of Section 33352 shall constitute the initial implementation plan and thereafter the agency after a public hearing shall adopt an implementation plan every five years commencing with the fifth year after the plan has been adopted. Agencies may adopt implementation plans that include more than one project area.

(c) Every agency, at least once within the five-year term of the plan, shall conduct a public hearing and hear testimony of all interested parties for the purpose of reviewing the redevelopment plan and the corresponding implementation plan for each redevelopment project within the jurisdiction and evaluating the progress of the redevelopment project. The hearing required by this subdivision shall take place no earlier than two years and no later than three years after the adoption of the implementation plan. For a project area that is within three years of the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2, 33333.6, 33333.7, or 33333.10, the review shall specifically address those items in paragraph (4) of subdivision (a). An agency may hold one hearing for two or more project areas if those project areas are included within the same implementation plan.

(d) Notice of public hearings conducted pursuant to this section shall be published pursuant to Section 6063 of the Government Code, mailed at least three weeks in advance to all persons and agencies that have requested notice, and posted in at least four permanent places within the project area for a period of three weeks. Publication, mailing, and posting shall be completed not less than 10 days prior to the date set for hearing.

SEC. 21. Section 33492.13 of the Health and Safety Code is amended to read:

33492.13. (a) A redevelopment plan, adopted pursuant to this chapter and containing the provisions set forth in Section 33670, shall contain all of the following limitations:

(1) A limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency pursuant thereto. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond this limitation, except by amendment of the redevelopment plan pursuant to Section 33354.6, or as necessary to comply with subdivision (a) of Section 33333.8.

(2) (A) The time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the date the county auditor certifies pursuant to Section 33492.9, except by amendment of the redevelopment plan as authorized by subparagraph (B). The loans, advances, or indebtedness may be repaid over a period of time longer than the time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) substantial blight remains within the project area; (ii) this blight cannot be eliminated without the establishment of additional debt; and (iii) the elimination of blight cannot reasonably be accomplished by private enterprise acting alone or by the legislative body's use of financing alternatives other than tax increment financing. However, this amended time limitation may not exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9, except as necessary to comply with subdivision (a) of Section 33333.8.

(3) A time limit, not to exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant

to the redevelopment plan except to pay previously incurred indebtedness, comply with subdivision (a) of Section 33333.8, and enforce existing covenants or contracts.

(4) A time limit, not to exceed 45 years from the date the county auditor certifies pursuant to Section 33492.9, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670, except as necessary to comply with subdivision (a) of Section 33333.8.

(5) The limitations contained in a redevelopment plan adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to comply with Section 33333.8. In the event of a conflict between these limitations and the obligations under Section 33333.8 the limitation established in the ordinance shall be suspended pursuant to Section 33333.8.

(b) (1) A redevelopment plan, adopted pursuant to this chapter, that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (2).

(2) A time limit, not to exceed 12 years from the date the county auditor certifies pursuant to Section 33492.9, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan.

SEC. 22. Section 50052.5 of the Health and Safety Code is amended to read:

50052.5. (a) For any owner-occupied housing that receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, ''affordable housing cost'' with respect to lower income households may not exceed 25 percent of gross income.

(b) For any owner-occupied housing that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, ''affordable housing cost'' may not exceed the following:

(1) For extremely low households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.

(2) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(3) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any

lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.

(4) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.

(c) The department shall, by regulation, adopt criteria defining, and providing for determination of, gross income, adjustments for family size appropriate to the unit, and housing cost for purposes of determining affordable housing cost under this section. These regulations may provide alternative criteria, where necessary to be consistent with pertinent federal statutes and regulations governing federally assisted housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing development.

(d) With respect to moderate- and lower income households who are tenants of rental housing developments and members or shareholders of cooperative housing developments, or limited equity cooperatives ''affordable housing cost'' has the same meaning as affordable rent, as defined in Section 50053.

(e) Regulations of the department shall also include a method for determining the maximum construction cost, mortgage loan, or sales price that will make housing available to an income group at affordable housing cost.

(f) For purposes of this section, ''area median income'' shall mean area median income as published by the department pursuant to Section 50093.

(g) For purposes of this section, ''moderate income household'' shall have the same meaning as ''persons and families of moderate income'' as defined in Section 50093.

(h) For purposes of this section, and provided there are no pertinent federal statutes applicable to a project or program, ''adjusted for family size appropriate to the unit'' shall mean for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case

of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

SEC. 23. Section 50053 of the Health and Safety Code is amended to read:

50053. (a) For any rental housing development that receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, ''affordable rent'' with respect to lower income households shall not exceed the percentage of the gross income of the occupant person or household established by regulation of the department that shall not be less than 15 percent of gross income nor exceed 25 percent of gross income.

(b) For any rental housing development that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, ''affordable rent,'' including a reasonable utility allowance, shall not exceed:

(1) For extremely low income households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.

(2) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(3) For lower income households whose gross incomes exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those lower income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(4) For moderate-income households, the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(c) The department's regulation shall permit alternative percentages of income for agency-assisted rental and cooperative housing developments pursuant to regulations adopted under subdivision (f) of Section 50462. The department shall, by regulation, adopt criteria defining and providing for determination of gross income, adjustments for family size appropriate to the unit, and rent for purposes of this section. These regulations may provide alternative criteria, where necessary, to be consistent with pertinent federal statutes and regulations

governing federally assisted rental and cooperative housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing developments.

For purposes of this section, ''area median income,'' ''adjustments for family size appropriate to the unit,'' and ''moderate-income household'' shall have the same meaning as provided in Section 50052.5.

SEC. 24. Section 50079.5 of the Health and Safety Code is amended to read:

50079.5. (a) ''Lower income households'' means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.

(b) ''Lower income households'' includes very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, ''area median income'' means the median family income of a geographic area of the state.

SEC. 25. Section 50105 of the Health and Safety Code is amended to read:

50105. (a) ''Very low income households'' means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. These qualifying limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for very low income households for all geographic areas of the state at 50 percent of area median income, adjusted for family size and revised annually.

(b) ''Very low income households'' includes extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, ''area median income'' means the median family income of a geographic area of the state.

CHAPTER 783

An act to add Section 17538.35 to the Business and Professions Code, relating to electronic mail.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 17538.35 is added to the Business and Professions Code, to read:

17538.35. (a) Unless otherwise permitted by law or contract, any provider of electronic mail service shall provide each customer with notice at least 30 days before permanently terminating the customer's electronic mail address.

(b) No contract for electronic mail service may permit termination of service without cause with less than a 30-day notice. For purposes of this subdivision, ''termination of service without cause'' means termination of service at the unfettered discretion of the service provider without regard to any conduct of the customer that violates the service provider's terms of service or acceptable use policy.

(c) For purposes of this section, ''provider'' shall mean the entity that controls the customer's electronic mail address, and not the entity making the underlying network or access available to the provider or the customer.

(d) No provider shall be liable under this section solely for a failure to comply with this section in the event a customer's electronic mail address is permanently terminated due to the action or inaction of an entity making the underlying network or access available to the provider or the customer.

(e) This section supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, cities and counties, municipalities, and other local agencies regarding notice of electronic mail termination by providers of electronic mail service.

(f) This section shall become inoperative on the date that a federal law or regulation is enacted that regulates notice requirements in the event of termination of electronic mail service.

CHAPTER 784

An act to amend Sections 6079.1, 6152, 6302.5, 6324, 6341, 6405, 22391, 22455, and 25361 of, and to repeal Section 6365 of, the Business and Professions Code, to amend Sections 52.1, 1181, 1789.24, 1812.105, 1812.503, 1812.510, 1812.515, 1812.525, 1812.600, and 2924j of the Civil Code, to amend Sections 17, 32.5, 73e, 75, 77, 86.1, 116.210, 116.250, 116.950, 134, 166, 170.5, 170.6, 170.9, 179, 194, 195, 198.5, 201, 215, 217, 234, 274a, 394, 396, 403, 403.010, 404, 404.3, 404.9, 422.30, 575, 594, 628, 632, 668, 670, 701.530, 701.540, 904.5, 1060, 1068, 1085, 1103, 1132, 1141.11, 1141.12, 1208.5, 1281.5, 1420, 1607, 1609, 1710.20, 1775.1, and 2015.3 of, and to repeal Sections 34, 85.1, 199, 199.2, 199.3, 199.5, 200, 402, 655, 1052, 1052.5, and 1141.29 of, and to repeal Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Section 420 of the Corporations Code, to amend Sections 69763.1 and 69763.2 of the Education Code, to amend Sections 13.5, 327, 2212, 8203, 11221, 13107, 13109, and 13111 of, and to repeal Section 325 of, the Elections Code, to amend Sections 300, 452.5, and 1061 of the Evidence Code, to amend Sections 4252, 7122, 7134, 8613, 8614, 8702, 8714.5, 8818, 9200, and 17521 of, and to repeal Sections 240.5 and 6390 of, the Family Code, to amend Section 210 of the Fish and Game Code, to amend Sections 30801, 31503, 31621, and 31622 of the Food and Agricultural Code, and to amend Sections 945.3, 1770, 3501.5, 6103.5, 6520, 6701, 6704, 12989, 15422, 16265.2, 20437, 20440, 23220, 23396, 25100.5, 26608.3, 26625, 26625.2, 26625.3, 26625.4, 26638.2, 26638.4, 26638.5, 26638.6, 26638.7, 26638.8, 26638.9, 26638.10, 26638.11, 26639.2, 26639.3, 26665, 26671.1, 26671.4, 26671.5, 26671.6, 26671.8, 26827.1, 26835.1, 26856, 27081, 27464, 27706, 29610, 31520, 31662.6, 31663, 41803.5, 50920, 53069.4, 53075.6, 53075.61, 61601.1, 68071, 68072, 68073, 68074.1, 68082, 68090.7, 68093, 68105, 68108, 68115, 68152, 68202, 68206.2, 68502.5, 68562, 68620, 69508.5, 69510, 69510.5, 69510.6, 69580, 69581, 69582, 69582.5, 69583, 69584, 69584.5, 69585, 69585.5, 69585.7, 69586, 69587, 69588, 69589, 69590, 69590.5, 69590.7, 69591, 69592, 69593, 69594, 69595, 69595.5, 69596, 69598, 69599, 69599.5, 69600, 69601, 69602, 69603, 69604, 69605, 69605.5, 69606, 69610, 69611, 69649, 69741, 69743, 69744, 69744.5, 69941, 69942, 69944, 69955, 71305, 71380, 71382, 71384, 71601, 71620, 71674, 72110, 72116, 72190, 72190.1, 72190.2, 72301, 72403, 72407, 73301, 74820.2, 74820.3, 75076.2, 75103, 75602, 76200, 76238, 76245, 77003, 77007, 77008, 82011, 84215, and 91013.5 of, to amend and repeal Sections 72114.2 and 72115 of, to amend and renumber Section 72194.5 of, to add Sections 26638.12, 26639.7, 26672, 69580.3, 69580.7, 69581.3,

69581.7, 69582.3, 69583.5, 69584.7, 69585.9, 69588.3, 69588.7, 69589.3, 69589.7, 69591.3, 69591.7, 69593.5, 69598.5, 69600.5, 69601.3, 69601.7, 69604.3, 69604.5, 69604.7, 69840, 69917, and 70219 to, to add Article 13 (commencing with Section 70141.11) to Chapter 5 of, Article 1 (commencing with Section 71002), Article 2 (commencing with Section 71042.5), Article 3 (commencing with Section 71094), Article 5 (commencing with Section 71180), and Article 7 (commencing with Section 71265) to Chapter 6 of, Article 1 (commencing with Section 72004) to Chapter 8 of, Chapter 9 (commencing with Section 72708) to, Article 9.5 (commencing with Section 73660), Article 11.6 (commencing with Section 73750), Article 27 (commencing with Section 74602), Article 31 (commencing with Section 74784), and Article 40 (commencing with Section 74984) to Chapter 10 of, Title 8 of, to repeal Sections 23296, 23398, 23579, 26608.4, 26608.5, 26625.1, 26625.10, 26625.11, 26625.12, 26625.13, 26625.14, 26625.15, 26639.1, 26667, 26668, 26800, 31555, 68077, 68083, 68096, 68520, 68540, 68542, 68542.5, 68546, 68611, 68618.5, 69607, 69608, 69609, 69613, 69614, 69615, 69648, 69750, 69753, 69801, 69890, 69891.1, 69891.5, 69892, 69892.1, 69893.5, 69894, 69894.1, 69895, 69896, 69897, 69898, 69899.5, 69900, 69901, 69903.3, 69904, 69906, 69908, 69911, 69912, 69915, 69945, 69957, 69958, 69959, 70214.5, 70214.6, 72053.5, 72111, 72113, 72114.1, 72114.2, 72150, 72151, 72190.5, 72191, 72192, 72194, 72195, 72196, 72198, 72199, 72400, 72404, 72405, 72406, 72408, 73300, 74820.4, 74820.5, 74820.6, 74820.7, 74820.8, 74820.9, 74820.10, 74820.11, 74820.12, 74820.13, 74820.14, and 75095.5 of, to repeal Article 1.5 (commencing with Section 26630) of Chapter 2 of Part 3 of Division 2 of Title 3 of, and Article 13 (commencing with Section 70140) of Chapter 5 of, Article 1 (commencing with Section 71001), Article 2 (commencing with Section 71040), Article 3 (commencing with Section 71080), Article 4 (commencing with Section 71140), Article 5 (commencing with Section 71180), Article 6 (commencing with Section 71220), and Article 7 (commencing with Section 71260) of Chapter 6 of, Article 1 (commencing with Section 72000), Article 6 (commencing with Section 72230), Article 7 (commencing with Section 72270), and Article 10 (commencing with Section 72450) of Chapter 8 of, Chapter 9 (commencing with Section 72600) of, Chapter 9.1 (commencing with Section 73075) of, and Chapter 9.2 (commencing with Section 73100) of, Article 1.5 (commencing with Section 73330), Article 2 (commencing with Section 73340), Article 3.1 (commencing with Section 73400), Article 4 (commencing with Section 73430), Article 5 (commencing with Section 73480), Article 6 (commencing with Section 73520), Article 7.5 (commencing with Section 73580), Article 8 (commencing with Section 73600), Article 9.5 (commencing with

Section 73660), Article 9.7 (commencing with Section 73671), Article 10 (commencing with Section 73680), Article 11 (commencing with Section 73701), Article 11.6 (commencing with Section 73750), Article 13 (commencing with Section 73820), Article 14 (commencing with Section 73870), Article 17.1 (commencing with Section 74010), Article 18 (commencing with Section 74020), Article 21.5 (commencing with Section 74190), Article 21.6 (commencing with Section 74205), Article 25.1 (commencing with Section 74355), Article 26 (commencing with Section 74500), Article 27 (commencing with Section 74600), Article 28.5 (commencing with Section 74660), Article 29 (commencing with Section 74690), Article 29.5 (commencing with Section 74700), Article 31 (commencing with Section 74780), Article 32 (commencing with Section 74800), Article 32.5 (commencing with Section 74830), Article 33 (commencing with Section 74840), Article 34 (commencing with Section 74860), Article 35 (commencing with Section 74900), and Article 41 (commencing with Section 74993) of Chapter 10 of, Title 8 of, to repeal and add Sections 26639 and 74820.1 of, and to repeal and add Article 4 (commencing with Section 71141) to Chapter 6 of, and Article 3 (commencing with Section 73390), Article 7 (commencing with Section 73560), Article 9 (commencing with Section 73640), Article 10.5 (commencing with Section 73698), Article 11.5 (commencing with Section 73730), Article 12 (commencing with Section 73770), Article 12.2 (commencing with Section 73783.1), Article 12.3 (commencing with Section 73784), Article 12.5 (commencing with Section 73790), Article 16 (commencing with Section 73950), Article 20 (commencing with Section 74130), Article 25 (commencing with Section 74340), Article 28 (commencing with Section 74640), Article 29.6 (commencing with Section 74720), Article 30 (commencing with Section 74740), Article 30.1 (commencing with Section 74760), Article 35.5 (commencing with Section 74915), Article 36 (commencing with Section 74920), Article 37 (commencing with Section 74934), Article 38 (commencing with Section 74948), Article 39 (commencing with Section 74960), and Article 40 (commencing with Section 74993) to Chapter 10 of, the Government Code, to amend Section 515 of the Harbors and Navigation Code, to amend Sections 1428, 1543, 1568.0823, 1569.43, 102247, and 103625 of the Health and Safety Code, to amend Section 11706 of the Insurance Code, to amend Sections 98, 98.1, 98.2, 1181, 1701.10, 2691, and 5600 of the Labor Code, to amend Section 395.3 of the Military and Veterans Code, to amend Sections 28, 808, 810, 830.1, 851.8, 859a, 869, 870, 924.4, 932, 933, 938.1, 987.2, 1000, 1000.5, 1050, 1089, 1203.1b, 1203.1c, 1203.6, 1214, 1237.5, 1240.1, 1281a, 1428, 1463, 1524.1, 1538.5, 3075, 3076, 3085.1, 3607, 4007, 4008, 4009, 4010, 4012, 4024.1, 4112, 4301, 4303, 4304, 4852.18, 6031.1, 13151, and 14154 of, and to repeal Sections

1429.5 and 1462 of, the Penal Code, to amend Sections 1513, 1821, 1826, 1827.5, 1851, and 15688 of the Probate Code, to amend Section 14591.5 of the Public Resources Code, to amend Section 5411.5 of the Public Utilities Code, to amend Section 19707 of the Revenue and Taxation Code, to amend Sections 5419, 6619, 6621, 6622, 6623, and 8266 of the Streets and Highways Code, to amend Section 1815 of the Unemployment Insurance Code, to amend Sections 9805, 9806, 9872.1, 10751, 11102.1, 11203, 11301.5, 11710.2, 27362, 40256, 40502, 40506.5, 40508.6, 42003, 42008, 42008.5, and 42203 of the Vehicle Code, and to amend Sections 246, 255, 270, 601.4, 656, 661, 742.16, 872, 1737, 5205, 6251, 6776, and 14172 of, the Welfare and Institutions Code, relating to court unification.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 6079.1 of the Business and Professions Code is amended to read:

6079.1. (a) The Supreme Court shall appoint a presiding judge of the State Bar Court. In addition, five hearing judges shall be appointed, two by the Supreme Court, one by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. The presiding judge and all other judges of that department shall be appointed for a term of six years and may be reappointed for additional six-year terms. Any judge appointed under this section shall be subject to admonition, censure, removal, or retirement by the Supreme Court upon the same grounds as provided for judges of courts of record of this state.

(b) Judges of the State Bar Court appointed under this section shall not engage in the private practice of law. The State Bar Court shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. Each judge:

(1) Shall have been a member of the State Bar for at least five years.

(2) Shall not have any record of the imposition of discipline as an attorney in California or any other jurisdiction.

(3) Shall meet such other requirements as may be established by subdivision (d) of Section 12011.5 of the Government Code.

(c) Applicants for appointment or reappointment as a State Bar Court judge shall be screened by an applicant evaluation committee as directed by the Supreme Court. The committee, appointed by the Supreme Court, shall submit evaluations and recommendations to the appointing

authority and the Supreme Court as provided in Rule 961 of the California Rules of Court, or as otherwise directed by the Supreme Court. The committee shall submit no fewer than three recommendations for each available position.

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities. Hearing judges shall be paid 91.3225 percent of the salary of a superior court judge. The presiding judge shall be paid the same salary as a superior court judge.

(e) From among the members of the State Bar or retired judges, the Supreme Court or the board may appoint pro tempore judges to decide matters in the Hearing Department of the State Bar Court when a judge of the State Bar Court is unavailable to serve without undue delay to the proceeding. Subject to modification by the Supreme Court, the board may set the qualifications, terms, and conditions of service for pro tempore judges and may, in its discretion, compensate some or all of them out of funds appropriated by the board for this purpose.

(f) A judge or pro tempore judge appointed under this section shall hear every regulatory matter pending in the Hearing Department of the State Bar Court as to which the taking of testimony or offering of evidence at trial has not commenced, and when so assigned, shall sit as the sole adjudicator, except for rulings that are to be made by the presiding judge of the State Bar Court or referees of other departments of the State Bar Court.

(g) Any judge or pro tempore judge of the State Bar Court as well as any employee of the State Bar assigned to the State Bar Court shall have the same immunity that attaches to judges in judicial proceedings in this state. Nothing in this subdivision limits or alters the immunities accorded the State Bar, its officers and employees, or any judge or referee of the State Bar Court as they existed prior to January 1, 1989. This subdivision does not constitute a change in, but is cumulative with, existing law.

(h) Nothing in this section shall be construed to prohibit the board from appointing persons to serve without compensation to arbitrate fee disputes under Article 13 (commencing with Section 6200) of this chapter or to monitor the probation of a member of the State Bar, whether those appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, serve in the State Bar Court or otherwise.

SEC. 2. Section 6152 of the Business and Professions Code is amended to read:

6152. (a) It is unlawful for:

(1) Any person, in an individual capacity or in a capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any attorneys or to solicit any

business for any attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).

(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in Sections 1203 and 1250 of the Health and Safety Code, as a result of the injury alleged to have given rise to the claim and primarily for treatment of the injury, is presumed fraudulent if the release is executed within 15 days after the commencement of confinement or prior to release from confinement, whichever occurs first.

(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.

(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether those persons are in custody or otherwise.

SEC. 3. Section 6302.5 of the Business and Professions Code is amended to read:

6302.5. (a) Notwithstanding any other provision of law, in Los Angeles County appointments made by judges of the superior court shall be for a term of four years, and appointments made by the board of supervisors of the county shall be for a term of two years.

(b) The terms of no more than three judge-appointed members shall expire in the same year.

(c) The term of one member appointed by the board of supervisors shall expire each year.

SEC. 4. Section 6324 of the Business and Professions Code is amended to read:

6324. The board of supervisors of any county may set apart from the fees collected by the clerk of the court, sums not exceeding one thousand two hundred dollars ($1,200) in any one fiscal year, to be paid by the clerk into the law library fund in addition to the moneys otherwise provided to be deposited in that fund by law. The board of supervisors may also appropriate from the county treasury for law library purposes such additional sums as may in their discretion appear proper. When so

paid into the law library fund, such sums shall constitute a part of the fund and be used for the same purposes.

SEC. 5. Section 6341 of the Business and Professions Code is amended to read:

6341. Any board of law library trustees may establish and maintain a branch of the law library in any city in the county, other than the county seat, in which a session of the superior court is held. In any city constituting the county seat, any board of law library trustees may establish and maintain a branch of the law library at any location therein where four or more judges of the superior court are designated to hold sessions more than 10 miles distant from the principal office of the court. In any city and county any board of law library trustees may establish and maintain branches of the law library. A branch is in all respects a part of the law library and is governed accordingly.

SEC. 6. Section 6365 of the Business and Professions Code is repealed.

SEC. 7. Section 6405 of the Business and Professions Code is amended to read:

6405. (a) (1) An application for a certificate of registration by an individual shall be accompanied by a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). An application for secondary registration shall meet all of the requirements of this subdivision, except that in place of posting another original bond or cash deposit, the applicant shall include a certified copy of the bond or cash deposit posted in the county in which the applicant filed the primary registration.

(2) An application for a certificate of registration by a partnership or corporation shall be accompanied by a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). An application for a certificate of registration by a person employed by a partnership or corporation shall be accompanied by a bond of twenty-five thousand dollars ($25,000) only if the partnership or corporation has not posted a bond of twenty-five thousand dollars ($25,000) as required by this subdivision. An application for secondary registration shall meet all of the requirements of this subdivision, except that in place of posting another original bond or cash deposit, the applicant shall include a certified copy of the bond or cash deposit posted in the county in which the applicant filed the primary registration.

(3) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The county clerk shall, upon filing of the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registrant. The fee may be paid to the county clerk who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(e) In lieu of the bond required by subdivision (a), a registrant may deposit twenty-five thousand dollars ($25,000) in cash with the county clerk.

(f) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to subdivision (g) and the right of a person to recover against the bond or cash deposit under Section 6412.

(g) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge of a superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(h) The bond required by this section shall be in favor of the State of California for the benefit of any person who is damaged as a result of the violation of this chapter or by the fraud, dishonesty, or incompetency of an individual, partnership, or corporation registered under this chapter. The bond required by this section shall also indicate the name of the county in which it will be filed.

SEC. 8. Section 22391 of the Business and Professions Code is amended to read:

22391. (a) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the

Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in Section 22390.

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

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

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

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

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

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

at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit.

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

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

SEC. 9. Section 22455 of the Business and Professions Code is amended to read:

22455. (a) A certificate of registration shall be accompanied by a bond of five thousand dollars ($5,000) which is executed by a corporate surety qualified to do business in this state and conditioned upon compliance with the provisions of this chapter and all laws governing the transmittal of confidential documentary information under the code sections specified in Section 22450. The total aggregate liability on the bond shall be limited to five thousand dollars ($5,000). The bond may be terminated pursuant to the provisions of Section 995.440 and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure.

(1) The county clerk shall, upon filing the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registered professional photocopier. The fee may be paid to the county clerk, who shall transmit it to the recorder.

(2) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(3) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for the notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(b) In lieu of the bond required by subdivision (a), a registrant may deposit five thousand dollars ($5,000) in cash with the county clerk.

(c) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to the provisions of subdivision (d) and the right of a person to recover against the bond or cash deposit under Section 22459.

(d) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge of a superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

SEC. 10. Section 25361 of the Business and Professions Code is amended to read:

25361. Notice of the seizure and of the intended forfeiture proceeding shall be filed with the clerk of the court and shall be served on all persons, firms, or corporations having any right, title, or interest in the alcoholic beverages or other property seized. If the owner or owners are unknown or cannot be found, notice of the seizure and intended forfeiture proceedings shall be made upon such owners by publication pursuant to Section 6061 of the Government Code in the county where the seizure was made.

SEC. 11. Section 52.1 of the Civil Code is amended to read:

52.1. (a) If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars ($25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated.

(b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured.

(c) An action brought pursuant to subdivision (a) or (b) may be filed either in the superior court for the county in which the conduct

complained of occurred or in the superior court for the county in which a person whose conduct complained of resides or has his or her place of business. An action brought by the Attorney General pursuant to subdivision (a) also may be filed in the superior court for any county wherein the Attorney General has an office, and in that case, the jurisdiction of the court shall extend throughout the state.

(d) If a court issues a temporary restraining order or a preliminary or permanent injunction in an action brought pursuant to subdivision (a) or (b), ordering a defendant to refrain from conduct or activities, the order issued shall include the following statement: VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.9 OF THE PENAL CODE.

(e) The court shall order the plaintiff or the attorney for the plaintiff to deliver, or the clerk of the court to mail, two copies of any order, extension, modification, or termination thereof granted pursuant to this section, by the close of the business day on which the order, extension, modification, or termination was granted, to each local law enforcement agency having jurisdiction over the residence of the plaintiff and any other locations where the court determines that acts of violence against the plaintiff are likely to occur. Those local law enforcement agencies shall be designated by the plaintiff or the attorney for the plaintiff. Each appropriate law enforcement agency receiving any order, extension, or modification of any order issued pursuant to this section shall serve forthwith one copy thereof upon the defendant. Each appropriate law enforcement agency shall provide to any law enforcement officer responding to the scene of reported violence, information as to the existence of, terms, and current status of, any order issued pursuant to this section.

(f) A court shall not have jurisdiction to issue an order or injunction under this section, if that order or injunction would be prohibited under Section 527.3 of the Code of Civil Procedure.

(g) An action brought pursuant to this section is independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law, including, but not limited to, an action, remedy, or procedure brought pursuant to Section 51.7.

(h) In addition to any damages, injunction, or other equitable relief awarded in an action brought pursuant to subdivision (b), the court may award the petitioner or plaintiff reasonable attorney's fees.

(i) A violation of an order described in subdivision (d) may be punished either by prosecution under Section 422.9 of the Penal Code, or by a proceeding for contempt brought pursuant to Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure. However, in any proceeding pursuant to the Code of Civil Procedure, if it is determined that the person proceeded against is guilty

of the contempt charged, in addition to any other relief, a fine may be imposed not exceeding one thousand dollars ($1,000), or the person may be ordered imprisoned in a county jail not exceeding six months, or the court may order both the imprisonment and fine.

(j) Speech alone is not sufficient to support an action brought pursuant to subdivision (a) or (b), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.

(k) No order issued in any proceeding brought pursuant to subdivision (a) or (b) shall restrict the content of any person's speech. An order restricting the time, place, or manner of any person's speech shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of constitutional or statutory rights, consistent with the constitutional rights of the person sought to be enjoined.

SEC. 12. Section 1181 of the Civil Code is amended to read:

1181. The proof or acknowledgment of an instrument may be made before a notary public at any place within this state, or within the county or city and county in this state in which the officer specified below was elected or appointed, before either:

(a) A clerk of a superior court.
(b) A county clerk.
(c) A court commissioner.
(d) A retired judge of a municipal or justice court.
(e) A district attorney.
(f) A clerk of a board of supervisors.
(g) A city clerk.
(h) A county counsel.
(i) A city attorney.
(j) Secretary of the Senate.
(k) Chief Clerk of the Assembly.

SEC. 13. Section 1789.24 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

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

SEC. 14. Section 1812.105 of the Civil Code is amended to read:

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

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

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

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

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

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

(g) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the

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

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

SEC. 15. Section 1812.503 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of an employment agency or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the

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

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

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

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

SEC. 16. Section 1812.510 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

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

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the employment counseling service, other than as to an amount as no longer needed or

required for the purpose of this title that would otherwise be returned to the employment counseling service by the Secretary of State.

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

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

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

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

SEC. 17. Section 1812.515 of the Civil Code is amended to read:

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

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

representatives, or employees while acting within the scope of their employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 18. Section 1812.525 of the Civil Code is amended to read:

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

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any

violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions, or failure to provide the services of the nurses' registry in performance of the contract with the nurse by the nurses' registry or its agents, representatives, or employees while acting within the scope of their employment.

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

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

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

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

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

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

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

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or

in part pursuant to subdivisions (f) and (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

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

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

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

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

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

SEC. 19. Section 1812.600 of the Civil Code is amended to read:

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

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person or persons damaged by any fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions, or failure to

provide the services of the auctioneer or auction company in performance of the auction by the auctioneer or auction company or its agents, representatives, or employees while acting within the scope of their employment.

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

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

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

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

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

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

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

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or

in part pursuant to subdivision (f) or (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

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

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

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

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

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

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

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

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

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

SEC. 20. Section 2924j of the Civil Code is amended to read:

2924j. (a) Unless an interpleader action has been filed, within 30 days of the execution of the trustee's deed resulting from a sale in which there are proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice pursuant to subdivisions (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person may be required to present proof that the person holds the beneficial interest in the obligation and the security interest therefor. In the case of a promissory note secured by a deed of trust, proof that the person holds the beneficial interest may include the original promissory note and assignment of beneficial interests related thereto. The noticed person shall also submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to the priority of the written claims submitted to the trustee, proceeds shall be paid within 30

days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action pursuant to subdivision (e). Nothing in this section shall preclude any person from pursuing other remedies or claims as to surplus proceeds.

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale, a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

The clerk shall deposit the amount with the county treasurer subject to order of the court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Article 2 (commencing with Section 26820) of Division 2 of Title 3 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that the trustee intends to deposit the funds with the clerk of the court and that a claim for the funds must be filed with the court within 30 days from the date of the notice, providing the address

of the court in which the funds were deposited, and a phone number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustees' declaration at the addresses specified therein. Where the amount of the deposit is twenty-five thousand dollars ($25,000) or less, a proceeding pursuant to this section is a limited civil case. The court shall distribute the deposited funds to any and all claimants entitled thereto.

(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order to resolve a dispute about the proceeds of a trustee's sale. Once an interpleader action has been filed, thereafter the provisions of this section shall not apply.

(f) ''Due diligence,'' for the purposes of this section means that the trustee researched the written claims submitted or other evidence of conflicts and determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve.

(g) To the extent required by the Unclaimed Property Law, a trustee in possession of surplus proceeds not required to be deposited with the court pursuant to subdivision (b) shall comply with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

(h) Prior to July 1, 2000, the Judicial Council shall adopt a form to accomplish the filing authorized by this section.

SEC. 21. Section 17 of the Code of Civil Procedure is amended to read:

17. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word ''person'' includes a corporation as well as a natural person; the word ''county'' includes ''city and county''; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term ''testify,'' and every written one in the term ''depose''; signature or subscription includes mark, when the person cannot write, his or her name or her being written near it by a person who writes his or her own name as a witness; provided, that when a signature is by mark it must, in order that the same may be acknowledged or may serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witness thereto.

The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word ''property'' includes both real and personal property;

2. The words ''real property'' are coextensive with lands, tenements, and hereditaments;

3. The words ''personal property'' include money, goods, chattels, things in action, and evidences of debt;

4. The word ''month'' means a calendar month, unless otherwise expressed;

5. The word ''will'' includes codicil;

6. The word ''writ'' signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer; and the word ''process'' a writ or summons issued in the course of judicial proceedings;

7. The word ''state,'' when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words ''United States'' may include the district and territories;

8. The word ''section'' whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned;

9. The word ''affinity'' when applied to the marriage relation, signifies the connection existing in consequence of marriage, between each of the married persons and the blood relatives of the other;

10. The word ''sheriff'' shall include ''marshal.''

SEC. 22. Section 32.5 of the Code of Civil Procedure is amended to read:

32.5. The ''jurisdictional classification'' of a case means its classification as a limited civil case or an unlimited civil case.

SEC. 23. Section 34 of the Code of Civil Procedure is repealed.

SEC. 24. Section 73e of the Code of Civil Procedure is amended to read:

73e. Notwithstanding any other provisions of law, in each county wherein the juvenile hall is not located at the county seat of the county, a majority of the judges of the superior court in and for such county may by an order filed with the clerk of the court direct that a session or sessions of the superior court, while sitting for the purpose of hearing and determining cases and proceedings arising under Chapter 2 of Part 1 of Division 2 or Chapter 2 of Part 1 of Division 6 or Chapter 4 of Part 4 of Division 6 of the Welfare and Institutions Code, may be held or continued in any place in the county in which the juvenile hall is located and thereafter such session or sessions of the court may be held or continued in the location designated in such order. In a county having two superior court judges the presiding judge may make the order.

SEC. 25. Section 75 of the Code of Civil Procedure is amended to read:

75. The superior court in any county may by rule provide that, whenever all judges are absent from the county, any noncontested matter

in which no evidence is required, or which may be submitted upon affidavits, shall be deemed submitted upon the filing with the clerk of a statement of submission by the party or the party's attorney or upon the date set for the hearing.

SEC. 26. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive for the time so served, amounts equal to that which the judge would have received if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of the appellate division.

(h) Notwithstanding the provisions of subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court.

SEC. 27. Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of the Code of Civil Procedure is repealed.

SEC. 28. Section 85.1 of the Code of Civil Procedure is repealed.

SEC. 29. Section 86.1 of the Code of Civil Procedure is amended to read:

86.1. An action brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) is a limited civil case if civil penalties are not sought or amount to twenty-five thousand dollars ($25,000) or less.

SEC. 30. Section 116.210 of the Code of Civil Procedure is amended to read:

116.210. In each superior court there shall be a small claims division. The small claims division may be known as the small claims court.

SEC. 31. Section 116.250 of the Code of Civil Procedure is amended to read:

116.250. (a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. They may also be scheduled at any public building within the county, including places outside the courthouse.

(b) Each small claims division of a superior court with seven or more judicial officers shall conduct at least one night session or Saturday session each month for the purpose of hearing small claims cases other than small claims appeals. The term ''session'' includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

SEC. 32. Section 116.950 of the Code of Civil Procedure is amended to read:

116.950. (a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or

public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of Technology, Trade, and Commerce.

(6) Six judicial officers who have extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, judges of the appellate courts, retired judicial officers, and temporary judges.

(7) One representative appointed by the Governor.

(8) Two clerks of the court appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed.

SEC. 33. Section 134 of the Code of Civil Procedure is amended to read:

134. (a) Except as provided in subdivision (c), the courts shall be closed for the transaction of judicial business on judicial holidays for all but the following purposes:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict.

(2) To receive a verdict or discharge a jury.

(3) For the conduct of arraignments and the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

(4) For the conduct of Saturday small claims court sessions pursuant to the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

(b) Injunctions and writs of prohibition may be issued and served on any day.

(c) In any superior court, one or more departments of the court may remain open and in session for the transaction of any business that may come before the department in the exercise of the civil or criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of the day or night, or both, as the judges of the court prescribe.

(d) The fact that a court is open on a judicial holiday shall not make that day a nonholiday for purposes of computing the time required for the conduct of any proceeding nor for the performance of any act. Any paper lodged with the court at a time when the court is open pursuant to subdivision (c), shall be filed by the court on the next day that is not a judicial holiday, if the document meets appropriate criteria for filing.

SEC. 34. Section 166 of the Code of Civil Procedure is amended to read:

166. (a) The judges of the superior courts may, in chambers:

(1) Grant all orders and writs that are usually granted in the first instance upon an ex parte application, and hear and dispose of those orders and writs, appoint referees, require and receive inventories and accounts to be filed, order notice of settlement of supplemental accounts, suspend the powers of personal representatives, guardians, or conservators in the cases allowed by law, appoint special administrators, grant letters of temporary guardianship or conservatorship, approve or reject claims, and direct the issuance from the court of all writs and process necessary in the exercise of their powers in matters of probate.

(2) Hear and determine all motions made pursuant to Section 657 or 663.

(3) Hear and determine all uncontested actions, proceedings, demurrers, motions, petitions, applications, and other matters pending before the court other than actions for dissolution of marriage, for legal separation, or for a judgment of nullity of the marriage, and except also applications for confirmation of sale of real property in probate proceedings.

(4) Hear and determine motions to tax costs of enforcing a judgment.

(5) Approve bonds and undertakings.

(b) A judge may, out of court, anywhere in the state, exercise all the powers and perform all the functions and duties conferred upon a judge as contradistinguished from the court, or that a judge may exercise or perform in chambers.

SEC. 35. Section 170.5 of the Code of Civil Procedure is amended to read:

170.5. For the purposes of Sections 170 to 170.5, inclusive, the following definitions apply:

(a) ''Judge'' means judges of the superior courts, and court commissioners and referees.

(b) ''Financial interest'' means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars ($1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a ''financial interest'' in those securities unless the judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a ''financial interest'' in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a ''financial interest'' in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(c) ''Officer of a public agency'' does not include a Member of the Legislature or a state or local agency official acting in a legislative capacity.

(d) The third degree of relationship shall be calculated according to the civil law system.

(e) ''Private practice of law'' includes a fee for service, retainer, or salaried representation of private clients or public agencies, but excludes lawyers as full-time employees of public agencies or lawyers working exclusively for legal aid offices, public defender offices, or similar nonprofit entities whose clientele is by law restricted to the indigent.

(f) ''Proceeding'' means the action, case, cause, motion, or special proceeding to be tried or heard by the judge.

(g) ''Fiduciary'' includes any executor, trustee, guardian, or administrator.

SEC. 36. Section 170.6 of the Code of Civil Procedure is amended to read:

170.6. (1) No judge, court commissioner, or referee of any superior court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in the action or proceeding.

(2) Any party to or any attorney appearing in any such action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of

perjury or an oral statement under oath that the judge, court commissioner, or referee before whom the action or proceeding is pending or to whom it is assigned is prejudiced against any such party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee. Where the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall any judge, court commissioner, or referee entertain the motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there is no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

A motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (3) of this section, the party who filed the appeal that resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so.

The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or such oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council shall assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Except as provided in this section, no party or attorney shall be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:

(Here set forth court and cause)

State of California,)
County of _____) ss.

PEREMPTORY CHALLENGE

____, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That ____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this
_____ day of _____, 20__.
(Clerk or notary public or other
officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(7) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

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

SEC. 37. Section 170.9 of the Code of Civil Procedure is amended to read:

170.9. (a) No judge shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the California Code of Judicial Ethics adopted by the California Supreme Court or any other provision of law.

(b) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by subdivision (e).

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(3) A gift, bequest, favor, or loan from any person whose preexisting relationship with a judge would prevent the judge from hearing a case involving that person, under the Code of Judicial Ethics adopted by the California Supreme Court.

(c) For purposes of this section, ''judge'' means judges of the superior courts, and justices of the courts of appeal or the Supreme Court.

(d) The gift limitation amounts in this section shall be adjusted biennially by the Commission on Judicial Performance to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars ($10).

(e) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a judicial or governmental purpose, or to an issue

of state, national, or international public policy, is not prohibited or limited by this section if any of the following apply:

(1) The travel is in connection with a speech, practice demonstration, or group or panel discussion given or participated in by the judge, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, demonstration, or discussion, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency or authority, a foreign government, a foreign bar association, an international service organization, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

For purposes of this section, ''foreign bar association'' means an association of attorneys located outside the United States (A) that performs functions substantially equivalent to those performed by state or local bar associations in this state and (B) that permits membership by attorneys in that country representing various legal specialties and does not limit membership to attorneys generally representing one side or another in litigation. ''International service organization'' means a bona fide international service organization of which the judge is a member. A judge who accepts travel payments from an international service organization pursuant to this subdivision shall not preside over or participate in decisions affecting that organization, its state or local chapters, or its local members.

(3) The travel is provided by a state or local bar association or judges professional association in connection with testimony before a governmental body or attendance at any professional function hosted by the bar association or judges professional association, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the professional function.

(f) Payments, advances, and reimbursements for travel not described in subdivision (e) are subject to the limit in subdivision (a).

(g) No judge shall accept any honorarium.

(h) ''Honorarium'' means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal or like gathering.

(i) ''Honorarium'' does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a publisher, and does not include fees or other things of value received

pursuant to Section 94.5 of the Penal Code for performance of a marriage.

For purposes of this section, ''teaching'' shall include presentations to impart educational information to lawyers in events qualifying for credit under Mandatory Continuing Legal Education, to students in bona fide educational institutions, and to associations or groups of judges.

(j) Subdivision (a) and (e) shall apply to all payments, advances, reimbursements for travel and related lodging and subsistence.

(k) This section does not apply to any honorarium that is not used and, within 30 days after receipt, is either returned to the donor or delivered to the Controller for deposit in the General Fund without being claimed as a deduction from income for tax purposes.

(*l*) ''Gift'' means any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. However, the term ''gift'' does not include:

(1) Informational material such as books, reports, pamphlets, calendars, periodicals, cassettes and discs, or free or reduced-price admission, tuition, or registration, for informational conferences or seminars. No payment for travel or reimbursement for any expenses shall be deemed ''informational material.''

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

(3) Gifts from a judge's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars ($250).

(7) Admission to events hosted by state or local bar associations or judges' professional associations, and provision of related food and beverages at such events, when attendance does not require ''travel'' as described in paragraph (3) of subdivision (e).

(m) The Commission on Judicial Performance shall enforce the prohibitions of this section.

SEC. 38. Section 179 of the Code of Civil Procedure is amended to read:

179. Each of the justices of the Supreme Court and of any court of appeal and the judges of the superior courts, shall have power in any part of the state to take and certify:

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument.

2. The acknowledgment of satisfaction of a judgment of any court.

3. An affidavit or deposition to be used in this state.

SEC. 39 Section 194 of the Code of Civil Procedure is amended to read:

194. The following definitions govern the construction of this chapter:

(a) ''County'' means any county or any coterminous city and county.

(b) ''Court'' means a superior court of this state, and includes, when the context requires, any judge of the court.

(c) ''Deferred jurors'' are those prospective jurors whose request to reschedule their service to a more convenient time is granted by the jury commissioner.

(d) ''Excused jurors'' are those prospective jurors who are excused from service by the jury commissioner for valid reasons based on statute, state or local court rules, and policies.

(e) ''Juror pool'' means the group of prospective qualified jurors appearing for assignment to trial jury panels.

(f) ''Jury of inquest'' is a body of persons summoned from the citizens before the sheriff, coroner, or other ministerial officers, to inquire of particular facts.

(g) ''Master list'' means a list of names randomly selected from the source lists.

(h) ''Potential juror'' means any person whose name appears on a source list.

(i) ''Prospective juror'' means a juror whose name appears on the master list.

(j) ''Qualified juror'' means a person who meets the statutory qualifications for jury service.

(k) ''Qualified juror list'' means a list of qualified jurors.

(*l*) ''Random'' means that which occurs by mere chance indicating an unplanned sequence of selection where each juror's name has substantially equal probability of being selected.

(m) ''Source list'' means a list used as a source of potential jurors.

(n) ''Summons list'' means a list of prospective or qualified jurors who are summoned to appear or to be available for jury service.

(o) ''Trial jurors'' are those jurors sworn to try and determine by verdict a question of fact.

(p) ''Trial jury'' means a body of persons selected from the citizens of the area served by the court and sworn to try and determine by verdict a question of fact.

(q) ''Trial jury panel'' means a group of prospective jurors assigned to a courtroom for the purpose of voir dire.

SEC. 40. Section 195 of the Code of Civil Procedure is amended to read:

195. (a) In each county, there shall be one jury commissioner who shall be appointed by, and serve at the pleasure of, a majority of the judges of the superior court. In any county where there is a superior court administrator or executive officer, that person shall serve as ex officio jury commissioner. In any court jurisdiction where any person other than a court administrator or clerk/administrator is serving as jury commissioner on the effective date of this section, that person shall continue to so serve at the pleasure of a majority of the judges of the appointing court.

(b) Any jury commissioner may, whenever the business of court requires, appoint deputy jury commissioners. Salaries and benefits of those deputies shall be fixed in the same manner as salaries and benefits of other court employees.

(c) The jury commissioner shall be primarily responsible for managing the jury system under the general supervision of the court in conformance with the purpose and scope of this act. He or she shall have authority to establish policies and procedures necessary to fulfill this responsibility.

SEC. 41. Section 198.5 of the Code of Civil Procedure is amended to read:

198.5. If sessions of the superior court are held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held, pursuant to a local superior court rule that (1) divides the county in a manner that provides all qualified persons in the county an equal opportunity to be considered for jury service and (2) gives each prospective juror residing in the county an opportunity to elect to serve on a jury with respect to a trial held anywhere in the county. Nothing in this section precludes the court, in its discretion, from ordering a countywide venire in the interest of justice.

SEC. 42. Section 199 of the Code of Civil Procedure is repealed.

SEC. 43. Section 199.2 of the Code of Civil Procedure is repealed.

SEC. 44. Section 199.3 of the Code of Civil Procedure is repealed.

SEC. 45. Section 199.5 of the Code of Civil Procedure is repealed.

SEC. 46. Section 200 of the Code of Civil Procedure is repealed.

SEC. 47. Section 201 of the Code of Civil Procedure is amended to read:

201. In any superior court, a separate trial jury panel may be drawn, summoned, and impaneled for each judge, or any one panel may be drawn, summoned, and impaneled by any one of the judges, for use in the trial of cases before any of the judges, as occasion may require. In those courts, when a panel of jurors is in attendance for service before one or more of the judges, whether impaneled for common use or not, the whole or any number of the jurors from such panel may be required to attend and serve in the trial of cases, or to complete a panel, or jury, before any other of the judges.

SEC. 48. Section 215 of the Code of Civil Procedure is amended to read:

215. (a) Beginning July 1, 2000, the fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars ($15) a day for each day's attendance as a juror after the first day.

(b) Unless a higher rate of mileage is otherwise provided by statute or by county or city and county ordinance, jurors in the superior court shall be reimbursed for mileage at the rate of fifteen cents ($0.15) per mile for each mile actually traveled in attending court as a juror, in going only.

SEC. 49. Section 217 of the Code of Civil Procedure is amended to read:

217. In criminal cases only, while the jury is kept together, either during the progress of the trial or after their retirement for deliberation, the court may direct the sheriff or marshal to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. The expenses incurred under this section shall be charged against the Trial Court Operations Fund of the county in which the court is held. All those expenses shall be paid on the order of the court.

SEC. 50. Section 234 of the Code of Civil Procedure is amended to read:

234. Whenever, in the opinion of a judge of a superior court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as ''alternate jurors.''

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall

be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times upon the trial of the cause in company with the other jurors, but shall not participate in deliberation unless ordered by the court, and for a failure to do so are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff or marshal during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff or marshal who shall not suffer any communication to be made to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she has been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil cases the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled.

SEC. 51. Section 274a of the Code of Civil Procedure is amended to read:

274a. Any judge of the superior court may have any opinion given or rendered by the judge in the trial of a felony case or an unlimited civil case, pending in that court, or any necessary order, petition, citation, commitment or judgment in any probate proceeding, proceeding concerning new or additional bonds of county officials or juvenile court proceeding, or the testimony or judgment relating to the custody or support of minor children in any proceeding in which the custody or support of minor children is involved, taken down in shorthand and transcribed together with such copies as the court may deem necessary by the official reporter or an official reporter pro tempore of the court.

SEC. 52. Section 394 of the Code of Civil Procedure is amended to read:

394. (a) An action or proceeding against a county, or city and county, a city, or local agency, may be tried in such county, or city and county, or the county in which such city or local agency is situated, unless the action or proceeding is brought by a county, or city and county, a city, or local agency, in which case it may be tried in any county, or city and county, not a party thereto and in which the city or local agency is not situated. Except for actions initiated by the district attorney pursuant to Section 11350, 11350.1, 11475.1, or 11476.1 of the Welfare and Institutions Code, any action or proceeding brought by a county, city and county, city, or local agency within a certain county, or city and county, against a resident of another county, city and county, or city, or a corporation doing business in the latter, shall be, on motion of either party, transferred for trial to a county, or city and county, other than the plaintiff, if the plaintiff is a county, or city and county, and other than that in which the plaintiff is situated, if the plaintiff is a city, or a local agency, and other than that in which the defendant resides, or is doing business, or is situated. Whenever an action or proceeding is brought against a county, city and county, city, or local agency, in any county, or city and county, other than the defendant, if the defendant is a county, or city and county, or, if the defendant is a city, or local agency, other than that in which the defendant is situated, the action or proceeding must be, on motion of the said defendant, transferred for trial to a county, or city and county, other than that in which the plaintiff, or any of the plaintiffs, resides, or is doing business, or is situated, and other than the plaintiff county, or city and county, or county in which such plaintiff city or local agency is situated, and other than the defendant county, or city and county, or county in which such defendant city or local agency is situated; provided, however, that any action or proceeding against the city, county, city and county, or local agency for injury occurring within the city, county, or city and county, or within the county in which such local agency is situated, to person or property or person and property caused by the negligence or alleged negligence of such city, county, city and county, local agency, or its agents or employees, shall be tried in such county, or city and county, or if a city is a defendant, in such city or in the county in which such city is situated, or if a local agency is a defendant, in such county in which such local agency is situated. In any such action or proceeding, the parties thereto may, by stipulation in writing, or made in open court, and entered in the minutes, agree upon any county, or city and county, for the place of trial thereof. When the action or proceeding is one in which a jury is not of right, or in case a jury be waived, then in lieu of transferring the cause the court in the original county may request the Chairman of the Judicial Council to assign a disinterested judge from a neutral county to hear said cause and all proceedings in connection therewith. When such action or proceeding

is transferred to another county for trial, a witness required to respond to a subpoena for a hearing within the original county shall be compelled to attend hearings in the county to which the cause is transferred. If the demand for transfer be made by one party and the opposing party does not consent thereto the additional costs of the nonconsenting party occasioned by the transfer of the cause, including living and traveling expenses of said nonconsenting party and material witnesses, found by the court to be material, and called by such nonconsenting party, not to exceed five dollars ($5) per day each in excess of witness fees and mileage otherwise allowed by law, shall be assessed by the court hearing the cause against the party requesting the transfer. To the extent of such excess, such costs shall be awarded to the nonconsenting party regardless of the outcome of the trial. This section shall apply to actions or proceedings now pending or hereafter brought.

(b) For the purposes of this section, ''local agency'' shall mean any governmental district, board, or agency, or any other local governmental body or corporation, but shall not include the State of California or any of its agencies, departments, commissions, or boards.

SEC. 53. Section 396 of the Code of Civil Procedure is amended to read:

396. If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and subdivision 1 of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In any such case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.

If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack

of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.

An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.

Nothing herein shall be construed to preclude or affect the right to amend the pleadings as provided in this code.

Upon the making of an order for transfer, proceedings shall be had as provided in Section 399 of this code, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.

SEC. 54. Section 402 of the Code of Civil Procedure is repealed.

SEC. 55. Section 403 of the Code of Civil Procedure is amended to read:

403. A judge may, on motion, transfer an action or actions from another court to that judge's court for coordination with an action involving a common question of fact or law within the meaning of Section 404. The motion shall be supported by a declaration stating facts showing that the actions meet the standards specified in Section 404.1, are not complex as defined by the Judicial Council and that the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action. Notice of the motion shall be served on all parties to each action and on each court in which an action is pending. Any party to that action may file papers opposing the motion within the time permitted by rule of the Judicial Council. The court to which a case is transferred may order the cases consolidated for trial pursuant to Section 1048 without any further motion or hearing.

The Judicial Council may adopt rules to implement this section, including rules prescribing procedures for preventing duplicative or conflicting transfer orders issued by different courts.

SEC. 56. Section 403.010 of the Code of Civil Procedure is amended to read:

403.010. Nothing in this chapter expands or limits the law on whether a plaintiff, cross-complainant, or petitioner may file an amended complaint or other amended initial pleading. Nothing in this chapter expands or limits the law on whether, and to what extent, an

amendment relates back to the date of filing the original complaint or other initial pleading.

SEC. 57. Section 404 of the Code of Civil Procedure is amended to read:

404. When civil actions sharing a common question of fact or law are pending in different courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council, by the presiding judge of any such court, or by any party to one of the actions after obtaining permission from the presiding judge, or by all of the parties plaintiff or defendant in any such action. A petition for coordination, or a motion for permission to submit a petition, shall be supported by a declaration stating facts showing that the actions are complex, as defined by the Judicial Council and that the actions meet the standards specified in Section 404.1. On receipt of a petition for coordination, the Chairperson of the Judicial Council may assign a judge to determine whether the actions are complex, and if so, whether coordination of the actions is appropriate, or the Chairperson of the Judicial Council may authorize the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases.

SEC. 58. Section 404.3 of the Code of Civil Procedure is amended to read:

404.3. A judge assigned pursuant to Section 404 who determines that coordination is appropriate shall order the actions coordinated, report that fact to the Chairperson of the Judicial Council, and the Chairperson of the Judicial Council shall either assign a judge to hear and determine the actions in the site or sites the assigned judge finds appropriate or authorize the presiding judge of a court to assign the matter to judicial officers of the court in the same manner as assignments are made in other civil cases.

SEC. 59. Section 404.9 of the Code of Civil Procedure is amended to read:

404.9. Any duties of the presiding judge specified in this chapter may be delegated by the presiding judge to another judge of the court.

SEC. 60. Section 422.30 of the Code of Civil Procedure is amended to read:

422.30. (a) Every pleading shall contain a caption setting forth:

(1) The name of the court and county in which the action is brought.

(2) The title of the action.

(b) In a limited civil case, the caption shall state that the case is a limited civil case, and the clerk shall classify the case accordingly.

SEC. 61. Section 575 of the Code of Civil Procedure is amended to read:

575. The Judicial Council may promulgate rules governing pretrial conferences, and the time, manner and nature thereof, in civil cases at issue, or in one or more classes thereof, in the superior courts.

SEC. 62. Section 594 of the Code of Civil Procedure is amended to read:

594. (a) In superior courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' notice of such trial or five days' notice of the trial in an unlawful detainer action as specified in subdivision (b). If the adverse party has served notice of trial upon the party seeking the dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall be deemed to have had notice.

(b) The notice to the adverse party required by subdivision (a) shall be served by mail on all the parties by the clerk of the court not less than 20 days prior to the date set for trial. In an unlawful detainer action where notice is served by mail that service shall be mailed not less than 10 days prior to the date set for trial. If notice is not served by the clerk as required by this subdivision, it may be served by mail by any party on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful detainer action where notice is served by mail that service shall be mailed not less than 10 days prior to the date set for trial. The time provisions of Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions. If notice is served by the clerk, proof thereof may be made by introduction into evidence of the clerk's certificate pursuant to subdivision (3) of Section 1013a or other competent evidence. If notice is served by a party, proof may be made by introduction into evidence of an affidavit or certificate pursuant to subdivision (1) or (2) of Section 1013a or other competent evidence. The provisions of this subdivision are exclusive.

SEC. 63. Section 628 of the Code of Civil Procedure is amended to read:

628. In superior courts upon receipt of a verdict, an entry must be made in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

SEC. 64. Section 632 of the Code of Civil Procedure is amended to read:

632. In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision.

The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.

SEC. 65. Section 655 of the Code of Civil Procedure is repealed.

SEC. 66. Section 668 of the Code of Civil Procedure is amended to read:

668. Except as provided in Section 668.5, the clerk of the superior court, must keep, with the records of the court, a book called the ''judgment book,'' in which judgments must be entered.

SEC. 67. Section 670 of the Code of Civil Procedure is amended to read:

670. In superior courts the following papers, without being attached together, shall constitute the judgment roll:

(a) In case the complaint is not answered by any defendant, the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment; if defendant has appeared by demurrer, and the demurrer has been overruled, then notice of the overruling thereof served on defendant's attorney, together with proof of the service; and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons.

(b) In all other cases, the pleadings, all orders striking out any pleading in whole or in part, a copy of the verdict of the jury, the statement of decision of the court, or finding of the referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment; if there are two or more defendants in the action, and any one of them has allowed judgment to pass against him or her by default, the summons, with proof of its service, on the defendant, and if

the service on the defaulting defendant be by publication, then the affidavit for publication, and the order directing the publication of the summons.

SEC. 68. Section 701.530 of the Code of Civil Procedure is amended to read:

701.530. (a) Notice of sale of personal property shall be in writing, shall state the date, time, and place of sale, and shall describe the property to be sold.

(b) Not less than 10 days before a sale of personal property, notice of sale shall be posted and served on the judgment debtor by the levying officer. Service shall be made personally or by mail.

(c) Posting under this section shall be in three public places in:

(1) The city in which the property is to be sold if it is to be sold in a city.

(2) The county in which the property is to be sold if it is not to be sold in a city.

(d) A sale of personal property of an individual may not take place until the expiration of the time during which the judgment debtor may make a claim of exemption under subdivision (a) of Section 703.520.

SEC. 69. Section 701.540 of the Code of Civil Procedure is amended to read:

701.540. (a) Notice of sale of an interest in real property shall be in writing, shall state the date, time, and place of sale, shall describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. If the real property has no street address or other common designation, the notice of sale shall include a statement that directions to its location may be obtained from the levying officer upon oral or written request or, in the discretion of the levying officer, the notice of sale may contain directions to its location. Directions are sufficient if information as to the location of the real property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description of the real property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location, are erroneous or omitted.

(b) Not less than 20 days before the date of sale, notice of sale of an interest in real property shall be served, mailed, and posted by the levying officer as provided in subdivisions (c), (d), (e), and (f).

(c) Notice of sale shall be served on the judgment debtor. Service shall be made personally or by mail.

(d) Notice of sale shall be posted in the following places:

(1) One public place in the city in which the interest in the real 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 real property is to be sold.

(2) A conspicuous place on the real property.

(e) At the time notice is posted pursuant to paragraph (2) of subdivision (d), notice of sale shall be served or service shall be attempted on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If the levying officer is unable to serve such an occupant at the time service is attempted, the levying officer is not required to make any further attempts to serve an occupant.

(f) If the property described in the notice of sale consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service pursuant to subdivision (e) and posting pursuant to paragraph (2) of subdivision (d) need be made as to each continuous, unbroken tract.

(g) Notice of sale shall be published pursuant to Section 6063 of the Government Code, with the first publication at least 20 days prior to the time of sale, in a newspaper of general circulation published in the city in which the real 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 judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, notice of sale shall be published in a newspaper of general circulation in the county in which the real property or a part thereof is situated.

(h) Not earlier than 30 days after the date of levy, the judgment creditor shall determine the names of all persons having liens on the real property on the date of levy that are of record in the office of the county recorder and shall instruct the levying officer to mail notice of sale to each such person at the address used by the county recorder for the return of the instrument creating the person's lien after recording. The levying officer shall mail notice to each such person, at the address given in the instructions, not less than 20 days before the date of sale.

SEC. 70. Section 904.5 of the Code of Civil Procedure is amended to read:

904.5. Appeals from the small claims division of a superior court shall be governed by the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1).

SEC. 71. Section 1052 of the Code of Civil Procedure is repealed.

SEC. 72. Section 1052.5 of the Code of Civil Procedure is repealed.

SEC. 73. Section 1060 of the Code of Civil Procedure is amended to read:

1060. Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

SEC. 74. Section 1068 of the Code of Civil Procedure is amended to read:

1068. (a) A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

(b) The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

SEC. 75. Section 1085 of the Code of Civil Procedure is amended to read:

1085. (a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person.

(b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

SEC. 76. Section 1103 of the Code of Civil Procedure is amended to read:

1103. (a) A writ of prohibition may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

(b) The appellate division of the superior court may grant a writ of prohibition directed to the superior court in a limited civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

SEC. 77. Section 1132 of the Code of Civil Procedure is amended to read:

1132. (a) A judgment by confession may be entered without action either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any superior court.

(b) A judgment by confession shall be entered only if an attorney independently representing the defendant signs a certificate that the attorney has examined the proposed judgment and has advised the defendant with respect to the waiver of rights and defenses under the confession of judgment procedure and has advised the defendant to utilize the confession of judgment procedure. The certificate shall be filed with the filing of the statement required by Section 1133.

SEC. 78. Section 1141.11 of the Code of Civil Procedure is amended to read:

1141.11. (a) In each superior court with 18 or more judges, all at-issue civil actions pending on or filed after the operative date of this chapter, other than a limited civil case, shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(b) In each superior court with fewer than 18 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(c) Each superior court may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue limited civil cases pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. This section does not apply to any action in small claims court, or to any action maintained pursuant to Section 1781 of the Civil Code or Section 1161 of this code.

(d) In each court that has adopted judicial arbitration pursuant to subdivision (c), all limited civil cases pending on or after July 1, 1990, that involve a claim for money damages against a single defendant as a result of a motor vehicle collision, except those heard in the small claims division, shall be submitted to arbitration within 120 days of the filing of the defendant's answer to the complaint (except as may be extended by the court for good cause) before an arbitrator selected by the court, subject to disqualification for cause as specified in Sections 170.1 and 170.6.

The court may provide by local rule for the voluntary or mandatory use of case questionnaires, established under Section 93, in any proceeding subject to these provisions. Where local rules provide for the use of case questionnaires, the questionnaires shall be exchanged by the parties upon the defendant's answer and completed and returned within 60 days.

For the purposes of this subdivision, the term ''single defendant'' means (1) an individual defendant, whether a person or an entity, (2) two or more persons covered by the same insurance policy applicable to the motor vehicle collision, or (3) two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision. The naming of one or more cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not subject to the provisions of this subdivision.

(e) No local rule of a superior court providing for judicial arbitration may dispense with the conference required pursuant to Section 1141.16.

SEC. 79. Section 1141.12 of the Code of Civil Procedure is amended to read:

1141.12. (a) In each superior court in which arbitration is required pursuant to subdivision (a) of Section 1141.11, or pursuant to a local rule adopted under subdivision (b) of Section 1141.11, upon stipulation of the parties, any at-issue civil actions shall be submitted to arbitration regardless of the amount in controversy.

(b) In all other superior courts, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes:

(i) Any cause upon stipulation of the parties.

(ii) Upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the amount in controversy as specified in Section 1141.11.

(c) Any election by a plaintiff shall be filed no sooner than the filing of the at-issue memorandum, and no later than 90 days before trial, or at a later time if permitted by the court.

SEC. 80. Section 1141.29 of the Code of Civil Procedure is repealed.

SEC. 81. Section 1208.5 of the Code of Civil Procedure is amended to read:

1208.5. Any person having a lien upon any animal or animals under the provisions of Section 597a or 597f of the Penal Code may satisfy such lien as follows: If such lien is not discharged and satisfied, by the person responsible, within three days after the obligation becomes due, then the person holding such lien may resort to the proper court to satisfy the claim; or may, three days after the charges against the property become due, sell the property, or an undivided fraction thereof as may become necessary, to defray the amount due and costs of sale, by giving three days' notice of the sale by advertising in some newspaper published in the county, or city and county, in which the lien has attached to the property; or, if there is no paper published in the county, then by posting notices of the sale in three of the most public places in the town or county for three days previous to the sale. The notices shall contain an accurate description of the property to be sold, together with the terms of sale, which must be for cash, payable on the consummation of the sale. The proceeds of the sale shall be applied to the discharge of the lien and the costs of sale; the remainder, if any, shall be paid over to the owner, if known, and if not known shall be paid into the treasury of the humane society of the county, or city and county, wherein the sale takes place; if no humane society exists in the county, then the remainder shall be paid into the county treasury.

SEC. 82. Section 1281.5 of the Code of Civil Procedure is amended to read:

1281.5. (a) Any person who proceeds to record and enforce a claim of lien by commencement of an action pursuant to Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, shall not thereby waive any right of arbitration which that person may have pursuant to a written agreement to arbitrate, if, in filing an action to enforce the claim of lien, the claimant at the same time presents to the court an application that the action be stayed pending the arbitration of any issue, question, or dispute which is claimed to be arbitrable under the agreement and which is relevant to the action to enforce the claim of lien.

(b) The failure of a defendant to file a petition pursuant to Section 1281.2 at or before the time he or she answers the complaint filed pursuant to subdivision (a) shall constitute a waiver of that party's right to compel arbitration.

SEC. 83. Section 1420 of the Code of Civil Procedure is amended to read:

1420. At any time after two years after the death of any decedent who leaves property to which the state is entitled by reason of it having escheated to the state, the Attorney General shall commence a proceeding on behalf of the state in the Superior Court for the County of Sacramento to have it adjudged that the state is so entitled. Such action shall be commenced by filing a petition, which shall be treated as the information elsewhere referred to in this title.

There shall be set forth in such petition a description of the property, the name of the person last possessed thereof, the name of the person, if any, claiming such property, or portion thereof, and the facts and circumstances by virtue of which it is claimed the property has escheated.

Upon the filing of such petition, the court must make an order requiring all persons interested in the estate to appear and show cause, if any they have, within 60 days from the date of the order, why such estate should not vest in the state. Such order must be published at least once a week for four consecutive weeks in a newspaper published in said County of Sacramento, the last publication to be at least 10 days prior to the date set for the hearing. Upon the completion of the publication of such order, the court shall have full and complete jurisdiction over the estate, the property, and the person of everyone having or claiming any interest in the said property, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon.

If proceedings for the administration of such estate have been instituted, a copy of such order must be filed with the papers in such estate. If proceedings for the administration of any estate of any such decedent have been instituted and none of the persons entitled to succeed thereto have appeared and made claim to such property or any portion thereof, before the decree of final distribution therein is made, or before the commencement of such proceeding by the Attorney General, or if the court shall find that such persons as have appeared are not entitled to the property of such estate, or any portion thereof, the court shall, upon final settlement of the proceedings for the administration of such estate, after the payment of all debts and expenses of administration, distribute all moneys and other property remaining to the State of California.

In any proceeding brought by the Attorney General under this chapter, any two or more parties and any two or more causes of action may be joined in the same proceedings and in the same petition without being separately stated; and it shall be sufficient to allege in the petition that the decedent left no heirs to take the estate and the failure of heirs to appear and set up their claims in any such proceeding, or in any

proceedings for the administration of such estate, shall be sufficient proof upon which to base the judgment in any such proceeding or such decree of distribution.

Where proceedings for the administration of any estate have not been commenced within six months from the death of any decedent the Attorney General may direct the public administrator to commence the same forthwith.

SEC. 84. Section 1607 of the Code of Civil Procedure is amended to read:

1607. When a report is received from the Comptroller General or other proper officer of the United States, the Controller shall prepare and forward a copy thereof to the clerk of the superior court of each county within this state and the said clerk shall post such copy at the courthouse for a period of 60 days. Any person asserting an interest in property mentioned in the report may elect to claim against the United States under the laws of the United States, in which event and within 90 days following the date of initial posting by the clerk such person shall notify the Controller of the asserted interest and intention to so claim. The Controller shall omit such property from any claim by the state until such time as the asserted interest may be finally determined against the claimant. Such interest shall not thereafter be asserted against the state.

SEC. 85. Section 1609 of the Code of Civil Procedure is amended to read:

1609. Within 120 days following the date of initial posting by the clerk of the superior court, the Attorney General shall commence a proceeding by filing a petition to determine the state's right to custody of all property mentioned in such report and unclaimed within the time and in the manner provided by Section 1607. The proceeding shall be commenced and heard in the superior court in the County of Sacramento and venue shall not be affected by the provisions of Section 401, Code of Civil Procedure.

The petition shall name as respondents all persons known to have been interested and ''all persons unknown claiming any title or interest in or to the property described or referred to in the petition.'' If the records of the United States fail to disclose with reasonable certainty the identity or number of owners or claimants of specific funds or other personal property, or the extent of their interests therein, such persons may be designated and described as a class, to wit, as ''all unknown owners or claimants to the funds or property mentioned in or affected by ____,'' and, as the case may be, the petition shall identify and set forth the court actions or proceedings to the credit of which such funds or other property are held, or the accounts or other identifying references under which they are carried upon the records of the United States. The petition shall describe or refer to the property, and may include one or more items, as

the Attorney General may be advised, without prejudice to his right to commence subsequent proceedings relating to other items not included. The petition shall also state the name of the owner and his last address as known or as presumed under this chapter, and shall set forth the facts and circumstances by virtue of which it is claimed that such funds or property are subject to custody by the state. Any number of respondents may be joined whether they reside in the same or different counties, and any number of causes of action may be joined and need not be separately stated.

SEC. 86. Section 1710.20 of the Code of Civil Procedure is amended to read:

1710.20. (a) An application for entry of a judgment based on a sister state judgment shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is any of the following:

(1) The county in which any judgment debtor resides.

(2) If no judgment debtor is a resident, any county in this state.

(c) A case in which the sister state judgment amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

SEC. 87. Section 1775.1 of the Code of Civil Procedure is amended to read:

1775.1. (a) As used in this title, ''mediation'' means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) Unless otherwise specified in this title or ordered by the court, any act to be performed by a party may also be performed by his or her counsel of record.

SEC. 88. Section 2015.3 of the Code of Civil Procedure is amended to read:

2015.3. The certificate of a sheriff, marshal, or the clerk of the superior court, has the same force and effect as his or her affidavit.

SEC. 89. Section 420 of the Corporations Code is amended to read:

420. Neither a domestic nor foreign corporation nor its transfer agent or registrar is liable:

(a) For transferring or causing to be transferred on the books of the corporation to the surviving joint tenant or tenants any share or shares or other securities issued to two or more persons in joint tenancy, whether or not the transfer is made with actual or constructive knowledge of the existence of any understanding, agreement, condition or evidence that the shares or securities were held other than in joint tenancy or of a breach of trust by any joint tenant.

(b) To a minor or incompetent person in whose name shares or other securities are of record on its books or to any transferee of or transferor

to either for transferring the shares or other securities on its books at the instance of or to the minor or incompetent or for the recognition of or dealing with the minor or incompetent as a shareholder or security holder, whether or not the corporation, transfer agent or registrar had notice, actual or constructive, of the nonage or incompetency, unless a guardian or conservator of the property of the minor or incompetent has been appointed and the corporation, transfer agent or registrar has received written notice thereof.

(c) To any married person or to any transferee of such person for transferring shares or other securities on its books at the instance of the person in whose name they are registered, without the signature of such person's spouse and regardless of whether the registration indicates that the shares or other securities are community property, in the same manner as if such person were unmarried.

(d) For transferring or causing to be transferred on the books of the corporation shares or other securities pursuant to a judgment or order of a court which has been set aside, modified or reversed unless, prior to the registration of the transfer on the books of the corporation, written notice is served upon the corporation or its transfer agent in the manner provided by law for the service of a summons in a civil action, stating that an appeal or other further court proceeding has been or is to be taken from or with regard to such judgment or order. After the service of such notice neither the corporation nor its transfer agent has any duty to register the requested transfer until the corporation or its transfer agent has received a certificate of the clerk of the court in which the judgment or order was entered or made, showing that the judgment or order has become final.

(e) The Commercial Code shall not affect the limitations of liability set forth in this section. Section 1100 of the Family Code shall be subject to the provisions of this section and shall not be construed to prevent transfers, or result in liability to the corporation, transfer agent or registrar permitting or effecting transfers, which comply with this section.

SEC. 90. Section 69763.1 of the Education Code is amended to read:

69763.1. (a) If a borrower defaults on a guaranteed student loan and the lender's default claim has been paid, the Student Aid Commission shall fulfill the collection efforts required by federal law, which includes initiating a civil suit against the borrower for repayment of the loan.

(b) After the period specified in federal law for commencing action, the amount of the promissory note, plus interest and costs, may be collected by the filing of a certificate requesting judgment pursuant to subdivision (c) or by other appropriate civil action.

(c) If the loan principal, interest, and predefault and collection costs are not paid when due, and there is evidence that the borrower does not intend to pay under the terms of the promissory note or promissory notes, the commission may file in the office of the Clerk of the Superior Court of Sacramento County, or any other county, a certificate specifying the amount of the loan principal, interest, and predefault and collection costs due, the name and last known address of the individual liable for the amount due, the fact that the commission has complied with all applicable state and federal laws in the computation of the amount due, and a request that judgment be entered against the individual in the amount of the loan principal, interest, and predefault and collection costs specified in the certificate.

(d) Prior to the filing of the certificate, the commission shall, by mail, notify the individual of the amount that is due and of the opportunity for a hearing. If a hearing is requested, 10 days' notice shall be given of the time and place of the hearing, which shall be held in Sacramento County or, if properly requested, the county of residence of the person requesting the hearing. The hearing shall be conducted by a referee who shall submit findings and recommendations to the director of the commission, or an authorized representative, who shall decide the matter. The decision shall be effective upon notice to the interested parties. The director of the commission, or the authorized representative, may rescind the decision and reconsider the matter for good cause shown at any time within three years after the date the disputed loan first became due, or within one year from the hearing, whichever is later. If no hearing is requested within 15 days after mailing the notice required by this subdivision, the certificate required by subdivision (b) may be filed.

SEC. 91. Section 69763.2 of the Education Code is amended to read:

69763.2. (a) The clerk, immediately upon the filing of the certificate specified in Section 69763.1, shall enter a judgment for the people of the State of California against the individual in the amount of the loan principal, interest, and predefault and collection costs listed on the certificate. The clerk may file the judgment in the book entitled ''California Student Aid Commission Judgments.''

(b) Execution shall issue upon the judgment specified in subdivision (a) upon request of the Student Aid Commission in the same manner as execution may issue upon other judgments as prescribed in the Code of Civil Procedure.

(c) At least 10 days before executing any writ to collect, the commission shall send notice of the intent to execute upon a writ to the borrower and to any cosigners, by certified mail, to the most recent addresses maintained in the files of the commission. Any person receiving the notice of the intent to execute upon a writ may request a

hearing to contest the existence or the amount of the writ. At the request of the individual, the commission shall conduct a hearing pursuant to Section 69763.1, at which it shall be determined whether the loan principal, interest, and predefault and collection costs in the amount claimed by the commission are due and whether the individual named on the certificate is liable for the amount. If no hearing is requested, the execution shall be commenced for the garnishment of wages, the attachment of property, or other legal collection action.

SEC. 92. Section 13.5 of the Elections Code is amended to read:

13.5. (a) (1) Notwithstanding subdivision (a) of Section 13, no person shall be considered a legally qualified candidate for any of the offices set forth in subdivision (b) unless that person has filed a declaration of candidacy, nomination papers, or statement of write-in candidacy, accompanied by documentation, including, but not necessarily limited to, certificates, declarations under penalty of perjury, diplomas, or official correspondence, sufficient to establish, in the determination of the official with whom the declaration or statement is filed, that the person meets each qualification established for service in that office by the provision referenced in subdivision (b).

(2) The provision of ''documentation,'' for purposes of compliance with the requirements of paragraph (1), may include the submission of either an original, as defined in Section 255 of the Evidence Code, or a duplicate, as defined in Section 260 of the Evidence Code.

(b) This section shall be applicable to the following offices and qualifications therefor:

(1) For the office of county auditor, the qualifications set forth in Sections 26945 and 26946 of the Government Code.

(2) For the office of county district attorney, the qualifications set forth in Sections 24001 and 24002 of the Government Code.

(3) For the office of county sheriff, the qualifications set forth in Section 24004.3 of the Government Code.

(4) For the office of county superintendent of schools, the qualifications set forth in Sections 1205 to 1208, inclusive, of the Education Code.

(5) For the office of judge of the superior court, the qualifications set forth in Section 15 of Article VI of the California Constitution.

(6) For the office of county treasurer, county tax collector, or county treasurer-tax collector, the qualifications set forth in Section 27000.7 of the Government Code, provided that the board of supervisors has adopted the provisions of that section pursuant to Section 27000.6 of the Government Code.

SEC. 93. Section 325 of the Elections Code is repealed.

SEC. 94. Section 327 of the Elections Code is amended to read:

327. ''Judicial officer'' means any Justice of the Supreme Court, justice of a court of appeal, or judge of the superior court.

SEC. 95. Section 2212 of the Elections Code is amended to read:

2212. The clerk of the superior court of each county, on the basis of the records of the court, shall furnish to the chief elections official of the county, not less frequently than the first day of April and the first day of September of each year, a statement showing the names, addresses, and dates of birth of all persons who have been convicted of felonies since the clerk's last report. The elections official shall, during the first week of April and the first week of September in each year, cancel the affidavits of registration of those persons who are currently imprisoned or on parole for the conviction of a felony. The clerk shall certify the statement under the seal of the court.

SEC. 96. Section 8203 of the Elections Code is amended to read:

8203. In any county in which only the incumbent has filed nomination papers for the office of superior court judge, his or her name shall not appear on the ballot unless there is filed with the elections official, within 10 days after the final date for filing nomination papers for the office, a petition indicating that a write-in campaign will be conducted for the office and signed by 100 registered voters qualified to vote with respect to the office.

If a petition indicating that a write-in campaign will be conducted for the office at the general election, signed by 100 registered voters qualified to vote with respect to the office, is filed with the elections official not less than 83 days before the general election, the name of the incumbent shall be placed on the general election ballot if it has not appeared on the direct primary election ballot.

If, in conformity with this section, the name of the incumbent does not appear either on the primary ballot or general election ballot, the elections official, on the day of the general election, shall declare the incumbent reelected. Certificates of election specified in Section 15401 or 15504 shall not be issued to a person reelected pursuant to this section before the day of the general election.

SEC. 97. Section 11221 of the Elections Code is amended to read:

11221. The number of qualified signatures required in order to qualify a recall for the ballot shall be as follows:

(a) In the case of an officer of a city, county, school district, community college district, county board of education, or resident voting district, the number of signatures shall be equal in number to not less than the following percent of the registered voters in the electoral jurisdiction:

(1) Thirty percent if the registration is less than 1,000.

(2) Twenty-five percent if the registration is less than 10,000 but at least 1,000.

(3) Twenty percent if the registration is less than 50,000 but at least 10,000.

(4) Fifteen percent if the registration is less than 100,000 but at least 50,000.

(5) Ten percent if the registration is 100,000 or above.

(b) For purposes of this section, the number of registered voters shall be calculated as of the time of the last report of registration by the county elections official to the Secretary of State pursuant to Section 2187, and prior to the finding by the elections official or Secretary of State that no alterations are required in the form of the recall petition pursuant to Section 11042.

(c) (1) In the case of a state officer, including judges of courts of appeal and trial courts, the number of signatures shall be as provided for in subdivision (b) of Section 14 of Article II of the California Constitution. In the case of a judge of a superior court, which office has never appeared on the ballot since its creation, or did not appear on the ballot at its last election pursuant to Section 8203, the number of signatures shall be as provided in subdivision (b) of Section 14 of Article II of the California Constitution, except that the percentage shall be based on the number of votes cast within the judicial jurisdiction for the countywide office which had the least number of votes in the most recent general election in the county in which the judge holds his or her office.

(2) For purposes of this subdivision, ''countywide office'' means an elective office wholly within the county which is voted on throughout the county.

(d) In the case of a landowner voting district, signatures of voters owning at least 10 percent of the assessed value of land within the electoral jurisdiction of the officer sought to be recalled.

SEC. 98. Section 13107 of the Elections Code is amended to read:

13107. (a) With the exception of candidates for Justice of the State Supreme Court or court of appeal, immediately under the name of each candidate, and not separated from the name by any line, may appear at the option of the candidate only one of the following designations:

(1) Words designating the elective city, county, district, state, or federal office which the candidate holds at the time of filing the nomination documents to which he or she was elected by vote of the people, or to which he or she was appointed, in the case of a superior court judge.

(2) The word ''incumbent'' if the candidate is a candidate for the same office which he or she holds at the time of filing the nomination papers, and was elected to that office by a vote of the people, or, in the case of a superior court judge, was appointed to that office.

(3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal

professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents. For purposes of this section, all California geographical names shall be considered to be one word. Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.

(4) The phrase ''appointed incumbent'' if the candidate holds an office other than a judicial office by virtue of appointment, and the candidate is a candidate for election to the same office, or, if the candidate is a candidate for election to the same office or to some other office, the word ''appointed'' and the title of the office. In either instance, the candidate may not use the unmodified word ''incumbent'' or any words designating the office unmodified by the word ''appointed.'' However, the phrase ''appointed incumbent'' shall not be required of a candidate who seeks reelection to an office which he or she holds and to which he or she was appointed, as a nominated candidate, in lieu of an election, pursuant to Sections 5326 and 5328 of the Education Code or Section 7228, 7423, 7673, 10229, or 10515 of this code.

(b) Neither the Secretary of State nor any other election official shall accept a designation of which any of the following would be true:

(1) It would mislead the voter.

(2) It would suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent.

(3) It abbreviates the word ''retired'' or places it following any word or words which it modifies.

(4) It uses a word or prefix, such as ''former'' or ''ex-,'' which means a prior status. The only exception is the use of the word ''retired.''

(5) It uses the name of any political party, whether or not it has qualified for the ballot.

(6) It uses a word or words referring to a racial, religious, or ethnic group.

(7) It refers to any activity prohibited by law.

(c) If, upon checking the nomination documents, the election official finds the designation to be in violation of any of the restrictions set forth in this section, the election official shall notify the candidate by registered or certified mail return receipt requested, addressed to the mailing address appearing on the candidate's nomination documents.

(1) The candidate shall, within three days from the date of receipt of the notice, appear before the election officer or, in the case of the Secretary of State, notify the Secretary of State by telephone, and provide an alternate designation.

(2) In the event the candidate fails to provide an alternate designation, no designation shall appear after the candidate's name.

(d) No designation given by a candidate shall be changed by the candidate after the final date for filing nomination documents, except as specifically requested by the elections official as specified in subdivision (c) or as provided in subdivision (e).

(e) The designation shall remain the same for all purposes of both primary and general elections, unless the candidate, at least 98 days prior to the general election, requests in writing a different designation which the candidate is entitled to use at the time of the request.

(f) In all cases, words so used shall be printed in 8-point roman uppercase and lowercase type except that, if the designation selected is so long that it would conflict with the space requirements of Sections 13207 and 13211, the elections official shall use a type size for the designation for each candidate for that office sufficiently smaller to meet these requirements.

(g) Whenever a foreign language translation of a candidate's designation is required under the Voting Rights Act of 1965 (42 U.S.C.A. Sec. 1971), as amended, to appear on the ballot in addition to the English language version, it shall be as short as possible, as consistent as is practicable with this section, and shall employ abbreviations and initials wherever possible in order to avoid undue length.

SEC. 99. Section 13109 of the Elections Code is amended to read:

13109. The order of precedence of offices on the ballot shall be as listed below for those offices and measures that apply to the election for which this ballot is provided. Beginning in the column to the left:

(a) Under the heading, PRESIDENT AND VICE PRESIDENT:

Nominees of the qualified political parties and independent nominees for President and Vice President.

(b) Under the heading, PRESIDENT OF THE UNITED STATES:

(1) Names of the presidential candidates to whom the delegates are pledged.

(2) Names of the chairpersons of unpledged delegations.

(c) Under the heading, STATE:

(1) Governor.

(2) Lieutenant Governor.

(3) Secretary of State.

(4) Controller.

(5) Treasurer.

(6) Attorney General.

(7) Insurance Commissioner.

(8) Member, State Board of Equalization.

(d) Under the heading, UNITED STATES SENATOR:

Candidates or nominees to the United States Senate.

(e) Under the heading, UNITED STATES REPRESENTATIVE:

Candidates or nominees to the House of Representatives of the United States.

(f) Under the heading, STATE SENATOR:

Candidates or nominees to the State Senate.

(g) Under the heading, MEMBER OF THE STATE ASSEMBLY:

Candidates or nominees to the Assembly.

(h) Under the heading, COUNTY COMMITTEE:

Members of the County Central Committee.

(i) Under the heading, JUDICIAL:

(1) Chief Justice of California.

(2) Associate Justice of the Supreme Court.

(3) Presiding Justice, Court of Appeal.

(4) Associate Justice, Court of Appeal.

(5) Judge of the Superior Court.

(6) Marshal.

(j) Under the heading, SCHOOL:

(1) Superintendent of Public Instruction.

(2) County Superintendent of Schools.

(3) County Board of Education Members.

(4) College District Governing Board Members.

(5) Unified District Governing Board Members.

(6) High School District Governing Board Members.

(7) Elementary District Governing Board Members.

(k) Under the heading, COUNTY:

(1) County Supervisor.

(2) Other offices in alphabetical order by the title of the office.

(*l*) Under the heading, CITY:

(1) Mayor.

(2) Member, City Council.

(3) Other offices in alphabetical order by the title of the office.

(m) Under the heading, DISTRICT:

Directors or trustees for each district in alphabetical order according to the name of the district.

(n) Under the heading, MEASURES SUBMITTED TO THE VOTERS and the appropriate heading from subdivisions (a) through (m), above, ballot measures in the order, state through district shown above, and within each jurisdiction, in the order prescribed by the official certifying them for the ballot.

(o) In order to allow for the most efficient use of space on the ballot in counties that use a voting system, as defined in Section 362, the county elections official may vary the order of subdivisions (j), (k), (*l*), (m), and (n) as well as the order of offices within these subdivisions.

However, the office of Superintendent of Public Instruction shall always precede any school, county, or city office, and state measures shall always precede local measures.

SEC. 100. Section 13111 of the Elections Code is amended to read:

13111. Candidates for each office shall be printed on the ballot in accordance with the following rules:

(a) The names of presidential candidates to whom candidates for delegate to the national convention are pledged, and the names of chairpersons of groups of candidates for delegate expressing no preference, shall be arranged on the primary election ballot by the Secretary of State by the names of the candidates in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(b) The names of the pairs of candidates for President and Vice President shall be arranged on the general election ballot by the Secretary of State by the names of the candidates for President in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the pair appearing first in the last preceding Assembly district shall be placed last, the order of the other pairs remaining unchanged.

(c) In the case of all other offices, the candidates for which are to be voted on throughout the state, the Secretary of State shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(d) If the office is that of Representative in Congress or member of the State Board of Equalization, the Secretary of State shall arrange the names of candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for that Assembly district that has the lowest number of all the Assembly districts in which candidates are to be voted on. Thereafter, for each succeeding Assembly district in which the candidates are to be voted on, the names appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(e) If the office is that of State Senator or Member of the Assembly, the county elections official shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for

in Section 13112, unless the district encompasses more than one county, in which case the arrangement shall be made pursuant to subdivision (i).

(f) If the office is to be voted upon wholly within, but not throughout, one county, as in the case of municipal, district, county supervisor, and county central committee offices, the official responsible for conducting the election shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112.

(g) If the office is to be voted on throughout a single county, and there are not more than four Assembly districts wholly or partly in the county, the county elections official shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112 for the first supervisorial district. Thereafter, for each succeeding supervisorial district, the name appearing first for each office in the last preceding supervisorial district shall be placed last, the order of the other names remaining unchanged.

(h) If there are five or more Assembly districts wholly or partly in the county, an identical procedure shall be followed, except that rotation shall be by Assembly district, commencing with the Assembly district which has the lowest number.

(i) Except as provided in subdivision (d) of Section 13112, if the office is that of State Senator or Member of the Assembly, and the district includes more than one county, the county elections official in each county shall conduct a drawing of the letters of the alphabet, pursuant to the same procedures specified in Section 13112. The results of the drawing shall be known as a county randomized ballot and shall be used only to arrange the names of the candidates when the district includes more than one county.

(j) If the office is that of Justice of the California Supreme Court or a court of appeal, the appropriate elections officials shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112. However, the names of the judicial candidates shall not be rotated among the applicable districts.

SEC. 101. Section 300 of the Evidence Code is amended to read:

300. Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal or superior court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

SEC. 102. Section 452.5 of the Evidence Code is amended to read:

452.5. (a) The official acts and records specified in subdivisions (c) and (d) of Section 452 include any computer-generated official court records, as specified by the Judicial Council which relate to criminal convictions, when the record is certified by a clerk of the superior court

pursuant to Section 69844.5 of the Government Code at the time of computer entry.

(b) An official record of conviction certified in accordance with subdivision (a) of Section 1530 is admissible pursuant to Section 1280 to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act, condition, or event recorded by the record.

SEC. 103. Section 1061 of the Evidence Code is amended to read:

1061. (a) For purposes of this section, and Sections 1062 and 1063:

(1) ''Trade secret'' means ''trade secret,'' as defined in subdivision (d) of Section 3426.1 of the Civil Code, or paragraph (9) of subdivision (a) of Section 499c of the Penal Code.

(2) ''Article'' means ''article,'' as defined in paragraph (2) of subdivision (a) of Section 499c of the Penal Code.

(b) In addition to Section 1062, the following procedure shall apply whenever the owner of a trade secret wishes to assert his or her trade secret privilege, as provided in Section 1060, during a criminal proceeding:

(1) The owner of the trade secret shall file a motion for a protective order, or the people may file the motion on the owner's behalf and with the owner's permission. The motion shall include an affidavit based upon personal knowledge listing the affiant's qualifications to give an opinion concerning the trade secret at issue, identifying, without revealing, the alleged trade secret and articles which disclose the secret, and presenting evidence that the secret qualifies as a trade secret under either subdivision (d) of Section 3426.1 of the Civil Code or paragraph (9) of subdivision (a) of Section 499c of the Penal Code. The motion and affidavit shall be served on all parties in the proceeding.

(2) Any party in the proceeding may oppose the request for the protective order by submitting affidavits based upon the affiant's personal knowledge. The affidavits shall be filed under seal, but shall be provided to the owner of the trade secret and to all parties in the proceeding. Neither the owner of the trade secret nor any party in the proceeding may disclose the affidavit to persons other than to counsel of record without prior court approval.

(3) The movant shall, by a preponderance of the evidence, show that the issuance of a protective order is proper. The court may rule on the request without holding an evidentiary hearing. However, in its discretion, the court may choose to hold an in camera evidentiary hearing concerning disputed articles with only the owner of the trade secret, the people's representative, the defendant, and defendant's counsel present. If the court holds such a hearing, the parties' right to examine witnesses shall not be used to obtain discovery, but shall be directed solely toward the question of whether the alleged trade secret qualifies for protection.

(4) If the court finds that a trade secret may be disclosed during any criminal proceeding unless a protective order is issued and that the issuance of a protective order would not conceal a fraud or work an injustice, the court shall issue a protective order limiting the use and dissemination of the trade secret, including, but not limited to, articles disclosing that secret. The protective order may, in the court's discretion, include the following provisions:

(A) That the trade secret may be disseminated only to counsel for the parties, including their associate attorneys, paralegals, and investigators, and to law enforcement officials or clerical officials.

(B) That the defendant may view the secret only in the presence of his or her counsel, or if not in the presence of his or her counsel, at counsel's offices.

(C) That any party seeking to show the trade secret, or articles containing the trade secret, to any person not designated by the protective order shall first obtain court approval to do so:

(i) The court may require that the person receiving the trade secret do so only in the presence of counsel for the party requesting approval.

(ii) The court may require the person receiving the trade secret to sign a copy of the protective order and to agree to be bound by its terms. The order may include a provision recognizing the owner of the trade secret to be a third-party beneficiary of that agreement.

(iii) The court may require a party seeking disclosure to an expert to provide that expert's name, employment history, and any other relevant information to the court for examination. The court shall accept that information under seal, and the information shall not be disclosed by any court except upon termination of the action and upon a showing of good cause to believe the secret has been disseminated by a court-approved expert. The court shall evaluate the expert and determine whether the expert poses a discernible risk of disclosure. The court shall withhold approval if the expert's economic interests place the expert in a competitive position with the victim, unless no other experts are available. The court may interview the expert in camera in aid of its ruling. If the court rejects the expert, it shall state its reasons for doing so on the record and a transcript of those reasons shall be prepared and sealed.

(D) That no articles disclosing the trade secret shall be filed or otherwise made a part of the court record available to the public without approval of the court and prior notice to the owner of the secret. The owner of the secret may give either party permission to accept the notice on the owner's behalf.

(E) Other orders as the court deems necessary to protect the integrity of the trade secret.

(c) A ruling granting or denying a motion for a protective order filed pursuant to subdivision (b) shall not be construed as a determination that the alleged trade secret is or is not a trade secret as defined by subdivision (d) of Section 3426.1 of the Civil Code or paragraph (9) of subdivision (a) of Section 499c of the Penal Code. Such a ruling shall not have any effect on any civil litigation.

(d) This section shall have prospective effect only and shall not operate to invalidate previously entered protective orders.

SEC. 104. Section 240.5 of the Family Code is repealed.

SEC. 105. Section 4252 of the Family Code is amended to read:

4252. (a) The superior court shall appoint one or more subordinate judicial officers as child support commissioners to perform the duties specified in Section 4251. The child support commissioners' first priority always shall be to hear Title IV-D child support cases. The child support commissioners shall specialize in hearing child support cases, and their primary responsibility shall be to hear Title IV-D child support cases. Notwithstanding Section 71622 of the Government Code, the number of child support commissioner positions allotted to each court shall be determined by the Judicial Council in accordance with caseload standards developed pursuant to paragraph (3) of subdivision (b), subject to appropriations in the annual Budget Act.

(b) The Judicial Council shall do all of the following:

(1) Establish minimum qualifications for child support commissioners.

(2) Establish minimum educational and training requirements for child support commissioners and other court personnel that are assigned to Title IV-D child support cases. Training programs shall include both federal and state laws concerning child support and related issues.

(3) Establish caseload, case processing, and staffing standards for child support commissioners on or before April 1, 1997, which shall set forth the maximum number of cases that each child support commissioner can process. These standards shall be reviewed and, if appropriate, revised by the Judicial Council every two years.

(4) Adopt uniform rules of court and forms for use in Title IV-D child support cases.

(5) Offer technical assistance to courts regarding issues relating to implementation and operation of the child support commissioner system, including assistance related to funding, staffing, and the sharing of resources between courts.

(6) Establish procedures for the distribution of funding to the courts for child support commissioners, family law facilitators pursuant to Division 14 (commencing with Section 10000), and related allowable costs.

(7) Adopt rules that define the exceptional circumstances in which judges may hear Title IV-D child support matters as provided in subdivision (a) of Section 4251.

(8) Undertake other actions as appropriate to ensure the successful implementation and operation of child support commissioners in the counties.

(c) As used in this article, ''Title IV-D'' means Title IV-D of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).

SEC. 106. Section 6390 of the Family Code is repealed.

SEC. 107. Section 7122 of the Family Code is amended to read:

7122. (a) The court shall sustain the petition if it finds that the minor is a person described by Section 7120 and that emancipation would not be contrary to the minor's best interest.

(b) If the petition is sustained, the court shall forthwith issue a declaration of emancipation, which shall be filed by the clerk of the court.

(c) A declaration is conclusive evidence that the minor is emancipated.

SEC. 108. Section 7134 of the Family Code is amended to read:

7134. If the petition is sustained, the court shall forthwith issue an order voiding or rescinding the declaration of emancipation, which shall be filed by the clerk of the court.

SEC. 109. Section 8613 of the Family Code is amended to read:

8613. (a) If the prospective adoptive parent is commissioned or enlisted in the military service, or auxiliary thereof, of the United States, or of any of its allies, or is engaged in service on behalf of any governmental entity of the United States, or in the American Red Cross, or in any other recognized charitable or religious organization, so that it is impossible or impracticable, because of the prospective adoptive parent's absence from this state, or otherwise, to make an appearance in person, and the circumstances are established by satisfactory evidence, the appearance may be made for the prospective adoptive parent by counsel, commissioned and empowered in writing for that purpose. The power of attorney may be incorporated in the adoption petition.

(b) Where the prospective adoptive parent is permitted to appear by counsel, the agreement may be executed and acknowledged by the counsel, or may be executed by the absent party before a notary public, or any other person authorized to take acknowledgments including the persons authorized by Sections 1183 and 1183.5 of the Civil Code.

(c) Where the prospective adoptive parent is permitted to appear by counsel, or otherwise, the court may, in its discretion, cause an examination of the prospective adoptive parent, other interested person, or witness to be made upon deposition, as it deems necessary. The deposition shall be taken upon commission, as prescribed by the Code

of Civil Procedure, and the expense thereof shall be borne by the petitioner.

(d) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition shall be filed in the office of the clerk of the court.

(e) The provisions of this section permitting an appearance through counsel are equally applicable to the spouse of a prospective adoptive parent who resides with the prospective adoptive parent outside this state.

(f) Where, pursuant to this section, neither prospective adoptive parent need appear before the court, the child proposed to be adopted need not appear. If the law otherwise requires that the child execute any document during the course of the hearing, the child may do so through counsel.

(g) Where none of the parties appears, the court may not make an order of adoption until after a report has been filed with the court pursuant to Section 8715, 8807, 8914, or 9001.

SEC. 110. Section 8614 of the Family Code is amended to read:

8614. Upon the request of the adoptive parents or the adopted child, a clerk of the superior court may issue a certificate of adoption that states the date and place of adoption, the birthday of the child, the names of the adoptive parents, and the name the child has taken. Unless the child has been adopted by a stepparent or by a relative, as defined in subdivision (c) of Section 8714.7, the certificate shall not state the name of the birth parents of the child.

SEC. 111. Section 8702 of the Family Code is amended to read:

8702. (a) The department shall adopt a statement to be presented to the birth parents at the time a relinquishment is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parents of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child's best interest that the birth parent keep the department or licensed adoption agency to whom the child was relinquished for adoption informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department or licensed adoption agency to whom the child was relinquished for adoption in order to permit a response to inquiries concerning medical or social history.

(3) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to request the department or the licensed adoption agency to disclose the name and

address of the adoptee's birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department or to the licensed adoption agency that joined in the adoption petition.

(5) The relinquishment will be filed in the office of the clerk of the court in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the relinquishment is signed, which shall provide as follows:

"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. 112. 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 clerk of the court 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. 113. Section 8818 of the Family Code is amended to read:

8818. (a) The department shall adopt a statement to be presented to the birth parents at the time the consent to adoption is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parent of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child's best interest that the birth parents keep the department informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department in order to permit a response to inquiries concerning medical or social history.

(3) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to request the department to disclose the name and address of the adoptee's birth

parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department.

(5) The consent will be filed in the office of the clerk of the court in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the consent to adoption is signed, which shall provide as follows:

"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. 114. Section 9200 of the Family Code is amended to read:

9200. (a) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition filed in the office of the clerk of the court pursuant to this part is not open to inspection by any person other than the parties to the proceeding and their attorneys and the department, except upon the written authority of the judge of the superior court. A judge of the superior court may not authorize anyone to inspect the petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, or power of attorney or deposition or any portion of any of these documents, except in exceptional circumstances and for good cause approaching the necessitous. The petitioner may be required to pay the expenses for preparing the copies of the documents to be inspected.

(b) Upon written request of any party to the proceeding and upon the order of any judge of the superior court, the clerk of the court shall not provide any documents referred to in this section for inspection or copying to any other person, unless the name of the child's birth parents

or any information tending to identify the child's birth parents is deleted from the documents or copies thereof.

(c) Upon the request of the adoptive parents or the child, a clerk of the court may issue a certificate of adoption that states the date and place of adoption, the child's birth date, the names of the adoptive parents, and the name the child has taken. Unless the child has been adopted by a stepparent, the certificate shall not state the name of the child's birth parents.

SEC. 115. Section 17521 of the Family Code is amended to read:

17521. The order to show cause or notice of motion described in subdivision (j) of Section 17520 shall be filed and heard in the superior court.

SEC. 116. Section 210 of the Fish and Game Code is amended to read:

210. (a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 206, subdivision (e) of Section 207, and subdivision (d) of Section 208 to each county clerk, each district attorney, and each judge of the superior court in the state.

(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.

(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.

(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

SEC. 117. Section 30801 of the Food and Agricultural Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be:

(1) Stamped with the name of the county and the year of issue.

(2) Unless the board of supervisors designates the animal control department to issue the licenses, issued by the county clerk directly or

through judges of the superior court, to owners of dogs, that make application.

(b) The licenses shall be issued for a period of not to exceed two years.

(c) In addition to the authority provided in subdivisions (a) and (b), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination.

SEC. 118. Section 31503 of the Food and Agricultural Code is amended to read:

31503. If any person sustains any loss or damage to any livestock or poultry which is caused by a dog, or if any livestock of any person is necessarily destroyed because of having been bitten by a dog, the person may file a complaint in the superior court of the county within which the damage occurred. A proceeding under this section is a limited civil case.

SEC. 119. Section 31621 of the Food and Agricultural Code is amended to read:

31621. If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the superior court of the county wherein the dog is owned or kept for a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious. A proceeding under this section is a limited civil case. A city or county may establish an administrative hearing procedure to hear and dispose of petitions filed pursuant to this chapter. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The chief officer of the public pound or animal control department or head of the local law enforcement agency shall notify the owner or keeper of the dog that a hearing will be held by the superior court or the hearing entity, as the case may be, at which time he or she may present evidence as to why the dog should not be declared potentially dangerous or vicious. The owner or keeper of the dog shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt

requested. The hearing shall be held promptly within no less than five working days nor more than 10 working days after service of notice upon the owner or keeper of the dog. The hearing shall be open to the public. The court may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. A jury shall not be available. The court may find, upon a preponderance of the evidence, that the dog is potentially dangerous or vicious and make other orders authorized by this chapter.

SEC. 120. Section 31622 of the Food and Agricultural Code is amended to read:

31622. (a) After the hearing conducted pursuant to Section 31621, the owner or keeper of the dog shall be notified in writing of the determination and orders issued, either personally or by first-class mail postage prepaid by the court or hearing entity. If a determination is made that the dog is potentially dangerous or vicious, the owner or keeper shall comply with Article 3 (commencing with Section 31641) in accordance with a time schedule established by the chief officer of the public pound or animal control department or the head of the local law enforcement agency, but in no case more than 30 days after the date of the determination or 35 days if notice of the determination is mailed to the owner or keeper of the dog. If the petitioner or the owner or keeper of the dog contests the determination, he or she may, within five days of the receipt of the notice of determination, appeal the decision of the court or hearing entity of original jurisdiction. The fee for filing an appeal shall be twenty dollars ($20), payable to the clerk of the court. If the original hearing held pursuant to Section 31621 was before a hearing entity other than a court of the jurisdiction, appeal shall be to the superior court. If the original hearing was held in the superior court, appeal shall be to the superior court before a judge other than the judge who originally heard the petition. The petitioner or the owner or keeper of the dog shall serve personally or by first-class mail, postage prepaid, notice of the appeal upon the other party.

(b) The court hearing the appeal shall conduct a hearing de novo, without a jury, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The hearing shall be conducted in the same manner and within the time periods set forth in Section 31621 and subdivision (a). The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The issue shall be decided upon the preponderance of the evidence. If the court rules the dog to be potentially dangerous or vicious, the court may establish a time schedule to ensure compliance with this chapter, but in

no case more than 30 days subsequent to the date of the court's determination or 35 days if the service of the judgment is by first-class mail.

SEC. 121. Section 945.3 of the Government Code is amended to read:

945.3. No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court.

Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a superior court.

For the purposes of this section, charges pending before a superior court do not include appeals or criminal proceedings diverted pursuant to Chapter 2.5 (commencing with Section 1000), Chapter 2.6 (commencing with Section 1000.6), Chapter 2.7 (commencing with Section 1001), Chapter 2.8 (commencing with Section 1001.20), or Chapter 2.9 (commencing with Section 1001.50) of Title 6 of Part 2 of the Penal Code.

Nothing in this section shall prohibit the filing of a claim with the board of a public entity, and this section shall not extend the time within which a claim is required to be presented pursuant to Section 911.2.

SEC. 122. Section 1770 of the Government Code is amended to read:

1770. An office becomes vacant on the happening of any of the following events before the expiration of the term:

(a) The death of the incumbent.

(b) An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.

(c) His or her resignation.

(d) His or her removal from office.

(e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.

(f) His or her absence from the state without the permission required by law beyond the period allowed by law.

(g) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.

(h) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, ''trial court judgment'' means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.

(i) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.

(j) The decision of a competent tribunal declaring void his or her election or appointment.

(k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.

(*l*) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

SEC. 123. 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.

SEC. 124. Section 6103.5 of the Government Code is amended to read:

6103.5. (a) Whenever a judgment is recovered by a public agency named in Section 6103, either as plaintiff or petitioner or as defendant or respondent, in any action or proceeding to begin, or to defend, which under the provisions of Section 6103 no fee for any official service rendered by the clerk of the court, including, but not limited to, the services of filing, certifying, and preparing transcripts, nor fee for service of process or notices by a sheriff or marshal has been paid, other than in a condemnation proceeding, quiet title action, action for the forfeiture of a fish net or nets or action for the forfeiture of an automobile or automobiles, the clerk entering the judgment shall include as a part of the judgment the amount of the filing fee, and the amount of the fee for the service of process or notices which would have been paid but for Section 6103, designating it as such. The clerk entering the judgment shall include as part of the judgment the amount of the fees for certifying

and preparing transcripts if the court has, in its discretion, ordered those fees to be paid.

(b) When an amount equal to the clerk's fees and the fees for service of process and notices is collected upon a judgment pursuant to subdivision (a), those amounts shall be due and payable to the clerk and the serving officer respectively. The clerk shall ascertain from the serving officer's return the amount of fees he or she would have charged had it not been for the provisions of Section 6103. Remittances of the amounts so due shall be made within 45 days by the fiscal officer of the plaintiff or petitioner or respondent or defendant in the action or proceeding unless those fees have been collected by the levying officer and remitted to the court. No interest shall be computed or charged on the amount of the fee. If the judgment pursuant to subdivision (a) consists only of the amount of the filing fee, it shall be at the public agency's discretion whether to seek collection. If the public agency determines not to seek collection of the filing fee, it shall notify the clerk and no further action as provided for in this section may be brought against the public agency.

(c) If the remittance is not received within 45 days of the filing of a partial satisfaction of judgment in an amount at least equal to the fees due to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law and except as provided in subdivision (b), the court may issue a writ of execution for recovery from the public agency of those fees plus the fees for issuance and execution of the writ plus a fee for administering this section.

(d) The superior court shall set a fee, not to exceed the actual costs of administering this section, up to a maximum of twenty-five dollars ($25), which shall be added to the writ of execution.

SEC. 125. Section 6520 of the Government Code is amended to read:

6520. (a) Notwithstanding any other provision of law, the Board of Supervisors of San Diego County and the City Council of the City of San Diego may create by joint powers agreement, the San Diego Courthouse, Jail, and Related Facilities Development Agency, hereinafter referred to as ''the agency,'' which shall have all the powers and duties of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code as well as all the powers of a joint powers agency pursuant to this chapter, with respect to the acquisition, construction, improvement, financing, and operation of a combined courthouse-criminal justice facility, including a parking garage, and other related improvements, hereinafter referred to as ''the facility.''

(b) The agency shall be governed by a board of directors composed of one city council member and one citizen designated by the San Diego

City Council; one supervisor and one citizen designated by the San Diego County Board of Supervisors; two citizens appointed by the presiding judge of the superior court effective during his or her term of presidence; the Sheriff of San Diego County; the president or designee of the San Diego County Bar Association; and one citizen designated by the District Attorney of San Diego County; all of whom shall serve at the pleasure of the appointing power and without further compensation.

(c) The City of San Diego and the County of San Diego shall each have the power of nonconcurrence over any action taken by the board of directors, provided that a motion for reconsideration is made by a member of the board of directors immediately following the vote of the board of directors approving such action, and further provided that the city council or the board of supervisors votes to nullify such action, by a majority vote of its membership, within 30 days.

(d) The county may transfer to the agency county funds in either a Courthouse Temporary Construction Fund or a County Criminal Justice Facility Temporary Construction Fund, or both, to be expended for purposes of the facility.

(e) In addition to those funds, (1) the agency's governing body may allot up to 15 percent of the fines and forfeitures received by the City of San Diego pursuant to Section 1463 of the Penal Code from the service area of the downtown courts, as defined by the agency, for expenditure by the agency for the purposes specified in subdivision (a); (2) the City of San Diego and the County of San Diego may allot to the agency any state or federal funds received for purposes of the facility; and (3) the agency may expend any rent, parking fees, or taxes received on leasehold interests in the facility, for the purposes specified in subdivision (a).

SEC. 126. Section 6701 of the Government Code is amended to read:

6701. If January 1st, February 12th, March 31st, July 4th, September 9th, November 11th, or December 25th falls upon a Sunday, the Monday following is a holiday. If November 11th falls upon a Saturday, the preceding Friday is a holiday.

If any holiday designated in Section 6700 falls on a Saturday, the board of supervisors of any county may by ordinance or resolution provide that an alternate day shall be a holiday for the employees of the county, except those employees of the county working as court attachés.

SEC. 127. Section 6704 of the Government Code is amended to read:

6704. The legislative body of any city or district may, by ordinance or resolution, provide that every Saturday is a holiday as respects the transaction of business in the public offices of such cities or districts except that provision shall be made for the continuance of essential public services such as police and fire protection.

SEC. 128. Section 12989 of the Government Code is amended to read:

12989. (a) If an accusation is issued under Section 12981, a complainant, a respondent, or an aggrieved person on whose behalf a complaint is filed may elect, in lieu of an administrative proceeding under Section 12981, to have the claims asserted in the charge adjudicated in a civil action under this part.

(b) An election under this section may be made within 20 days after the service of the accusation, and not later than 20 days after service of the complaint to the respondent. A notice of election shall be filed with the department, and the department shall serve a copy of the notice to the director, the respondent, and the aggrieved person on whose behalf the complaint is filed. The notice shall be filed and served on all parties to the complaint in accordance with the procedures established by Section 12962.

(c) If either party serves a notice of election upon the department, as prescribed, the department shall, within 30 days after service of the notice of the election, dismiss the accusation. The department shall itself, or at its election through the Attorney General, within 30 days of receipt of the notice of election, file a civil action with the proper superior court in its name or on behalf of the aggrieved person as a real party in interest. In bringing a civil or administrative action, or pursuing subsequent appeals of those actions, the department or the Attorney General shall, in its representation of an aggrieved person's interests, comply with the Rules of Professional Conduct of the State Bar of California. The action may be filed in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to that practice are maintained and administered, or in the county in which the aggrieved person would have resided in the housing accommodation. If the respondent is not found within that county, the action may be filed in the county of the respondent's residence or principal office.

(d) Any person aggrieved with respect to the issues to be determined in a civil action filed under this part may intervene as of right in that civil action.

(e) If an election is not made pursuant to this section, the director shall maintain an administrative proceeding based on the charges in the complaint in accordance with the procedures set forth in Section 12981.

(f) The director or his or her designated representative shall be available for consultation concerning any legal issues raised by the Attorney General that relate to evidentiary or tactical matters relevant to any civil action brought under this part.

SEC. 129. Section 15422 of the Government Code is amended to read:

15422. Where a county public defender has refused, or is otherwise reasonably unable to represent a person because of conflict of interest or other reason, the State Public Defender is authorized to represent such person, pursuant to a contract with the county which provides for reimbursement of costs, where the person is not financially able to employ counsel and is charged with the commission of any contempt or offense triable in the superior court at all stages of any proceedings relating to such charge, including restrictions on liberty resulting from such charge. Except in cases of representation under subdivision (d) of Section 15421, the State Public Defender may decline to represent such person by filing a letter with the appropriate court citing Section 15420 of this chapter.

SEC. 130. Section 16265.2 of the Government Code is amended to read:

16265.2. As used in this chapter:

(a) ''County'' means a county and a city and county.

(b) ''County costs of eligible programs'' means the amount of money other than federal and state funds, as reported by the State Department of Social Services to the Department of Finance or as derived from the Controller's ''Annual Report of Financial Transactions Concerning Counties of California,'' that each county spends for each of the following:

(1) The Aid to Families with Dependent Children for Family Group and Unemployed Parents programs plus county administrative costs for each program minus the county's share of child support collections for each program, as described in Sections 10100, 10101, and 11250 of, and subdivisions (a) and (b) of Section 15200 of, the Welfare and Institutions Code.

(2) The county share of the cost of service provided for the In-Home Supportive Services Program, as described in Sections 10100, 10101, and 12306 of the Welfare and Institutions Code.

(3) The community mental health program, as described in Section 5705 of the Welfare and Institutions Code.

(4) The county share of the Food Stamp Program, as described in Section 18906.5 of the Welfare and Institutions Code.

(c) ''County costs of justice programs'' means the amount of money other than federal and state funds, as reported in the Controller's ''Annual Report of Financial Transactions Concerning Counties of California,'' that each county spends for each of the following:

(1) Superior courts.

(2) District attorney.

(3) Public defender.

(4) Probation.

(5) Correctional facilities.

''County costs of justice programs'' does not include any costs eligible for reimbursement to the county pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3.

(d) ''General purpose revenues'' means revenues received by a county whose purpose is not restricted by state law to a particular purpose or program, as reported in the Controller's ''Annual Report of Financial Transactions Concerning Counties of California.'' ''General purpose revenues'' are limited to all of the following:

(1) Property tax revenues, exclusive of those revenues dedicated to repay voter approved indebtedness, received pursuant to Part 0.5 (commencing with Section 50) of Division 1 of the Revenue and Taxation Code, or received pursuant to Section 33401 of the Health and Safety Code.

(2) Sales tax revenues received pursuant to Part 1 (commencing the Section 6001) of Division 2 of the Revenue and Taxation Code.

(3) Any other taxes levied by a county.

(4) Fines and forfeitures.

(5) Licenses, permits, and franchises.

(6) Revenue derived from the use of money and property.

(7) Vehicle license fees received pursuant to Section 11005 of the Revenue and Taxation Code.

(8) Trailer coach fees received pursuant to Section 11003.3 of the Revenue and Taxation Code.

(9) Revenues from cigarette taxes received pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code.

(10) Revenue received as open-space subventions pursuant to Chapter 3 (commencing with Section 16140) of Part 1.

(11) Revenue received as homeowners' property tax exemption subventions pursuant to Chapter 2 (commencing with Section 16120) of Part 1.

(12) General revenue sharing funds received from the federal government.

''General purpose revenues'' does not include revenues received by a county pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3.

SEC. 131. Section 20437 of the Government Code is amended to read:

20437. ''County peace officer'' shall also include the constable and each regularly employed deputy constable, marshal and each regularly employed deputy marshal who serves the superior court and he or she shall receive credit for service as a peace officer for any time he or she served as constable or deputy constable of a township or justice court or marshal or deputy marshal of a municipal court in the same county.

The provisions of this section shall not apply to the employees of any contracting agency nor to any such agency unless and until the contracting agency elects to be subject to the provisions of this section by amendment to its contract with the board, made as provided in Section 20474 or by express provision in its contract with the board.

SEC. 132. Section 20440 of the Government Code is amended to read:

20440. ''County peace officer'' shall also include employees of the sheriff employed to attend sessions of the superior or former municipal courts and preserve order in the courtrooms, to guard and maintain the security of prisoners during court appearances, or to summon jurors and take responsibility for them while they are deliberating or absent from the courtroom. It shall not include persons employed as clerks, typists, teachers, instructors or psychologists.

This section shall not apply to any contracting agency nor to the employees of a contracting agency until the agency elects to be subject to this section by amendment to its contract with the board, made as provided in Section 20474 or by express provision in its contract with the board.

SEC. 133. Section 23220 of the Government Code is amended to read:

23220. On and after the effective date of the boundary change, the superior court in each affected county shall retain jurisdiction in all cases pending in a session of that court.

SEC. 134. Section 23296 of the Government Code is repealed.

SEC. 135. Section 23396 of the Government Code is amended to read:

23396. The Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8) applies to the superior court and superior court employees in a proposed county, except that preference in appointment shall be given to those persons serving a session of the superior court located within the boundaries of the proposed county immediately prior to its creation.

SEC. 136. Section 23398 of the Government Code is repealed.

SEC. 137. Section 23579 of the Government Code is repealed.

SEC. 138. Section 25100.5 of the Government Code is amended to read:

25100.5. The board of supervisors of any county may provide by ordinance that the clerk of the board of supervisors may be appointed by the board in the same manner as other county officers are appointed. In such counties, the county clerk is not ex officio clerk of the board of supervisors.

The clerk of the board of supervisors shall perform those duties prescribed by law for the county clerk as ex officio clerk of the board of

supervisors or for the clerk of the board of supervisors and such additional duties as the board of supervisors shall prescribe by ordinance. Such person may perform all the duties vested in the county clerk other than those vested in the county clerk as registrar of voters and may take acknowledgments and administer and certify oaths in the performance of such person's official duties.

SEC. 140. Section 26608.3 of the Government Code is amended to read:

26608.3. (a) In Shasta County, the board of supervisors by ordinance or resolution may transfer from the sheriff to the marshal of the Shasta County Superior Court the duty to serve all writs, notices and other process issued by any state court, or other competent authority.

(b) After adoption of the ordinance or resolution pursuant to subdivision (a), and notwithstanding any other provision of law, in Shasta County the marshal shall have the duty to serve all writs, notices, and other process issued by any state court or other competent authority, and the sheriff shall be relieved of any obligation imposed by Section 26608 and any liability imposed by Section 26663 or 26664.

(c) Nothing in this section shall be construed as limiting the responsibility or authority of a private person or registered process server from serving process and notices in the manner prescribed by law, nor shall it limit the authority of the sheriff or any other peace officer to serve warrants of arrest or other process specifically directed by a court to the sheriff or any other peace officer.

SEC. 141. Section 26608.4 of the Government Code is repealed.

SEC. 142. Section 26608.5 of the Government Code is repealed.

SEC. 143. Section 26625 of the Government Code is amended to read:

26625. This article shall be known and may be cited as the Contra Costa County Court Services Consolidation Act of 1988.

SEC. 144. Section 26625.1 of the Government Code is repealed.

SEC. 145. Section 26625.2 of the Government Code is amended to read:

26625.2. There is a court security bureau within the Contra Costa County Sheriff's Department to serve the superior court. The relationship between the sheriff's department and the court security bureau shall be similar to that which exists between the Sheriff's Department of Contra Costa County and certain cities in the county that contract for police services.

SEC. 146. Section 26625.3 of the Government Code is amended to read:

26625.3. There is a Court Security Oversight Committee consisting of five superior court judges appointed by the presiding judge. The

duties of the committee shall be those prescribed by this article, and include, but are not limited to, the following:

(a) To approve all transfers out of and into the court security bureau.

(b) To approve staffing levels and the recommended budget prior to submission to the Judicial Council.

(c) To approve security measures and plans prepared by the sheriff, through the court security bureau commander.

(d) Notwithstanding any other provisions of law, the sheriff shall provide bailiffing, court security, and prisoner holding in the Superior Court of Contra Costa County.

SEC. 147. Section 26625.4 of the Government Code is amended to read:

26625.4. (a) The sheriff shall be the appointing authority for all court security bureau positions and employees.

(b) The selection, appointment, and removal of management heads of the court security bureau shall be made by a majority vote of the superior court judges of Contra Costa County from a list of qualified lieutenants submitted by the sheriff.

SEC. 148. Section 26625.10 of the Government Code is repealed.

SEC. 149. Section 26625.11 of the Government Code is repealed.

SEC. 150. Section 26625.12 of the Government Code is repealed.

SEC. 151. Section 26625.13 of the Government Code is repealed.

SEC. 152. Section 26625.14 of the Government Code is repealed.

SEC. 153. Section 26625.15 of the Government Code is repealed.

SEC. 154. Article 1.5 (commencing with Section 26630) of Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code is repealed.

SEC. 155. Section 26638.2 of the Government Code is amended to read:

26638.2. Notwithstanding any other provision of law, the Board of Supervisors of the County of Sacramento may, by ordinance, abolish the office of marshal of the municipal court and consolidate the services and personnel of the Sacramento County Marshal's Department into the Sacramento County Sheriff's Department.

Upon the effective date of such a consolidation ordinance, Sections 74194 and 74195 shall cease to be operative, and Sections 26638.3 to 26638.11, inclusive, shall become operative and shall continue in full force and effect during the period of consolidation.

SEC. 156. Section 26638.4 of the Government Code is amended to read:

26638.4. Notwithstanding the provisions of Sections 26603, 26608, and 26665, or any other provision of law, the sheriff shall provide to the superior court within the County of Sacramento all of the following:

(a) Notice and process services, including the service of summons, subpoenas, warrants, and other civil and criminal process.

(b) Court security services, including prisoner transportation services, prisoner escort services, bailiff services, courthouse and other court security services, and the execution of court orders and bench warrants requiring the immediate presence in court of a defendant or witness.

SEC. 157. Section 26638.5 of the Government Code is amended to read:

26638.5. The sheriff shall provide, within the limits of the resources at his or her disposal, notice and process and court security services to the superior court of at least as high a quality as were provided preceding the abolition and consolidation. The sheriff shall designate a position assigned to the administration of notice and process service as a court liaison officer whose duty it shall be to advise and confer with the court respecting the quality of notice and process services.

SEC. 158. Section 26638.6 of the Government Code is amended to read:

26638.6. There is hereby created as a separate unit within the sheriff's department a court security services unit, the functions of which shall be to provide to the superior court within Sacramento County prisoner transportation services, prisoner escort services, court control, courthouse and other court building security, bailiff services, and the execution of court orders and bench warrants requiring the immediate presence in court of a defendant or witness. All sheriff's personnel responsible for the delivery of these services shall be assigned to the court security services unit. The sheriff shall provide all security services to the court through that unit.

SEC. 159. Section 26638.7 of the Government Code is amended to read:

26638.7. The court security services unit shall be headed by a chief deputy who reports directly to the sheriff through the undersheriff, and whose administrative offices are situated at such location as the presiding judge of the superior court may direct.

The chief deputy shall be exempt from civil service, and shall not be a member of the county's classified service. The chief deputy shall be appointed by the sheriff from among Sacramento County employees who are assigned to the sheriff's department, and who are qualified peace officers. The person appointed chief deputy shall serve in that office at the individual pleasures of the sheriff and judges of the superior court. The chief deputy shall be subject to release from that office at the will of either the sheriff, or the judges of the superior court, as reflected by a majority vote of the judges. A person released from the office of chief deputy shall be returned to the highest salaried county class which that person occupied preceding his or her appointment to the office of chief deputy. The chief deputy, during the period he or she occupies that office,

shall be subject to suspension or dismissal from county employment at the sole discretion of the sheriff, subject to those county standards, procedures, and limitations as are applicable to county employees within the classified service.

Notwithstanding the provisions of the preceding paragraph, the first occupant of the office of chief deputy shall be the person who occupied the office of Sacramento County Marshal immediately preceding the effective date of the abolition of that office and consolidation. The first occupant shall be subject to release from that office and suspension or dismissal from county employment in accordance with the same terms, conditions, and procedures as are prescribed above. In the event the first occupant of the office of chief deputy is released from that office, he or she shall be assigned, at the discretion of the sheriff, to any existing vacancy in the classes of sheriff's captain, sheriff's lieutenant, sheriff's sergeant or deputy sheriff, at a salary equal to that which he or she was receiving immediately preceding the effective date of release from the chief deputy office. Upon assignment to such a class, the first occupant shall immediately acquire permanent civil service status, and shall thereafter be subject to discipline or other adverse employment action subject to the same regulations and procedures as are applicable to other classified personnel occupying the same class.

The office of chief deputy, court security services, is created as one whose principal function is to serve the superior court, and is assigned solely for organizational purposes to the sheriff's department in order to promote the efficient utilization of personnel resources and preserve unity of command in the delivery of peace officer services. The chief deputy is an employee of Sacramento County for all purposes.

SEC. 160. Section 26638.8 of the Government Code is amended to read:

26638.8. The sheriff, through the chief deputy, court security services, shall prepare and present for approval by the superior court, as expressed by a majority vote of the judges, written policies prescribing procedures and methods for the adequate and prompt delivery of court security services. The policies shall contain such elements as the court may prescribe, including, but not limited to:

(a) The transportation of prisoners in a manner which assures timely production at court hearings, within the limits of personnel resources at the disposal of the chief deputy, court security services.

(b) The approval by individual superior court judges of the identity of bailiffs assigned on a regular or continuing basis to the courtrooms of those judges.

(c) The organizational plan for the court security services unit in relation to the allocation of staffing levels to various functions of the court security services unit, within the limits of personnel resources at

the disposal of the chief deputy, court security services, including the regular assignment of one bailiff to each permanent sitting judge, commissioner and referee.

(d) The filling with reasonable dispatch of positions which become vacant due to employment termination, leave or incapacity; and, in the event of vacancies caused by the long-term incapacity of a sworn officer, that the sheriff make his or her best effort to assign the vacant position elsewhere within the department in a manner which makes available another sworn officer for court duties.

(e) With the foregoing exceptions, the reservation of discretion to the chief deputy, court security services, to assign, direct, and control the personnel of his or her unit.

Amendments of the policies shall be subject to advance approval by the court in the same manner as the court approves the original policies.

SEC. 161. Section 26638.9 of the Government Code is amended to read:

26638.9. The superior court shall bring any complaints regarding the sheriff's performance under this article and any written policies adopted pursuant hereto to the attention of the sheriff, and shall cooperate with the sheriff to resolve them. The court shall also actively participate and cooperate in the preparation and presentation of all budget requests for the court security services unit. The budget for the unit shall be prescribed from year to year by the board of supervisors through adoption of the annual budget. During any budget year, the staffing for the unit may be adjusted within budgeted resources and personnel classifications only with the approval of the court under policies adopted pursuant to subdivisions (c) and (d) of Section 26638.8.

The sheriff shall not transfer or otherwise divert from the court security services unit personnel or other resources allocated to that unit by the annual final budget approved by the board of supervisors, except on a temporary basis in the event of a sudden and unforeseen emergency requiring the immediate commitment of significant resources in relation to other functions performed by the sheriff.

That organization plan for the court security services unit and the level of staffing and hours of staffing services prescribed therein set forth in that document entitled ''Sacramento County Court Security Services Unit, Organization Plan,'' dated June 1, 1985, on file with the clerk of the Board of Supervisors of the County of Sacramento, shall, at minimum, be maintained during the 1985–86 fiscal year from and after the effective date of the abolition and consolidation authorized by this article; and the levels of staffing and hours of staffing services shall be subject to modification, increase, or decrease by the board of supervisors in future fiscal years.

SEC. 162. Section 26638.10 of the Government Code is amended to read:

26638.10. In the event that the superior court concludes by majority vote of its members that the sheriff has substantially failed to comply with any term of this article or written policies adopted hereunder, the court may request that the board of supervisors form and fund an independent review team to review the sheriff's compliance with this article or policies and report thereon. The board shall form and fund such review. The review team shall be selected by four persons who are the presiding judge of the court, county executive, sheriff, and a disinterested member of the public selected by the board.

(a) The sheriff shall take all necessary reasonable steps to remedy any violation of this article or policies adopted hereunder found by the review team. The failure of the sheriff to take such steps and violations of this article or policies adopted hereunder shall be reviewable in an action brought by the court requesting formation of the team under Section 1085 of the Code of Civil Procedure.

(b) Any findings by the review team relating to understaffing, insufficient or inadequate facilities, insufficient or inadequate equipment or appliances, or any other matter requiring as a remedy the appropriation or expenditure of public funds by the board of supervisors shall be advisory only, and shall not be enforceable by mandate or any other judicial proceeding against the county or board of supervisors.

The provisions of this section shall not be deemed to constitute an exclusive remedy, an administrative remedy which must be exhausted or to otherwise bar any other remedy which may be available to the court under this article or any other laws for a violation of the provisions of this article or written policies adopted hereunder.

SEC. 163. Section 26638.11 of the Government Code is amended to read:

26638.11. Neither this article nor any provision hereof, including Section 26638.10, shall be deemed in any manner to limit or otherwise impair the legal power vested by other laws in the superior court within Sacramento County to secure proper provision of court-related services.

SEC. 164. Section 26638.12 is added to the Government Code, to read:

26638.12. (a) This article shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 165. Section 26639 of the Government Code is repealed.

SEC. 166. Section 26639 is added to the Government Code, to read:

26639. This article applies to the abolition of the marshal's office and the consolidation of court-related services within the sheriff's office in Los Angeles County.

SEC. 167. Section 26639.1 of the Government Code is repealed.

SEC. 168. Section 26639.2 of the Government Code is amended to read:

26639.2. The courtroom assignment of bailiffs in the Los Angeles County Superior Court after consolidation pursuant to this article shall be determined by the presiding judge and the bailiff's management representative; or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned, the bailiff's management representative, and with the bargaining unit of the bailiff employee, if the employee is represented.

It is the intent of the Legislature, in enacting this section, to ensure that courtroom assignments are made in a manner which best assures that the interests of the affected judge or commissioner and bailiff are protected.

SEC. 169. Section 26639.3 of the Government Code is amended to read:

26639.3. (a) All county service or service by employees of the marshal's office on the effective date of the consolidation under this article shall be counted toward seniority in the sheriff's office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(b) No employee of the marshal's office or the sheriff's office on the effective date of the consolidation under this article shall lose peace officer status, be demoted, or otherwise adversely affected as a result of the consolidation.

SEC. 170. Section 26639.7 is added to the Government Code, to read:

26639.7. (a) This article shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 171. Section 26665 of the Government Code is amended to read:

26665. All writs, notices, or other process issued by superior courts in civil actions or proceedings may be served by any duly qualified and acting marshal or sheriff of any county in the state, subject to the Code of Civil Procedure.

SEC. 172. Section 26667 of the Government Code is repealed.

SEC. 173. Section 26668 of the Government Code is repealed.

SEC. 174. Section 26671.1 of the Government Code is amended to read:

26671.1. Notwithstanding any other provision of law, the Board of Supervisors of Santa Barbara County may, by ordinance, abolish the office of Marshal of Santa Barbara County and the Santa Barbara County Marshal's Office and consolidate the services and personnel of the Santa Barbara County Marshal into the Santa Barbara County Sheriff's Department.

Upon the effective date of that consolidation ordinance, there shall be established within the Santa Barbara County Sheriff's Department a unit designated as the court services division. The Sheriff of Santa Barbara County shall be responsible for the management and operation of that unit, in accordance with this article.

SEC. 175. Section 26671.4 of the Government Code is amended to read:

26671.4. Notwithstanding any other provision of law, upon consolidation the sheriff shall provide to the superior court within Santa Barbara County the following services:

(a) Court security services, including prisoner transportation services, prisoner escort services, bailiff services, courthouse and other security services, and the execution of court orders and bench warrants requiring the immediate presence in court of a defendant or witness.

(b) Notice and process services, including service of summons, subpoenas, warrants, and other civil and criminal process.

SEC. 176. Section 26671.5 of the Government Code is amended to read:

26671.5. (a) The sheriff shall provide, within the limits of the resources at his or her disposal, those services enumerated in Section 26671.4, to the superior court of at least as high a quality as were provided preceding the abolition and consolidation. In no event shall the resources committed to those services be less than necessary for the proper functioning of the Santa Barbara County Superior Court.

(b) Upon the effective date of consolidation, the regular assignment of bailiffs to individual courtrooms shall be made by the commander of the court services division with the concurrence of the individual judicial officer in whose courtroom the assignment is to be made.

SEC. 177. Section 26671.6 of the Government Code is amended to read:

26671.6. (a) Effective upon consolidation, there shall be created a Court Services Oversight Committee consisting of the presiding judge of the superior court and one judge to be selected by the sheriff.

(b) Members of the Court Services Oversight Committee shall serve for a term of two years, or as otherwise designated by the appointing authorities.

(c) The duties of the Court Services Oversight Committee shall be those prescribed by this article.

SEC. 178. Section 26671.8 of the Government Code is amended to read:

26671.8. Nothing in this article shall be deemed in any manner to limit or otherwise impair the legal power vested by other laws in the superior court within Santa Barbara County to secure proper provision of court-related services.

SEC. 179. Section 26672 is added to the Government Code, to read:

26672. (a) This article shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 180. Section 26800 of the Government Code is repealed.

SEC. 181. Section 26827.1 of the Government Code is amended to read:

26827.1. In Los Angeles County, whenever the court directs that an order or decree in a probate proceeding be prepared by the clerk, the fee for preparing such order or decree shall be the amount necessary to defray the costs of preparation, as determined by the clerk of the court on an annual basis, but shall not exceed fifty dollars ($50). The fee so paid shall be an expense of administration.

SEC. 182. Section 26835.1 of the Government Code is amended to read:

26835.1. (a) The clerk of the court shall collect a fee of six dollars ($6) per signature for any document that is required to be authenticated pursuant to court order.

(b) Each document authenticated by the clerk of the court shall contain the following statement:

"____, Clerk of the Superior Court, in and for the County of ____, State of California. Signed pursuant to court order dated ____ in the matter of ____ petitioner v. ____, respondent, Case No. ____."

(c) Notwithstanding Section 68085, two dollars ($2) of the fee authorized by subdivision (a) shall be deposited in the county general fund for use as county general fund revenue.

SEC. 183. Section 26856 of the Government Code is amended to read:

26856. The fees fixed by this article are in full for all services rendered by the clerk of the court in any civil action or special proceeding.

SEC. 184. Section 27081 of the Government Code is amended to read:

27081. The clerk of the court may deposit in the county treasury any money deposited as jury fees or as a portion of the naturalization fees required by law to be paid to the United States. The treasurer shall accept and keep separate accounts of such deposits. The money may be withdrawn at any time by the clerk of the court on the clerk's written order. For the safekeeping of the money the treasurer is liable on the treasurer's official bond.

SEC. 185. Section 27464 of the Government Code is amended to read:

27464. Whenever the death of any person shall have been referred to the coroner for investigation, there shall be delivered to the coroner any note, letter or other document apparently written by the deceased which may tend to indicate an intention by the writer to take the writer's life, including directions for disposition of property or disposal of remains. A facsimile copy thereof shall be placed in the coroner's records, and, if an inquest be held, a true copy shall be read into the record and transcribed into the notes of the official stenographer. Upon completion of legal proceedings arising from such death, the original instrument shall be delivered by the coroner to the addressee or to the legal representative of the estate of the decedent; provided, however, that if the instrument purports to be testamentary in nature, it shall be filed with the clerk of the court as provided by law.

SEC. 186. Section 27706 of the Government Code is amended to read:

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, the public defender shall defend, without expense to the defendant, except as provided by Section 987.8 of the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, the public defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, the public defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, the public defender shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court the public defender shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.

SEC. 187. Section 29610 of the Government Code is amended to read:

29610. The expenses of any elected county officer incurred while traveling to and from and while attending the annual convention of his or her respective association, are county charges which do not require prior approval of the board of supervisors. The board of supervisors may require prior approval by the board of supervisors for any other officer or employee to incur those expenses as county charges.

SEC. 188. Section 31520 of the Government Code is amended to read:

31520. Except as otherwise delegated to the board of investment and except for the statutory duties of the county treasurer, the management of the retirement system is vested in the board of retirement, consisting of five members, one of whom shall be the county treasurer. The second and third members of the board shall be active members of the association elected by it within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth and fifth members shall be qualified electors of the county who are not connected with county government in any capacity, except one may be a supervisor and one may be a retired member, and shall be chosen by the board of supervisors. The first

persons chosen as the second and fourth members shall serve for two years from the date the system becomes operative and the third and fifth members shall serve for a term of three years from that date. Thereafter the terms of office of the four elected members are three years.

As used in this section ''active member'' means a member in the active service of a county, district, or superior court and a ''retired member'' means a member, including a member under former Section 31555, retired for service or disability.

SEC. 189. Section 31555 of the Government Code is repealed.

SEC. 190. Section 31662.6 of the Government Code is amended to read:

31662.6. Two years after a retirement system established by this chapter becomes operative, a safety member except an elective officer, the sheriff and undersheriff, and the marshal appointed to serve the superior court within the county, shall be retired as of the first day of the calendar month next succeeding that in which he or she attains age 60.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

SEC. 191. Section 31663 of the Government Code is amended to read:

31663. After January 1, 1954, or two years after a retirement system established by this chapter becomes operative, whichever is later, a sheriff who is a safety member and not elective, and an undersheriff, who is a safety member shall be retired as of the first day of the calendar month next succeeding that in which he or she attains age 70.

The marshal appointed to serve the superior court within the county who is a safety member shall be retired as of the first day of the calendar month next succeeding that in which he or she attains age 65.

In San Bernardino County, a sheriff's inspector, a chief inspector in a sheriff's office, or a chief deputy in a sheriff's office, who is a safety member and whose primary duties are administrative, shall be retired as of the first day of the calendar month next succeeding that in which the person attains age 70.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

SEC. 192. Section 41803.5 of the Government Code is amended to read:

41803.5. (a) With the consent of the district attorney of the county, the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law. This section shall not be deemed to affect any of the provisions of Section 72193.

(b) In any case in which the district attorney is granted any powers or access to information with regard to the prosecution of misdemeanors, this grant of powers or access to information shall be deemed to apply to any other officer charged with the duty of prosecuting misdemeanor charges in the state, as authorized by law.

SEC. 193. Section 50920 of the Government Code is amended to read:

50920. As used in this article, the term ''peace officer'' means a sheriff, undersheriff, deputy sheriff, marshal, or deputy marshal of a county or city and county, or a marshal or police officer of a city or town, employed and compensated as such, whether the members are volunteer, partly paid, or fully paid, except those whose principal duties are clerical, such as stenographers, telephone operators, and other workers not engaged in law enforcement operations, or the protection or preservation of life or property, and not under suspension or otherwise lacking in good standing.

SEC. 194. Section 53069.4 of the Government Code is amended to read:

53069.4. (a) (1) The legislative body of a local agency, as the term ''local agency'' is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1) shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the

local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be twenty-five dollars ($25). The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the twenty-five dollar ($25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

SEC. 195. Section 53075.6 of the Government Code is amended to read:

53075.6. Whenever a peace officer or public officer or employee, when authorized by ordinance and as defined in Section 836.5 of the Penal Code, arrests any person for operating as a taxicab without a valid taxicab certificate, license, or permit required by any ordinance, and the offense occurred at a public airport, within 100 feet of a public airport, or within two miles of the international border between the United States and Mexico, the officer or employee may impound and retain possession of any vehicle used in a violation of the ordinance.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of the ordinance without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the

court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in superior court for the immediate return of a vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this paragraph is a limited civil case.

No officer or employee, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 196. Section 53075.61 of the Government Code is amended to read:

53075.61. A transportation inspector, authorized by a local government to cite any person for operating as a taxicab without a valid taxicab certificate, license, or permit required by any ordinance, may impound and retain possession of any vehicle used in a violation of the ordinance.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of the ordinance without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in superior court for the immediate return of a vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this paragraph is a limited civil case.

No officer or employee, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 198. Section 61601.1 of the Government Code is amended to read:

61601.1. (a) ''Abatement,'' for the purposes of this section, includes the removal and prevention of graffiti, antigraffiti education, and restitution to any property owner for any injury or damage caused by the removal of graffiti from the property.

(b) A district that is authorized to abate graffiti may:

(1) Remove or contract for the removal of graffiti from any public or private property within its boundaries.

(2) Indemnify or compensate any property owner for any injury or damage caused by the removal of graffiti from property.

(3) Undertake a civil action to abate graffiti as a nuisance pursuant to Section 731 of the Code of Civil Procedure.

(4) Use the services of persons ordered to perform those services by a superior or juvenile court.

(5) Use the phrase ''Graffiti Abatement District'' in the name of the district.

(6) Operate specifically designated telephone ''hot lines'' for the purpose of receiving reports of unlawful application of graffiti on public or private property.

(7) Operate a program of financial reward, not to exceed one thousand dollars ($1,000), for information leading to the arrest and conviction of any person who unlawfully applies graffiti to any public or private property.

SEC. 199. Section 68071 of the Government Code is amended to read:

68071. No rule adopted by a superior court shall take effect until January 1 or July 1, whichever comes first, following the 30th day after it has been filed with the Judicial Council and the clerk of the court, and made immediately available for public examination. The Judicial Council may establish, by rule, a procedure for exceptions to these effective dates.

SEC. 200. Section 68072 of the Government Code is amended to read:

68072. Rules adopted by the Judicial Council, the Supreme Court, or a court of appeal shall take effect on a date to be fixed in the order of adoption. If no effective date is fixed, those rules shall take effect 60 days after their adoption. Rules adopted by a superior court shall take effect as provided in Section 68071.

SEC. 201. Section 68073 of the Government Code is amended to read:

68073. (a) Commencing July 1, 1997, and each year thereafter, no county or city and county shall be responsible to provide funding for ''court operations'' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) Commencing as of July 1, 1996, and each year thereafter, each county or city and county shall be responsible for providing necessary and suitable facilities for judicial and court support positions created prior to July 1, 1996. In determining whether facilities are necessary and suitable, the reasonable needs of the court and the fiscal condition of the county or city and county shall be taken into consideration.

(c) If a county or city and county fails to provide necessary and suitable facilities as described in subdivision (b), the court shall give notice of a specific deficiency. If the county or city and county then fails to provide necessary and suitable facilities pursuant to this section, the court may direct the appropriate officers of the county or city and county to provide the necessary and suitable facilities. The expenses incurred, certified by the judges to be correct, are a charge against the county or city and county treasury and shall be paid out of the general fund.

(d) Prior to the construction of new court facilities or the alteration, remodeling, or relocation of existing court facilities, a county or city and county shall solicit the review and comment of the judges of the court affected regarding the adequacy and standard of design, and that review and comment shall not be disregarded without reasonable grounds.

(e) For purposes of this section, ''facilities'' means: (1) rooms for holding superior court, (2) the chambers of the judges of the court, (3) rooms for the attendants of the court, and (4) sufficient heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers.

(f) This section shall not be construed as authorizing a county, a city and county, a court, or the state to supply to the official reporters of the courts stenography, stenotype, or other shorthand machines; nor as authorizing the supply to the official reporters of the courts, for use in the preparation of transcripts, of typewriters, transcribing equipment, supplies, or other personal property.

SEC. 202. Section 68074.1 of the Government Code is amended to read:

68074.1. The seal of any superior court may be affixed by a seal press or stamp which will print or emboss a seal which will reproduce legibly under photographic methods.

SEC. 203. Section 68077 of the Government Code is repealed.

SEC. 204. Section 68082 of the Government Code is amended to read:

68082. Except as otherwise provided by law, during the officer's continuance in office, a court commissioner, judge, or court executive or administrative officer shall not practice law in any court of this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States. As used in this section, the practice of law includes being

in partnership or sharing fees, commissions, or expenses in the practice of law with any person acting as an attorney in this state.

SEC. 205. Section 68083 of the Government Code is repealed.

SEC. 206. Section 68090.7 of the Government Code is amended to read:

68090.7. In any county that has established a fee pursuant to Sections 26863 and 72054, the fee shall only apply to the following filings in each civil action or proceeding:

(a) The first paper and papers transmitted from another court, as specified in Sections 26820.4 and 72055.

(b) The first paper on behalf of an adverse party, as specified in Sections 26826 and 72056.

(c) A petition or other paper in a probate, guardianship, or conservatorship matter as specified by Section 26827.

The fee shall not apply to adoptions, appeals to the appellate division of the superior court, or motions.

Except as otherwise specified by law, all fees collected under this section shall be deposited into the trial court operations fund of the county established pursuant to Section 77009, and an amount equal thereto shall be used exclusively to pay the costs of automating the court clerk and trial court recordkeeping system or converting the trial court document system to micrographics, or both.

SEC. 207. Section 68093 of the Government Code is amended to read:

68093. Except as otherwise provided by law, witness' fees for each day's actual attendance, when legally required to attend a civil action or proceeding in the superior courts, are thirty-five dollars ($35) a day and mileage actually traveled, both ways, twenty cents ($0.20) a mile.

SEC. 208. Section 68096 of the Government Code is repealed.

SEC. 209. Section 68105 of the Government Code is amended to read:

68105. Notwithstanding any other provision of law to the contrary, the Supreme Court, any court of appeal, or any superior court may appoint as an official phonographic reporter or as an official phonographic reporter pro tempore a person who has declared the intention to become a citizen and who is a certified shorthand reporter.

''A person who has declared the intention to become a citizen,'' as used in this section, means a person who has either (1) filed the declaration of intention to become a citizen of the United States, or petition for naturalization, or comparable document prescribed by federal law or (2) filed an affidavit with the court, in the form prescribed by the court, that the person will, at the first opportunity at which the applicable federal law permits, file such a declaration of intention to become a citizen of the United States, petition for naturalization, or

comparable document. If the court determines that an individual who has filed under alternative (2) of the preceding sentence, has, without good cause, failed at the first opportunity provided under federal law to file one of the specified documents prescribed by federal law, it shall forthwith revoke the appointment.

SEC. 210. Section 68108 of the Government Code is amended to read:

68108. (a) To the extent that a Memorandum of Understanding for trial court employees designates certain days as unpaid furlough days for employees assigned to regular positions in the superior court, the court shall not be in session on those days except as ordered by the presiding judge upon a finding by the presiding judge of a judicial emergency as defined in Chapter 1.1 (commencing with Section 68115). On these furlough days, although the clerk's office shall not be open to the public, each court shall permit documents to be filed at a drop box pursuant to subdivision (b), and an appropriate judicial officer shall be available to conduct arraignments and examinations as required pursuant to Section 825 of the Penal Code, and to sign any necessary documents on an emergency basis.

(b) A drop box shall provide for an automated, official time and date stamping mechanism or other means of determining the actual date on which a document was deposited in the drop box.

SEC. 211. Section 68115 of the Government Code is amended to read:

68115. When war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to the building appointed for holding the court, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of a superior court, the presiding judge may request and the Chair of the Judicial Council may, notwithstanding any other provision of law, by order authorize the court to do one or more of the following:

(a) Hold sessions anywhere within the county.

(b) Transfer civil cases pending trial in the court to a superior court in an adjacent county. No such transfer shall be made pursuant to this subdivision except with the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial. Any civil case so transferred shall be integrated into the existing caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council.

(c) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 825 of the

Penal Code within which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than seven days, with the number of days to be designated by the Chair of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order.

(d) Extend the time period provided in Section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 15 days.

(e) Extend the time period provided in Section 1382 of the Penal Code within which the trial must be held by not more than 30 days, but the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.

(f) Within the affected area of a county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Sections 632 and 637 of the Welfare and Institutions Code within which a minor shall be given a detention hearing, with the number of days to be designated by the Chair of the Judicial Council. The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency, but in no event shall the time period within which a detention hearing must be given be extended to more than seven days. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

(g) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition shall be held by not more then 15 days, with the number of days to be designated by the Chair of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

SEC. 212. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under

subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 213. Section 68202 of the Government Code is amended to read:

68202. Effective January 1, 1985, the annual salary of each of the following judges is the amount indicated opposite the name of the office:

Judge of the superior court, seventy-two thousand seven hundred sixty-three dollars ($72,763).

SEC. 214. Section 68206.2 of the Government Code is amended to read:

68206.2. (a) On and after January 1, 1990, the state shall reimburse each small county which is not an option county under the Brown-Presley Trial Court Funding Act (Chapter 12 (commencing with Section 77000) of this title), for the cost of salary and per diem for any substitute judge assigned to replace a judge disqualified from acting as a judge while there is pending a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement

of the judge pursuant to subdivision (a) of Section 18 of Article VI of the California Constitution, beginning with the salary and per diem for the seventh month following the disqualification.

(b) For purposes of this section, a ''small county'' is one which has a total of nine or fewer superior court judges.

SEC. 214.5. Section 68502.5 of the Government Code is amended to read:

68502.5. (a) The Judicial Council may, as part of its trial court budget process, seek input from groups and individuals as it deems appropriate including, but not limited to, advisory committees and the Administrative Director of the Courts. The trial court budget process may include, but is not limited to, the following:

(1) The receipt of budget requests from the trial courts.

(2) The review of the trial courts' budget requests and evaluate them against performance criteria established by the Judicial Council by which a court's performance, level of coordination, and efficiency can be measured.

(3) The annual adoption of the projected cost in the subsequent fiscal year of court operations as defined in Section 77003 for each trial court. This estimation shall serve as a basis for recommended court budgets, which shall be developed for comparison purposes and to delineate funding responsibilities.

(4) The annual approval of a schedule for the allocation of moneys to individual courts and an overall trial court budget for forwarding to the Governor for inclusion in the Governor's proposed State Budget. The schedule shall be based on the performance criteria established pursuant to paragraph (2), on a minimum standard established by the Judicial Council for the operation and staffing of all trial court operations, and on any other factors as determined by the Judicial Council. This minimum standard shall be modeled on court operations using all reasonable and available measures to increase court efficiency. The schedule of allocations shall assure that all trial courts receive funding for the minimum operating and staffing standards before funding operating and staffing requests above the minimum standards, and shall include incentives and rewards for any trial court's implementation of efficiencies and cost saving measures.

(5) The reallocation of funds during the course of the fiscal year to ensure equal access to the trial courts by the public, to improve trial court operations, and to meet trial court emergencies. Neither the state nor the counties shall have any obligation to replace moneys appropriated for trial courts and reallocated pursuant to this paragraph.

(6) The allocation of funds in the Trial Court Improvement Fund to ensure equal access to trial courts by the public, to improve trial court operations, and to meet trial court emergencies.

(7) Upon approval of the trial courts' budget by the Legislature, the preparation during the course of the fiscal year of allocation schedules for payments to the trial courts, consistent with Section 68085, which shall be submitted to the Controller's office at least 15 days before the due date of any allocation.

(8) The establishment of rules regarding a court's authority to transfer trial court funding moneys from one functional category to another in order to address needs in any functional category.

(9) At the request of the presiding judge of a trial court, an independent review of the funding level of the court to determine whether it is adequate to enable the court to discharge its statutory and constitutional responsibilities.

(10) From time to time, a review of the level of fees charged by the courts for various services and prepare recommended adjustments for forwarding to the Legislature.

(11) Provisions set forth in rules adopted pursuant to Section 77206 of the Government Code.

(b) Courts and counties shall establish procedures to allow for the sharing of information as it relates to approved budget proposals and expenditures that impact the respective court and county budgets. The procedures shall include, upon the request of a court or county, that a respective court or county shall provide the requesting court or county a copy of its approved budget and, to the extent possible, approved program expenditure component information and a description of budget changes that are anticipated to have an impact on the requesting court or county. The Judicial Council shall provide to the Legislature on December 31, 2001, and yearly thereafter, budget expenditure data at the program component level for each court.

(c) The Judicial Council shall retain the ultimate responsibility to adopt a budget and allocate funding for the trial courts and perform the other activities listed in subdivision (a) that best assure their ability to carry out their functions, promote implementation of statewide policies, and promote the immediate implementation of efficiencies and cost saving measures in court operations, in order to guarantee equal access to the courts.

SEC. 215. Section 68520 of the Government Code is repealed.

SEC. 216. Section 68540 of the Government Code is repealed.

SEC. 217. Section 68542 of the Government Code is repealed.

SEC. 218. Section 68542.5 of the Government Code is repealed.

SEC. 219. Section 68546 of the Government Code is repealed.

SEC. 220. Section 68562 of the Government Code is amended to read:

68562. (a) The Judicial Council shall designate the languages for which certification programs shall be established under subdivision (b).

The language designations shall be based on (1) the courts' needs as determined by the language and interpreter use and need studies under Section 68563, (2) the language needs of non-English-speaking persons in the courts, and (3) other information the Judicial Council deems relevant.

(b) By July 1, 1996, the Judicial Council shall approve one or more entities to certify Spanish language interpreters and interpreters for as many other languages designated under subdivision (a) as practicable by that date. The Judicial Council may give provisional approval to an entity to examine interpreters and establish a list of recommended court interpreters pending final approval of one or more certification entities. Certification entities may include educational institutions, testing organizations, joint powers agencies, or public agencies.

The Judicial Council shall adopt and publish guidelines, standards, and procedures to determine which certification entities will be approved to test and certify interpreters.

(c) The Judicial Council shall develop and implement procedures to administer the list of recommended court interpreters previously established by the State Personnel Board and the list established by an entity provisionally approved under subdivision (b).

The Judicial Council shall develop procedures and standards for certifying without reexamination interpreters on the list of recommended court interpreters (1) previously established by the State Personnel Board, or (2) established by an entity provisionally approved under subdivision (b). Certification of these interpreters shall be based on criteria determined by the Judicial Council, such as recent interpreting experience, performance in court or at administrative hearings, training, and continuing education.

(d) The Judicial Council shall adopt standards and requirements for interpreter proficiency, continuing education, certification renewal, and discipline. The Judicial Council shall adopt standards of professional conduct for court interpreters.

(e) The Judicial Council shall adopt programs for interpreter recruiting, training, and continuing education and evaluation to ensure that an adequate number of interpreters is available and that they interpret competently.

(f) The Judicial Council shall establish guidelines for fees or shall set and charge fees for applications to take the court interpreter examinations, for renewal of certifications, for certification of interpreters on the list of recommended court interpreters, for maintaining interpreters on the recommended list until January 1, 1996, and for other functions and services provided under this article. All fees and other revenues received by the Judicial Council under this article shall be transferred promptly to the Controller, and shall be placed in the

Court Interpreters' Fund, which is hereby created, the moneys in which shall be available to carry out the purposes of this article upon appropriation by the Legislature.

(g) Each superior court may adopt local rules to impose additional requirements, standards, examinations, and programs as necessary for equity or to recognize local conditions.

SEC. 221. Section 68611 of the Government Code is repealed.

SEC. 222. Section 68618.5 of the Government Code is repealed.

SEC. 223. Section 68620 of the Government Code is amended to read:

68620. (a) Each superior court shall establish a delay reduction program for limited civil cases in consultation with the local bar that is consistent with the provisions of this article. In its discretion, the Judicial Council may assist in the development of, or may develop and adopt, any or all procedures, standards, or policies for a delay reduction program for limited civil cases in superior courts on a statewide basis which are consistent with the provisions of the Trial Court Delay Reduction Act.

(b) Actions and proceedings subject to the provisions of Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure or provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure shall not be assigned to or governed by the provisions of any delay reduction program established pursuant to the section.

(c) It is the intent of the Legislature that the civil discovery in actions and proceedings subject to a program established pursuant to Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure shall be governed by the times and procedures specified in that article. Civil discovery in these actions and proceedings shall not be affected by the provisions of any delay reduction program adopted pursuant to this section.

SEC. 224. Section 69508.5 of the Government Code is amended to read:

69508.5. (a) In courts with two judges a presiding judge shall be selected by the judges each calendar year and the selection should be on the basis of administrative qualifications and interest.

(b) If a selection cannot be agreed upon, then the office of presiding judge shall be rotated each calendar year between the two judges, commencing with the senior judge. If the judges are of equal seniority, the first presiding judge shall be selected by lot.

(c) Notwithstanding subdivisions (a) and (b), the Judicial Council may provide by rule of court for the qualifications of the presiding judge.

(d) In a court with one judge, whether as the result of a vacancy in a judgeship or otherwise, a reference in a statute to the presiding judge means the sole judge of the court.

SEC. 225. Section 69510 of the Government Code is amended to read:

69510. A majority of the judges of a superior court may order sessions of the court to be held at any place where there is a court facility. The order shall be filed with the clerk of the court and published as the judges may prescribe.

SEC. 226. Section 69510.5 of the Government Code is amended to read:

69510.5. Notwithstanding any other provision of law, a majority of the judges of the Orange County Superior Court may, upon a finding that no suitable additional facilities exist in the county seat or other locations where the court regularly holds sessions, order sessions of the court to be held at any location within the county.

SEC. 227. Section 69510.6 of the Government Code is amended to read:

69510.6. Notwithstanding any other provision of law, a majority of the judges of the San Mateo County Superior Court may, upon a finding that no suitable additional facilities exist in the county seat or other locations where the court holds sessions, order sessions of the court to be held at Crestmoor High School in San Bruno, California.

SEC. 228. Section 69580 of the Government Code is amended to read:

69580. In the County of Alameda there are 69 judges of the superior court.

SEC. 229. Section 69580.3 is added to the Government Code, to read:

69580.3. In the County of Alpine there are two judges of the superior court.

SEC. 230. Section 69580.7 is added to the Government Code, to read:

69580.7. In the County of Amador there are two judges of the superior court.

SEC. 231. Section 69581 of the Government Code is amended to read:

69581. In the County of Butte there are 10 judges of the superior court.

SEC. 232. Section 69581.3 is added to the Government Code, to read:

69581.3. In the County of Calaveras there are two judges of the superior court.

SEC. 233. Section 69581.7 is added to the Government Code, to read:

69581.7. In the County of Colusa there are two judges of the superior court.

SEC. 234. Section 69582 of the Government Code is amended to read:

69582. In the County of Contra Costa there are 33 judges of the superior court.

SEC. 235. Section 69582.3 is added to the Government Code, to read:

69582.3. In the County of Del Norte there are two judges of the superior court.

SEC. 236. Section 69582.5 of the Government Code is amended to read:

69582.5. In the County of El Dorado there are six judges of the superior court.

SEC. 237. Section 69583 of the Government Code is amended to read:

69583. In the County of Fresno there are 36 judges of the superior court.

SEC. 238. Section 69583.5 is added to the Government Code, to read:

69583.5. In the County of Glenn there are two judges of the superior court.

SEC. 239. Section 69584 of the Government Code is amended to read:

69584. In the County of Humboldt there are seven judges of the superior court.

SEC. 240. Section 69584.5 of the Government Code is amended to read:

69584.5. In the County of Imperial there are nine judges of the superior court.

SEC. 241. Section 69584.7 is added to the Government Code, to read:

69584.7. In the County of Inyo there are two judges of the superior court.

SEC. 242. Section 69585 of the Government Code is amended to read:

69585. In the County of Kern there are 33 judges of the superior court.

SEC. 243. Section 69585.5 of the Government Code is amended to read:

69585.5. In the County of Kings there are seven judges of the superior court.

SEC. 244. Section 69585.7 of the Government Code is amended to read:

69585.7. In the County of Lake there are four judges of the superior court.

SEC. 245. Section 69585.9 is added to the Government Code, to read:

69585.9. In the County of Lassen there are two judges of the superior court.

SEC. 246. Section 69586 of the Government Code is amended to read:

69586. In the County of Los Angeles there are 429 judges of the superior court.

SEC. 247. Section 69587 of the Government Code is amended to read:

69587. In the County of Madera there are seven judges.

SEC. 248. Section 69588 of the Government Code is amended to read:

69588. In the County of Marin there are 10 judges.

SEC. 249. Section 69588.3 is added to the Government Code, to read:

69588.3. In the County of Mariposa there are two judges of the superior court.

SEC. 250. Section 69588.7 is added to the Government Code, to read:

69588.7. In the County of Mendocino there are eight judges of the superior court.

SEC. 251. Section 69589 of the Government Code is amended to read:

69589. In the County of Merced there are six judges of the superior court.

SEC. 252. Section 69589.3 is added to the Government Code, to read:

69589.3. In the County of Modoc there are two judges of the superior court.

SEC. 253. Section 69589.7 is added to the Government Code, to read:

69589.7. In the County of Mono there are two judges of the superior court.

SEC. 254. Section 69590 of the Government Code is amended to read:

69590. In the County of Monterey there are 18 judges of the superior court.

SEC. 255. Section 69590.5 of the Government Code is amended to read:

69590.5. In the County of Napa there are six judges of the superior court.

SEC. 256. Section 69590.7 of the Government Code is amended to read:

69590.7. In the County of Nevada there are six judges of the superior court.

SEC. 257. Section 69591 of the Government Code is amended to read:

69591. In the County of Orange there are 109 judges of the superior court.

SEC. 258. Section 69591.3 is added to the Government Code, to read:

69591.3. In the County of Placer there are nine judges of the superior court.

SEC. 259. Section 69591.7 is added to the Government Code, to read:

69591.7. In the County of Plumas there are two judges of the superior court.

SEC. 260. Section 69592 of the Government Code is amended to read:

69592. In the County of Riverside there are 49 judges of the superior court.

SEC. 261. Section 69593 of the Government Code is amended to read:

69593. In the County of Sacramento there are 52 judges of the superior court.

SEC. 262. Section 69593.5 is added to the Government Code, to read:

69593.5. In the County of San Benito there are two judges of the superior court.

SEC. 263. Section 69594 of the Government Code is amended to read:

69594. In the County of San Bernardino there are 63 judges of the superior court.

SEC. 264. Section 69595 of the Government Code is amended to read:

69595. In the County of San Diego there are 128 judges of the superior court.

SEC. 265. Section 69595.5 of the Government Code is amended to read:

69595.5. Notwithstanding the provisions of Article 5 (commencing with Section 69740) of Chapter 5 of Title 8, in the County of San Diego, one or more judges of the superior court shall hold concurrent daily sessions in the City of Vista, two or more judges of the superior court shall hold concurrent daily sessions in the City of El Cajon, and one judge of the superior court shall hold concurrent daily sessions within the former South Bay Municipal Court District.

SEC. 266. Section 69596 of the Government Code is amended to read:

69596. In the City and County of San Francisco there are 50 judges of the superior court.

SEC. 267. Section 69598 of the Government Code is amended to read:

69598. In the County of San Joaquin there are 26 judges of the superior court.

SEC. 268. Section 69598.5 is added to the Government Code, to read:

69598.5. In the County of San Luis Obispo there are 11 judges of the superior court.

SEC. 269. Section 69599 of the Government Code is amended to read:

69599. In San Mateo County there are 26 judges of the superior court.

SEC. 270. Section 69599.5 of the Government Code is amended to read:

69599.5. In the County of Santa Barbara there are 19 judges of the superior court.

SEC. 271. Section 69600 of the Government Code is amended to read:

69600. In the County of Santa Clara there are 79 judges of the superior court.

SEC. 272. Section 69600.5 is added to the Government Code, to read:

69600.5. In the County of Santa Cruz there are 10 judges of the superior court.

SEC. 273. Section 69601 of the Government Code is amended to read:

69601. In the County of Shasta there are nine judges of the superior court.

SEC. 274. Section 69601.3 is added to the Government Code, to read:

69601.3. In the County of Sierra there are two judges of the superior court.

SEC. 275. Section 69601.7 is added to the Government Code, to read:

69601.7. In the County of Siskiyou there are four judges of the superior court.

SEC. 276. Section 69602 of the Government Code is amended to read:

69602. In the County of Solano there are 16 judges of the superior court.

SEC. 277. Section 69603 of the Government Code is amended to read:

69603. In the County of Sonoma there are 16 judges of the superior court.

SEC. 278. Section 69604 of the Government Code is amended to read:

69604. In the County of Stanislaus there are 17 judges of the superior court.

SEC. 279. Section 69604.3 is added to the Government Code, to read:

69604.3. In the County of Sutter there are five judges of the superior court.

SEC. 280. Section 69604.5 is added to the Government Code, to read:

69604.5. In the County of Tehama there are four judges of the superior court.

SEC. 281. Section 69604.7 is added to the Government Code, to read:

69604.7. In the County of Trinity there are two judges of the superior court.

SEC. 282. Section 69605 of the Government Code is amended to read:

69605. In the County of Tulare there are 16 judges of the superior court.

SEC. 283. Section 69605.5 of the Government Code is amended to read:

69605.5. In the County of Tuolumne there are four judges of the superior court.

SEC. 284. Section 69606 of the Government Code is amended to read:

69606. In the County of Ventura there are 28 judges of the superior court.

SEC. 285. Section 69607 of the Government Code is repealed.

SEC. 286. Section 69608 of the Government Code is repealed.

SEC. 287. Section 69609 of the Government Code is repealed.

SEC. 288. Section 69610 of the Government Code is amended to read:

69610. In the County of Yolo there are nine judges of the superior court.

SEC. 289. Section 69611 of the Government Code is amended to read:

69611. In the County of Yuba there are five judges of the superior court.

SEC. 290. Section 69613 of the Government Code is repealed.

SEC. 291. Section 69614 of the Government Code is repealed.

SEC. 292. Section 69615 of the Government Code is repealed.

SEC. 293. Section 69648 of the Government Code is repealed.

SEC. 294. Section 69649 of the Government Code is amended to read:

69649. When a majority of the judges of the superior court deem it necessary or advisable, by order filed with the clerk of the court and published as they may prescribe, they may direct that a session of the court be held at least once a week at any designated place in a district, not less than 30 miles distant from the nearest regular location of the sessions of the superior court in that district, measured by air line. The majority of the judges may limit the type of judicial proceedings which may be heard by the court at such place to probate, guardianship, conservatorship, and domestic relations matters, including, but not limited to, orders to show cause proceedings in domestic relations matters.

SEC. 295. Section 69741 of the Government Code is amended to read:

69741. Except as otherwise provided by Section 68115, each superior court shall hold its sessions:

(a) At the location or locations in each superior court district specified by ordinance adopted pursuant to Article 4 (commencing at Section 69640) of this chapter.

(b) In every county in which such an ordinance is not in effect, at the county seat and at such other locations, if any, as provided in this article.

The superior court shall hold regular sessions commencing on the first Mondays of January, April, July, and October, and special sessions at such other times as may be prescribed by the judges of the court, except that in the City and County of San Francisco the presiding judge shall prescribe the times of holding such special sessions.

SEC. 296. Section 69743 of the Government Code is amended to read:

69743. By an order filed with the clerk of the court and published as a majority of the judges of the superior court of the county prescribe, such a majority, when it deems it necessary or convenient, may provide for and direct the holding of additional sessions in each of the cities described in Section 69742.

SEC. 297. Section 69744 of the Government Code is amended to read:

69744. When the judges of the superior court of a county deem it necessary or advisable, by order filed with the clerk of the court and published as they prescribe, they may direct that the court be held or continued:

(a) At any place in the county, not less than 120 miles distant from the county seat.

(b) At any other city in the county with a population of not less than 7,000, in which the city hall is not less than 55 miles from the site of the county courthouse.

(c) At any other city in the county with a population of not less than 2,200 in which the city hall is not less than 60 miles from the site of the county courthouse.

SEC. 298. Section 69744.5 of the Government Code is amended to read:

69744.5. When a majority of the judges of the superior court deem it necessary or advisable, by order filed with the clerk of the court and published as the judges prescribe, the judges may direct that the court be held at least once a week at any designated place in the county, not less than 45 miles distant from the county seat, measured by air line. The place designated shall be within a former judicial district composed wholly of unincorporated territory, with a population of more than 40,000 as determined pursuant to Section 71043. A majority of the judges may limit the type of judicial proceedings which may be heard by the court at such place to probate matters and matters relating to domestic relations.

SEC. 299. Section 69750 of the Government Code is repealed.

SEC. 300. Section 69753 of the Government Code is repealed.

SEC. 301. Section 69801 of the Government Code is repealed.

SEC. 302. Section 69840 is added to the Government Code, to read:

69840. (a) The clerk of the court shall exercise or perform, in addition to the powers, duties, and responsibilities provided by statute, any powers, duties, and responsibilities required or permitted to be exercised by the county clerk in connection with judicial actions, proceedings, and records. The county clerk is relieved of any obligation imposed by law on the county clerk with respect to these powers, duties, and responsibilities.

(b) A deputy court clerk is subject to the provisions of Article 7 (commencing with Section 1190) of Chapter 1 of Division 4 of Title 1.

SEC. 303. Section 69890 of the Government Code is repealed.

SEC. 304. Section 69891.1 of the Government Code is repealed.

SEC. 305. Section 69891.5 of the Government Code is repealed.

SEC. 306. Section 69892 of the Government Code is repealed.

SEC. 307. Section 69892.1 of the Government Code is repealed.

SEC. 308. Section 69893.5 of the Government Code is repealed.

SEC. 309. Section 69894 of the Government Code is repealed.

SEC. 310. Section 69894.1 of the Government Code is repealed.

SEC. 311. Section 69895 of the Government Code is repealed.

SEC. 312. Section 69896 of the Government Code is repealed.

SEC. 313. Section 69897 of the Government Code is repealed.

SEC. 314. Section 69898 of the Government Code is repealed.

SEC. 315. Section 69899.5 of the Government Code is repealed.

SEC. 316. Section 69900 of the Government Code is repealed.

SEC. 317. Section 69901 of the Government Code is repealed.

SEC. 318. Section 69903.3 of the Government Code is repealed.

SEC. 319. Section 69904 of the Government Code is repealed.

SEC. 320. Section 69906 of the Government Code is repealed.

SEC. 321. Section 69908 of the Government Code is repealed.

SEC. 322. Section 69911 of the Government Code is repealed.

SEC. 323. Section 69912 of the Government Code is repealed.

SEC. 324. Section 69915 of the Government Code is repealed.

SEC. 326. Section 69917 is added to the Government Code, to read:

69917. A subordinate judicial officer may not engage in the private practice of law except to the extent permitted by Judicial Council rules. As used in this section, ''subordinate judicial officer'' means an officer appointed by the court to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution.

SEC. 327. Section 69941 of the Government Code is amended to read:

69941. A superior court may appoint as many competent phonographic reporters, to be known as official reporters of such court, and such official reporters pro tempore, as are deemed necessary for the performance of the duties and the exercise of the powers conferred by law upon the court and its members.

SEC. 328. Section 69942 of the Government Code is amended to read:

69942. No person shall be appointed to the position of official reporter of any court unless the person has first obtained a license to practice as a certified shorthand reporter from the Court Reporters Board of California.

SEC. 329. Section 69944 of the Government Code is amended to read:

69944. Until an official reporter of any court or official reporter pro tempore has fully completed and filed all transcriptions of the reporter's notes in any case on appeal which the reporter is required by law to transcribe, the reporter is not competent to act as official reporter in any court. Violation of subdivision (e) of Section 8025 of the Business and Professions Code shall also render an official reporter or official reporter pro tempore incompetent to act as official reporter in any court.

SEC. 330. Section 69945 of the Government Code is repealed.

SEC. 332. Section 69955 of the Government Code is amended to read:

69955. (a) As used in this section, ''reporting notes'' are the reporting notes of all court reporters employed to report in the courts of California, who may be known as official reporters and official reporters pro tempore. Reporting notes are official records of the court. Reporting notes shall be kept by the reporter taking the notes in a place designated by the court, or, upon order of the court, delivered to the clerk of the court.

(b) The reporting notes may be kept in any form of communication or representation including paper, electronic, or magnetic media or other technology capable of reproducing for transcription the testimony of the proceedings according to standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management. Reporting notes shall be stored in an environment free from excessive moisture, temperature variation, and electromagnetic fields if stored on a medium other than paper.

(c) The reporting notes shall be labeled with the date recorded, the department number of the court, and the name of the court reporter. The reporting notes shall be indexed for convenient retrieval and access. Instructions for access to data stored on a medium other than paper shall be documented.

(d) If the reporting notes are kept in any form other than paper, one duplicate backup copy of the notes shall be stored in a manner and place that reasonably assures its preservation.

(e) Reporting notes produced under subdivision (b) may be destroyed upon the order of the court after 10 years from the taking of the notes in criminal proceedings and after five years from the taking of the notes in all other proceedings, unless the notes report proceedings in capital felony cases including the preliminary hearing. No reporting notes in a capital felony case proceeding shall be destroyed until such time as the Supreme Court on request by the court clerk authorizes the destruction.

(f) A periodic review of the media on which the reporting notes are stored shall be conducted to assure that a storage medium is not obsolete and that current technology is capable of accessing and reproducing the records for the required retention period.

(g) If the reporting notes of an official reporter or official reporter pro tempore have not been delivered to the clerk of the court, the notes shall be delivered by the reporter to the clerk of the court upon the reporter's retirement, resignation, dismissal, termination of appointment, or in the case of any other absence for a period of more than 30 days or longer as designated by the court. Upon the order of the court, the notes shall be returned to the reporter upon the reporter's return from such absence. In the event of the reporter's death, the notes shall be delivered to the clerk of the court by the reporter's personal representative.

(h) If reporting notes delivered to the clerk of the court are to be transcribed, the court reporter who took the notes shall be given the first opportunity to make the transcription, unless the reporter cannot be located, refuses to transcribe the notes, or is found to be incompetent to transcribe the notes.

(i) A court reporter shall be reimbursed for the actual cost of the medium on which the reporting notes are kept, whether on paper, diskette, or other media in compliance with this section.

SEC. 333. Section 69957 of the Government Code is repealed.

SEC. 334. Section 69958 of the Government Code is repealed.

SEC. 335. Section 69959 of the Government Code is repealed.

SEC. 336. Article 13 (commencing with Section 70140) of Chapter 5 of Title 8 of the Government Code is repealed.

SEC. 337. Article 13 (commencing with Section 70141.11) is added to Chapter 5 of Title 8 of the Government Code, to read:

Article 13. Court Commissioners

70141.11. Notwithstanding Section 269 of the Code of Civil Procedure, any court reporting functions for the commissioner in Contra Costa County may be by electronic or mechanical means and devices.

SEC. 338. Section 70214.5 of the Government Code is repealed.

SEC. 339. Section 70214.6 of the Government Code is repealed.

SEC. 340. Section 70219 is added to the Government Code, to read:

70219. On submission by the California Law Revision Commission of its report to the Governor and the Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997 recommending statutory changes that may be necessitated by court unification, the Judicial Council and the California Law Revision Commission shall study and make recommendations to the Governor and the Legislature on the issues identified in the report as appropriate for future study, including consideration of the experience in counties in which the courts have unified. Each agency shall assume primary or joint responsibility for the studies and recommendations as outlined in the report, and each agency shall consult with the other in the studies and recommendations. This section does not limit any authority of the Judicial Council or the California Law Revision Commission to conduct studies and make recommendations authorized or directed by law.

SEC. 341. Article 1 (commencing with Section 71001) of Chapter 6 of Title 8 of the Government Code is repealed.

SEC. 342. Article 1 (commencing with Section 71002) is added to Chapter 6 of Title 8 of the Government Code, to read:

Article 1. General Provisions

71002. The board of supervisors shall provide suitable quarters for the municipal courts, including heating, lighting, and janitorial services, and shall supply them with furniture, books, and supplies necessary for carrying out their duties, including supplies and equipment for the preparation and maintenance of duplicate records of the court or a division of the court when sessions are held at more than one place.

SEC. 343. Article 2 (commencing with Section 71040) of Chapter 6 of Title 8 of the Government Code is repealed.

SEC. 344. Article 2 (commencing with Section 71042.5) is added to Chapter 6 of Title 8 of the Government Code, to read:

Article 2. Preservation of Judicial Districts

71042.5. Notwithstanding any other provision of law, where judicial districts in a county have been consolidated, or where the municipal and superior courts in a county have unified, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

71042.6. For the purpose of establishing boundaries under Section 71042.5, a map approved by the county surveyor shall be kept on file with the county recorder showing the boundaries of all consolidated or unified districts and component districts as of the date of consolidation or unification. The map shall be conclusively presumed to be accurate and may be used in evidence in any proceeding involving application of Section 71042.5.

71043. The determination of whether a judicial district or former judicial district has a population above or below 40,000 shall be made on the latest occurring of the following bases:

(a) As shown by the last preceding federal census of the district or of the aggregate cities and other political subdivisions situated within the district, whichever is greater.

(b) As shown by a subsequent census taken pursuant to Section 26203.

(c) As may have been found to be the fact in any proceeding for declaratory relief brought in a court having jurisdiction.

SEC. 345. Article 3 (commencing with Section 71080) of Chapter 6 of Title 8 of the Government Code is repealed.

SEC. 346. Article 3 (commencing with Section 71094) is added to Chapter 6 of Title 8 of the Government Code, to read:

Article 3. Court Superseded by Municipal Court

71094. Continuous employment in a court superseded by a municipal court, or in a court previously superseded by such superseded court, of the officers and attachés of the superseded court who succeeded to positions in a municipal court pursuant to the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, shall be considered prior service within the definition of that term in any retirement or pension system that includes former municipal court officers and attachés.

SEC. 347. Article 4 (commencing with Section 71140) of Chapter 6 of Title 8 of the Government Code is repealed.

SEC. 348. Article 4 (commencing with Section 71141) is added to Chapter 6 of Title 8 of the Government Code, to read:

Article 4. Election and Term of Office of Municipal Court Judge

71141. Judges of the municipal court shall be elected at the general state election next preceding the expiration of the term for which the incumbent has been elected.

71143. The provisions of the Elections Code relating to the nomination and election of judicial officers apply to the judges of municipal courts.

71144. No judge shall be deemed to have qualified before the date fixed for the commencement of the judge's term of office.

71145. The term of office of judges of municipal courts is six years from and including the first Monday of January after the January 1st next succeeding their election. Judges shall hold office until their successors are elected and qualify, but the office shall be deemed to be vacant upon the expiration of the fixed term for the purpose of selecting a successor.

71145.1. Notwithstanding any provision to the contrary, the term of any judge who was elected as one of the first judges of a municipal court with two judges established under the Municipal Court Act of 1925, and who automatically succeeded to the office of judge of the municipal court which superseded such municipal court to which such judge was elected, shall be six years from the date upon which the judges' term of office commenced unless such term expires in a year when no general state election is held, in which case, the judge shall continue to hold office until a successor is elected at the general state election next succeeding the expiration of the judge's term, and until such successor qualifies.

71146. This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

SEC. 349. Article 5 (commencing with Section 71180) of Chapter 6 of Title 8 of the Government Code is repealed.

SEC. 350. Article 5 (commencing with Section 71180) is added to Chapter 6 of Title 8 of the Government Code, to read:

Article 5. Filling of Vacancies

71180. (a) Any vacancy in the office of judge of a municipal court shall be filled by appointment by the Governor, but no vacancy shall be deemed to exist in any office before the time fixed in Sections 71080, 71082, and 71083 for the selection of the judges of that court and the time fixed by law for their qualification. The appointee shall hold office for the remainder of the unexpired term of his or her predecessor and until his or her successor is elected and qualifies.

If the office to which any person so appointed was not previously occupied, he or she shall hold office until his or her successor is elected at the general state election next succeeding the occurrence of the vacancy and qualifies. No successor to the appointee shall be elected at any election held within 10 months of the date of the occurrence of the vacancy.

(b) If a vacancy in the office of judge of a municipal court occurs between the last day candidacy declaration papers may be filed and the June direct primary election and that vacancy occurs because of the appointment of the incumbent judge to another office by the Governor, or because the incumbent has resigned, retired, died, or been removed from office in accordance with subdivision (b) or (c) of Section 18 of Article VI of the California Constitution, and if one or more qualified persons other than the incumbent have filed candidacy declaration papers for the office, no vacancy shall be deemed to exist for purposes of subdivision (a), and the election for the office of judge shall be postponed until the next November statewide election.

If the Governor appoints the incumbent judge to another office within 68 days of the June direct primary election, and, as a result, the elections officer does not have sufficient time to remove the candidates' names from the ballot, the June direct primary election for the office shall not be deemed to have been held. At the next November statewide election, the candidate who receives the most votes shall be elected.

In order for a person's name to appear on the ballot at the next November statewide election the person shall file nomination documents in accordance with Article 2 (commencing with Section 8020) of Chapter 1 of Part 1 of Division 8 of the Elections Code. No previously filed documents shall satisfy this subdivision. Qualified persons who did not file nomination documents for the June direct primary election, as well as qualified persons who filed nomination

documents for the June direct primary election, shall be permitted to file nomination documents for the November statewide election.

Persons who had previously paid the filing fee at the time of filing nomination documents for the June direct primary election shall not be required to pay a filing fee for the November statewide election.

71181. This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

SEC. 351. Article 6 (commencing with Section 71220) of Chapter 6 of Title 8 of the Government Code is repealed.

SEC. 352. Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of the Government Code is repealed.

SEC. 353. Article 7 (commencing with Section 71265) is added to Chapter 6 of Title 8 of the Government Code, to read:

Article 7. Marshal

71265. All provisions of Sections 26600 to 26604, inclusive, 26607 to 26608.1, inclusive, 26609, 26611, 26660 to 26664, inclusive, and 26680 of the Government Code, and Sections 262, 262.1, 262.2, 262.3, 262.4, and 262.5 of the Code of Civil Procedure, apply to marshals and govern their powers, duties and liabilities.

71266. Marshals shall charge and collect for their services the fees, expenses, and mileage allowed by law to sheriffs. They shall pay those fees into the county treasury on or before the fifth day of each month, except where those fees, expenses, and mileage or a percentage of them are allowed those officers.

71267. The board of supervisors may establish a revolving fund for the use of the marshal who serves the superior court within the county and is a county officer, pursuant to Sections 29320 to 29331, inclusive. The fund may only be used for services or materials that are a legal charge against the county.

SEC. 354. Section 71305 of the Government Code is amended to read:

71305. The retirement annuity or pension provided by this article shall be granted to the marshal and constable only if in the county where the superior court is located there is provided a retirement annuity or pension for county and township peace officers who perform duties of the same character as those performed by the marshal and constable.

SEC. 355. Section 71380 of the Government Code is amended to read:

71380. The Controller shall establish, supervise, and as necessary revise a uniform accounting system, including a system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by courts, and

their collection and appropriate disbursement, shall be properly and uniformly accounted for. The accounting system shall apply to superior courts, together with probation offices, central collection bureaus and any other agencies having a role in this process.

SEC. 356. Section 71382 of the Government Code is amended to read:

71382. Every judge of a superior court, or the clerk of any such court, who willfully fails to keep accounts pursuant to the system or to account for the money paid into and disbursed by the court pursuant to the system established by the Controller pursuant to this article is guilty of a misdemeanor.

SEC. 357. Section 71384 of the Government Code is amended to read:

71384. The system established pursuant to this article may provide for the deposit of all money collected by superior courts in the county treasury, for disbursement from it, and for the audit of such accounts by the county auditor.

SEC. 358. Section 71601 of the Government Code is amended to read:

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 or in a local rule, 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, child support commissioner, referee, traffic trial commissioner, traffic referee, traffic hearing officer, juvenile court referee, juvenile hearing officer, and temporary 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.

(*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.

SEC. 359. Section 71620 of the Government Code is amended to read:

71620. (a) Each trial court may establish such job classifications and may appoint such trial court officers, deputies, 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.

SEC. 360. Section 71674 of the Government Code is amended to read:

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.

SEC. 361. Article 1 (commencing with Section 72000) of Chapter 8 of Title 8 of the Government Code is repealed.

SEC. 362. Article 1 (commencing with Section 72004) is added to Chapter 8 of Title 8 of the Government Code, to read:

Article 1. General Provisions

72004. Sections 24350 to 24356, inclusive, and Sections 29350 and 29351 apply to officers of superior courts and to the disposition of fees collected by those officers.

SEC. 363. Section 72053.5 of the Government Code is repealed.

SEC. 364. Section 72110 of the Government Code is amended to read:

72110. (a) Notwithstanding any other provision of law, the Board of Supervisors of Riverside County may find, after holding a public hearing on the issue, that cost savings can be realized by consolidation of court-related services provided by the sheriff and both offices of the marshal within that county. If that finding is made, there shall be conducted among all of the judges of the superior and municipal courts of that county an election to determine the agency, either the sheriff or both offices of the marshal, under which court-related services shall be consolidated. The outcome shall be determined by a simple majority of votes cast. The registrar of voters shall administer that election and tabulate the results thereof. The results of that election shall be reported within 15 days following the election period by the registrar of voters to the board of supervisors and to the judges of the superior and municipal courts of that county. The board of supervisors shall immediately commence and, within a reasonable time not to exceed 90 days, implement the determination made by a majority of the votes cast by the judges of the superior and municipal courts of the county in that election. If an election is not conducted within 90 days of notification of the board of supervisors' finding, or if the results of the election are evenly divided, the board of supervisors of that county shall determine under which agency, either the sheriff or both offices of the marshal, court-related services shall be consolidated, and shall proceed to implement that consolidation as if on the basis of a majority of the votes cast by the judges of the superior and municipal courts of that county.

(b) Notwithstanding any other provision of law, the marshals and all personnel of the marshals' offices or personnel of the sheriff's office affected by a consolidation of court-related services under this section shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits, and except as may be necessary for the operation of the agency under which court-related services are consolidated, shall not be involuntarily transferred during a period of six years following the consolidation out of that consolidated court-related services office. The elective offices of marshal for the County of Riverside shall be abolished upon a determination pursuant to the procedures required by this section that consolidated court-related services shall be provided by the sheriff.

(c) Permanent employees of the marshals' offices or sheriff's office on the effective date of a consolidation under this section shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section shall retain their probationary status and rights, and shall not be

deemed to have transferred so as to require serving a new probationary period. Transferring personnel may be required to take a promotional examination to promote to a higher classification but shall not be required to retest for his or her existing classification as a prerequisite to testing for a higher classification. A transferring deputy marshal requesting a transfer to another division in the sheriff's office shall not be required to take a written test as a prerequisite to making a lateral transfer.

(d) All county service or service by employees of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) No employee of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court services.

(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 365. Section 72111 of the Government Code is repealed.

SEC. 366. Section 72113 of the Government Code is repealed.

SEC. 367. Section 72114.1 of the Government Code is repealed.

SEC. 368. Section 72114.2 of the Government Code, as added by Chapter 335 of the Statutes of 1999, is repealed.

SEC. 369. Section 72114.2 of the Government Code, as amended by Chapter 135 of the Statutes of 2000, is amended to read:

72114.2. (a) Notwithstanding any other provision of law, on or after January 1, 2000, the San Diego County Marshal's Office shall be abolished, and there shall be a bureau in the San Diego County Sheriff's Department under which court security services and the service of civil and criminal process are consolidated.

This bureau's primary function shall be to provide the management with direction, supervision, and personnel for court-related services that include court security, the service of civil and criminal process, public safety protection, judicial protection, standards of performance, and other matters incidental to the performance of those services.

The sheriff shall be appointing authority for all bureau personnel. The person selected by the sheriff to oversee the operation of court-related services, as described in this section, shall report directly to the sheriff.

Notwithstanding Section 77212, the operational service level for court security services shall be in accordance with agreements between the

court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

The operational service level for the service of civil and criminal process and for administrative services shall be in accordance with agreements between the court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

To ensure that the costs assessed to the court for bureau services are in full conformance with the rules of court and statutes concerning trial court funding, the bureau shall be maintained as a separate organizational unit for budgeting and cost accounting purposes.

On a semiannual basis or more often as required by law, the sheriff shall provide the court with an accounting of costs for the bureau, in sufficient detail to allow for an assessment of budget performance, separately, for each function of the bureau. The county auditor and controller shall provide to the court copies of each audit report conducted on the bureau. The court is authorized to conduct, and the sheriff shall cooperate in, independent financial audits of the bureau, either by court staff or by independent auditors.

(b) Notwithstanding any other provision of law, concomitant with the abolition of the marshal's office all personnel of the marshal's office shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits.

The marshal and the assistant marshal, or their equivalents, may become employees of the sheriff's department.

(c) Permanent employees of the marshal's office on the effective date of transfer of services from the marshal to the sheriff pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Promotions for all personnel from the marshal's office shall be made pursuant to standards set by the sheriff. Probationary employees in the marshal's office on the effective date of the abolition shall not be required to serve a new probationary period. All probationary time served as an employee of the marshal shall be credited toward probationary time required as an employee of the sheriff's department.

(d) All county service and all service with the marshal's office by employees of the marshal's office on the effective date of the abolition of the marshal's office shall be counted toward seniority in the sheriff's department. All time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) As a result of the abolition of the marshal's office, no employee of the marshal's office who becomes an employee of the sheriff's department pursuant to this section shall lose peace officer status or be reduced in rank or salary.

(f) Prior to the abolition of the marshal's office, the court and the County of San Diego shall enter into a contractual agreement regarding the provision of court security services to be provided by the sheriff. Thereafter, from time to time, the court and the County of San Diego may enter into agreements regarding the provision of court security services to be provided by the sheriff.

(g) After abolition of the marshal's office, a two-member committee comprised of a representative of the presiding judge of the superior court and a representative of the sheriff shall make recommendations to the sheriff regarding courtroom assignments of bailiffs. Bailiff assignments and the release from those assignments shall be made only after consultation with, and concurrence of, the affected judge or judicial officer. The presiding judge may provide the concurrence required by this section. This subdivision shall not apply to actions instituted by the sheriff for fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(h) For a period of five years following the abolition of the marshal's office, personnel of the marshal's office who become employees of the sheriff's department shall not be transferred from the bureau in the sheriff's department under which court-related services and the service of civil and criminal process are consolidated, unless the transfer is voluntary or is the result of fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(i) Personnel of the marshal's office who become employees of the sheriff's department shall be entitled to request an assignment to another bureau or division within the sheriff's department, and that request shall be reviewed the same as any other request from within the department.

(j) This section shall become operative in the County of San Diego when the board of supervisors adopts a resolution declaring this section operative. The implementation of this section shall be subject to approval and adoption by the board of supervisors of necessary actions, appropriations, and ordinances consistent with the charter of the County of San Diego and other statutory authority.

(k) This section shall remain in effect only until January 1, 2005, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 370. Section 72115 of the Government Code is amended to read:

72115. (a) This section applies to the abolition of the marshal's office and the transfer of court-related services provided by the marshal within the county to the sheriff's department.

(b) The courtroom assignment of bailiffs after abolition of the marshal's office and the consolidation pursuant to this section shall be determined by a two-member committee comprised of the presiding judge of the superior court and the sheriff, or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned.

It is the intent of the Legislature, in enacting this subdivision, to ensure that courtroom assignments are made in a manner which best assures that the interests of the affected judge or commissioner and bailiff are protected.

(c) Notwithstanding any other provision of law, the marshal and all personnel of the marshal's office affected by the abolition of the marshal's office in San Bernardino County shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits, and, except as may be necessary for the operation of the agency under which court-related services and the service of civil and criminal process are consolidated, they shall not be involuntarily transferred out of the consolidated office for a period of five years following the consolidation.

(d) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed in the same manner as any other request from within the department. Persons who accept a voluntary transfer from the court services/civil division shall waive their rights pursuant to subdivision (c).

(e) Permanent employees of the marshal's office on the effective date of the abolition of the marshal's office pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office on the effective date of a consolidation pursuant to this section shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(f) All county service or service by employees of the marshal's office on the effective date of a consolidation pursuant to this section shall be counted toward seniority in the consolidated office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(g) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

(h) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted

before January 1, 2018, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 371. Section 72116 of the Government Code is amended to read:

72116. (a) This section applies to the consolidation of court-related services within the marshal's office in Shasta County.

(b) Except as provided in subdivision (f), all personnel of the marshal's office or personnel of the sheriff's office affected by a consolidation of court-related services under this section shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits, and except as may be necessary for the operation of the agency under which court-related services are consolidated, shall not be involuntarily transferred out of the consolidated court-related services office for a period of four years following the consolidation.

(c) Permanent employees of the marshal's office or sheriff's office on the effective date of consolidation under this section shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(d) All county service or service by employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) No employee of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court-related services.

(f) All sheriff's bailiffs affected by the consolidation shall be given the option of becoming employees of the marshal's office or of remaining with the sheriff's office. If a staffing shortage is created by the exercise of this option by these bailiffs, the marshal may accept qualified applicants from the sheriff's office under the provisions of subdivisions (b), (c), (d), and (e).

SEC. 372. Section 72150 of the Government Code is repealed.

SEC. 373. Section 72151 of the Government Code is repealed.

SEC. 374. Section 72190 of the Government Code is amended to read:

72190. Within the jurisdiction of the court and under the direction of the judges, commissioners shall exercise all the powers and perform

all of the duties prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. They shall be ex officio deputy clerks. A commissioner who has been duly appointed and has thereafter been retired from service, may be assigned by the presiding judge to serve as a court commissioner of the court for any periods of time as he or she is needed for the prompt and efficient discharge of the business of that court. While serving, he or she shall be paid the full compensation of a court commissioner, payable as follows: he or she shall continue to receive his or her retirement allowance, and in addition the court shall pay him or her the amount equal to the difference between the retirement allowance and full compensation. That employment shall not operate to reinstate him or her as a member of the retirement system or to terminate or suspend his or her retirement rights or allowance, and no deductions shall be made from his or her compensation as contributions to the retirement system.

SEC. 375. Section 72190.1 of the Government Code is amended to read:

72190.1. A commissioner may conduct arraignment proceedings on a complaint if directed to perform those duties by the presiding judge of the court, including the issuance and signing of bench warrants.

SEC. 376. Section 72190.2 of the Government Code is amended to read:

72190.2. If directed to perform such duties by the presiding judge, a commissioner may issue and sign a bench warrant for the arrest of a defendant who fails to appear in court when required to appear by law or who fails to perform any act required by court order.

SEC. 377. Section 72190.5 of the Government Code is repealed.

SEC. 378. Section 72191 of the Government Code is repealed.

SEC. 379. Section 72192 of the Government Code is repealed.

SEC. 380. Section 72194 of the Government Code is repealed.

SEC. 381. Section 72194.5 of the Government Code is amended and renumbered to read:

69957. Whenever an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. A transcript derived from an electronic

recording may be utilized whenever a transcript of court proceedings is required. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use.

SEC. 382. Section 72195 of the Government Code is repealed.

SEC. 383. Section 72196 of the Government Code is repealed.

SEC. 384. Section 72198 of the Government Code is repealed.

SEC. 385. Section 72199 of the Government Code is repealed.

SEC. 386. Article 6 (commencing with Section 72230) of Chapter 8 of Title 8 of the Government Code is repealed.

SEC. 387. Article 7 (commencing with Section 72270) of Chapter 8 of Title 8 of the Government Code is repealed.

SEC. 388. Section 72301 of the Government Code is amended to read:

72301. The clerk of the superior court or one or more deputy clerks, the sheriff or one or more deputy sheriffs, or one or more city police officers shall be in attendance at all hours of the day and night, including Sundays and holidays, and may fix and accept bail pursuant to procedures established by the court for the appearance before the court of any defendant charged in the court or whenever a defendant has been arrested and booked within the county for having committed a misdemeanor. The amount of bail shall be pursuant to a schedule of bail in such cases previously fixed and approved by the judges of the court at their annual meeting. If a warrant has been issued for the arrest of the defendant, the bail shall be in the amount fixed in the warrant. The bail shall be cash, negotiable United States Treasury bonds, or a surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code.

SEC. 389. Section 72400 of the Government Code is repealed.

SEC. 390. Section 72403 of the Government Code is amended to read:

72403. The traffic referee shall have the power of a deputy clerk of the court, and shall perform such other duties as may be assigned by the court.

SEC. 391. Section 72404 of the Government Code is repealed.

SEC. 392. Section 72405 of the Government Code is repealed.

SEC. 393. Section 72406 of the Government Code is repealed.

SEC. 394. Section 72407 of the Government Code is amended to read:

72407. Notwithstanding any other provision of law, a traffic referee in any county with a population of 3,000,000 or more who has been duly appointed and has thereafter been retired for service, may be assigned by the presiding judge of a court to serve as a traffic referee of the court for such periods as needed for the prompt and efficient discharge of the business of that court. While so serving, the traffic referee shall be paid

the full compensation of a traffic referee, payable as follows: The traffic referee shall continue to receive a retirement allowance, and in addition the amount equal to the difference between such retirement allowance and such full compensation. Such employment shall not operate to reinstate the traffic referee as a member of the retirement system or to terminate or suspend the traffic referee's retirement rights or allowance, and no deductions shall be made from the traffic referee's compensation as contributions to the retirement system.

SEC. 395. Section 72408 of the Government Code is repealed.

SEC. 396. Article 10 (commencing with Section 72450) of Chapter 8 of Title 8 of the Government Code is repealed.

SEC. 397. Chapter 9 (commencing with Section 72600) of Title 8 of the Government Code is repealed.

SEC. 398. Chapter 9 (commencing with Section 72708) is added to Title 8 of the Government Code, to read:

CHAPTER 9. LOS ANGELES COUNTY

72708. This chapter applies to proceedings in the Los Angeles County Superior Court that would have been within the jurisdiction of the former Municipal Court of the Los Angeles Judicial District as of January 21, 2000.

72709. The salaries and benefits of official reporters shall be paid from the Reporters' Salary Fund.

72710. On order of the court, the per diem fees and benefits of official reporters pro tempore shall be paid from the Reporter's Salary Fund.

72711. (a) Fees for reporting services payable by law by the parties to proceedings in the court to official reporters or official reporters pro tempore shall be paid to the clerk of the court, who shall deposit them in the Reporters' Salary Fund.

(b) Fees for transcription of testimony and proceedings in the court shall be paid by the parties to official reporters and official reporters pro tempore as otherwise provided by law, and in all cases where by law the court may direct the payment of transcription fees out of the Trial Court Operations Fund, the fee on order of the court shall be paid from the Reporters' Salary Fund, except fees for transcription of testimony and proceedings in felony cases, which shall be paid from the Trial Court Operations Fund.

72711.5. The reporting and transcription fees payable pursuant to Section 72711 shall also be payable in the same sums and in the same manner by the parties to proceedings in the court for electronically recording an action or proceeding pursuant to Section 69957 or for transcriptions of testimony and proceedings in the court

stenographically recorded. The fees shall be paid to the clerk of the court, who shall deposit them in the Reporters' Salary Fund. In any case where by law the court may direct the payment of a transcription fee out of the Trial Court Operations Fund, on order of the court the fee for transcription of testimony and proceedings in the court electronically recorded shall be paid from the Reporters' Salary Fund, except fees for transcription of testimony and proceedings in felony cases, which shall be paid from the Trial Court Operations Fund.

72712. There shall be set aside from the revenue of the court a revolving fund in the amount of seven hundred fifty thousand dollars ($750,000). The fund shall be known as the Reporters' Salary Fund.

At the time of each monthly distribution of the revenue of the court to the cities within the former Los Angeles Judicial District and to the county within which the district was established, the clerk of the court shall deduct proportionately from their respective total shares such sum as will, when added to the sum then remaining in the fund, equal seven hundred fifty thousand dollars ($750,000) and deposit it in the fund. Such sum shall include the cost incurred pursuant to Section 69957 from electronic recording devices, appurtenant equipment, supplies, recordings, and transcriptions produced from electronic recording of testimony and proceedings in the court.

Deductions from the county's share of the revenue shall be made from that portion of it distributable to the general fund of the county, and deductions from each city's share shall be made from that portion of it distributable to the general fund of each city.

For the purposes of this section the ''revenue'' of the court includes all fines, forfeitures, and fees accruing to the cities or the county, except law library fees.

72713. (a) If at any time the Reporters' Salary Fund is insufficient, on order of the court the amount of the deficiency shall be paid from the Trial Court Operations Fund.

(b) The county treasurer shall be the depositary, and the county auditor the disbursing agent, for the Reporters' Salary Fund.

SEC. 399. Chapter 9.1 (commencing with Section 73075) of Title 8 of the Government Code is repealed.

SEC. 400. Chapter 9.2 (commencing with Section 73100) of Title 8 of the Government Code is repealed.

SEC. 401. Section 73300 of the Government Code is repealed.

SEC. 402. Section 73301 of the Government Code is amended to read:

73301. Persons who succeeded to positions in the municipal court upon its establishment shall receive credit for continuous prior service in superseded courts and in the sheriff's department or constabulary of the county, and, in addition to the minimum rate, such persons shall

receive the annual increments commensurate with such years of prior service up to the maximum rate set. This section applies to municipal courts provided for in former Articles 3, 7, 12, 13, 15, 18, 22, 23, 29, 31, and 32 of this chapter.

SEC. 403. Article 1.5 (commencing with Section 73330) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 404. Article 2 (commencing with Section 73340) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 405. Article 3 (commencing with Section 73390) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 406. Article 3 (commencing with Section 73390) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 3. Kings County

73390. This article applies to the municipal court for the County of Kings. The court referred to in this article shall be the successor of the court to be established by the consolidation of the Corcoran, Hanford, and Lemoore Judicial Districts by the Board of Supervisors of the County of Kings, and it shall be known as the Kings County Municipal Court.

73396. Facilities for the court shall be maintained in the Cities of Hanford, Corcoran, Lemoore, and (if incorporated pursuant to Section 73391.5) Avenal, and in such other locations within the County of Kings as are designated by the board of supervisors. The court shall hold sessions at each facility as business requires. At the direction of the court, arraignment of criminal defendants who are in custody at the Kings County Jail facility shall be held in the court facility located in Hanford.

SEC. 407. Article 3.1 (commencing with Section 73400) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 408. Article 4 (commencing with Section 73430) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 409. Article 5 (commencing with Section 73480) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 410. Article 6 (commencing with Section 73520) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 411. Article 7 (commencing with Section 73560) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 412. Article 7 (commencing with Section 73560) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 7. Monterey County

73560. This article applies to the Monterey County Municipal Court District, which encompasses the entire County of Monterey.

73561. Facilities for the court shall be maintained in the Cities of Salinas and Monterey and at court facilities provided elsewhere in accordance with law. The court shall determine the nature and frequency of sessions held at court locations.

SEC. 413. Article 7.5 (commencing with Section 73580) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 414. Article 8 (commencing with Section 73600) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 415. Article 9 (commencing with Section 73640) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 416. Article 9 (commencing with Section 73640) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 9. El Cajon Judicial District

73640. This article applies to the municipal court established in a district embracing the Judicial District of El Cajon.

73642. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

73648. The municipal court shall hold sessions at such location, or locations, within the El Cajon Judicial District as the Board of Supervisors of the County of San Diego may designate.

SEC. 417. Article 9.5 (commencing with Section 73660) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 418. Article 9.5 (commencing with Section 73660) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 9.5. Humboldt County

73660. There is in the County of Humboldt a single municipal court district known as the Humboldt County Municipal Court District.

73661. In order that the citizens of the county may have convenient access to the court, the location of permanent court facilities and locations where sessions of the court may be held other than in the county seat shall be as determined by the board of supervisors.

73665. (a) Effective January 1, 1999, the Sheriff of Humboldt County shall assume the duties and responsibilities of the Humboldt County Marshal and the office of the marshal shall be consolidated with the office of sheriff. Upon the effective date of the consolidation there shall be established within the Humboldt County Sheriff's Department a unit designated as the Court Security Services Division. The Sheriff of Humboldt County shall be responsible for the management and operation of this division, in accordance with this article.

(b) Neither this article nor any provision hereof, shall be deemed in any manner to limit or otherwise impair the power vested by all other laws in the Superior Court of Humboldt County to secure proper provision of court-related services.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

73666. (a) Permanent employees of the marshal's office on the effective date of consolidation under this article shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office on the effective date of a consolidation under this article shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(b) County service of employees of the marshal's office on the effective date of the consolidation under this article shall be counted toward seniority in the consolidated office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(c) No provision of this section shall be deemed to restrict the authority of the sheriff to discipline any employee in accordance with

county personnel policies, and memoranda of understanding, or rules, regulations, and procedures otherwise applicable, and except as otherwise expressly provided in this section, the discretion of the sheriff to assign, promote, direct, and control employees formerly assigned to the marshal's office shall not be deemed in any manner restricted by virtue of the abolition or consolidation.

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 419. Article 9.7 (commencing with Section 73671) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 420. Article 10 (commencing with Section 73680) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 421. Article 10.5 (commencing with Section 73698) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 422. Article 10.5 (commencing with Section 73698) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 10.5. Fresno County

73698. This article applies to the Central Valley Municipal Court District of Fresno County. The court referred to in this article shall become operative upon the consolidation of the Coalinga, Firebaugh, Fowler-Caruthers, Kerman, Kingsburg-Riverdale, Parlier-Selma, Reedley-Dunlap, and Sanger Judicial Districts by the Board of Supervisors of the County of Fresno.

73698.6. Facilities for the court shall be maintained in the Cities of Coalinga, Firebaugh, Fowler, Kerman, Kingsburg, Parlier, Selma, Reedley, and Sanger, and the communities of Caruthers and Riverdale; and in such other locations within the County of Fresno as are designated by the board of supervisors. The court shall hold sessions at each facility as business requires. At the direction of the court, arraignment of criminal defendants who are in custody at the Fresno County Detention Facility shall be held at the court facility located at the Fresno County Detention Facility.

SEC. 423. Article 11 (commencing with Section 73701) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 424. Article 11.5 (commencing with Section 73730) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 425. Article 11.5 (commencing with Section 73730) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 11.5. Imperial County

73730. There is hereby created a municipal court district which embraces the entire County of Imperial. This article applies to the municipal court established within the district, which shall be known as the Imperial County Municipal Court.

73732. Facilities for the court shall be maintained, at or near the county seat and at court facilities provided elsewhere as determined by ordinance adopted by the board of supervisors. The court shall determine the nature and frequency of sessions held at additional court locations designated by the board of supervisors.

SEC. 426. Article 11.6 (commencing with Section 73750) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 427. Article 11.6 (commencing with Section 73750) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 11.6. Madera County

73750. There is in the County of Madera, on and after the effective date of this section, a single municipal court district known as the Madera County Municipal Court District.

73756. Facilities for the district shall be maintained at the court facilities provided within each division. The presiding judge shall determine the nature and frequency of sessions held at the court facilities within each division.

73757. (a) In Madera County the majority of the judges of the superior court have voted to consolidate court services and security functions in the office of the Sheriff of Madera County.

(b) The sheriff's functions shall include, but not be limited to, providing all bailiff functions for the unified superior court in Madera County, and all other duties imposed by law upon deputy sheriffs and peace officers generally.

(c) The sheriff shall be responsible for the service of all writs, notices, and other processes issued by any court or other competent authority. Nothing in this section shall be construed as limiting the responsibility or authority of a private person or registered process server from serving process or notices in the manner prescribed by law, nor shall it limit the authority of the sheriff or any other peace officer to serve warrants of arrest or other process specifically directed by any court to the sheriff or any other peace officer.

(d) Each elected marshal holding office in Madera County as of January 1, 2000, shall become an employee of the Madera County Sheriff's Department in the position of sheriff's bailiff, as of that date and each elective position of Marshal of the Madera County Municipal

Court District is abolished as of that date. Each marshal transferring to the sheriff's department pursuant to this section shall be compensated at not less than the EL-10 step of Salary Range 43 (table B). No transferring marshal shall lose peace officer status or be demoted or otherwise be adversely affected by the consolidation of court-related services accomplished by this section. Each transferring marshal employed in the position of sheriff's bailiff shall be deemed duly qualified for that position and no other qualifications shall be required for that employment or retention in that position. Any transferring marshal wishing to transfer to another position shall meet the qualifications of a peace officer as required by subdivision (a) of Section 832 of the Penal Code and any other requirements of the Madera County civil service system. For purposes of establishing seniority within the class of sheriff's bailiff, each transferring marshal shall be credited with the marshal's total years of services to Madera County as a constable and marshal.

(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

73758. The Sheriff of Madera County shall be responsible for the transportation of prisoners held in the county's adult correctional facility to and from necessary court appearances, medical and dental trips, and transfers to or from local, state, or federal correctional facilities. To meet this responsibility, the Sheriff of Madera County shall contract with the county department of corrections, pursuant to Section 831.6 of the Penal Code, to provide these transportation services by qualified personnel of the county department of corrections.

SEC. 428. Article 12 (commencing with Section 73770) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 429. Article 12 (commencing with Section 73770) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 12. Marin County

73770. This article applies to the judicial district of the Marin County Municipal Court.

73771. A branch court shall be maintained at an appropriate location in the former Western Judicial District.

SEC. 430. Article 12.2 (commencing with Section 73783.1) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 431. Article 12.2 (commencing with Section 73783.1) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 12.2. Mariposa County

73783.1. This article applies to the municipal court established in a judicial district embracing the County of Mariposa.

73783.3. Facilities for the court shall be maintained at the county seat and at court facilities provided elsewhere as determined by ordinance adopted by the board of supervisors. The court shall determine the nature and frequency of sessions held at additional court locations designated by the board of supervisors. Jurors shall be drawn from the entire county.

SEC. 432. Article 12.3 (commencing with Section 73784) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 433. Article 12.3 (commencing with Section 73784) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 12.3. Mendocino County

73784. This article applies to and establishes the Mendocino County Municipal Court District, which shall embrace the entire County of Mendocino, and shall supersede the Anderson, Arena, Long Valley, Round Valley, and Ten Mile Judicial Districts and the Mount San Hedrin Municipal Court District.

73784.10. The location of permanent court facilities and locations where sessions of the court may be held other than in the county seat shall be as determined by the board of supervisors.

SEC. 434 Article 12.5 (commencing with Section 73790) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 435. Article 12.5 (commencing with Section 73790) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 12.5. Merced County

73790. There is hereby created a municipal court district which embraces the entire County of Merced. This article applies to the municipal court established within the district, which shall be known as the Merced County Municipal Court.

73792. Facilities for the court shall be maintained at or near the county seat and at court facilities provided elsewhere as determined by ordinance adopted by the board of supervisors. The court shall determine the nature and frequency of sessions held at additional court locations designated by the board of supervisors.

73796. There shall be one marshal of the Merced County Municipal Court. The marshal shall receive a salary on range 68.5.

When a vacancy occurs in the office, a majority of the superior and municipal court judges shall appoint the marshal and the marshal shall serve at their pleasure.

SEC. 436. Article 13 (commencing with Section 73820) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 437. Article 14 (commencing with Section 73870) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 438. Article 16 (commencing with Section 73950) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 439. Article 16 (commencing with Section 73950) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 16. North County Judicial District

73950. This article applies to the Municipal Court of the North County Judicial District.

73952. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

73956. The headquarters of the municipal court and the clerk and marshal of the North County Judicial District shall be located within the City of Vista or such other place as shall be designated by the Board of Supervisors of the County of San Diego. The municipal court shall hold sessions at its headquarters and at a department at a location within the City of Escondido and at such other location or locations within the North County Judicial District as shall be designated by the board of supervisors. The clerk and marshal of the North County Judicial District shall maintain branch offices at a location within the City of Escondido

as shall be designated by the board of supervisors. The Escondido branch office shall maintain the same office hours as the headquarters offices and shall provide facilities for complete municipal court services, including the filing of original complaints and other documents and the posting of bail, and the board of supervisors shall provide facilities within the City of Escondido for the complete transaction of business of the court including the holding of jury trials.

SEC. 440. Article 17.1 (commencing with Section 74010) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 441. Article 18 (commencing with Section 74020) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 442. Article 20 (commencing with Section 74130) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 443. Article 20 (commencing with Section 74130) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 20. Riverside County

74130. This article applies to the municipal courts established in Riverside County.

74145. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the county flexible benefits plan.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive the same long-term disability insurance as provided by the County of Riverside for other elected county officials.

SEC. 444. Article 21.5 (commencing with Section 74190) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 445. Article 21.6 (commencing with Section 74205) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 446. Article 25 (commencing with Section 74340) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 447. Article 25 (commencing with Section 74340) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 25. San Diego Judicial District

74340. This article applies to the municipal court established in a district embracing that portion of the City of San Diego not included within the South Bay Municipal Court District.

74342. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if

deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in these benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

SEC. 448. Article 25.1 (commencing with Section 74355) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 449. Article 26 (commencing with Section 74500) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 450. Article 27 (commencing with Section 74600) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 451. Article 27 (commencing with Section 74602) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 27. San Luis Obispo County

74602. Facilities for the San Luis Obispo County Superior Court shall be maintained in the City of San Luis Obispo, and may be maintained at any other location within the county. The court may hold sessions at each facility, as business requires. At the direction of the presiding judge, any subordinate judicial officer may perform his or her duties at any court location. At the direction of the court, arraignment of criminal defendants who are in custody at the San Luis Obispo County Jail facility shall be held at that facility.

SEC. 452. Article 28 (commencing with Section 74640) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 453. Article 28 (commencing with Section 74640) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 28. Santa Barbara County

74640. There are in the County of Santa Barbara two municipal court districts, known as the Santa Barbara Municipal Court and the North Santa Barbara County Municipal Court.

74640.2. In order that the citizens residing in each division of the North Santa Barbara County Municipal Court may have convenient access to the court, sufficient court facilities, including staff and other necessary personnel, shall be maintained in each division at the following sites or as otherwise designated by the board of supervisors:

(a) In the Santa Maria Division, in the City of Santa Maria.

(b) In the Lompoc Division, in the City of Lompoc.

(c) In the Solvang Division, in the City of Solvang.

SEC. 454. Article 28.5 (commencing with Section 74660) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 455. Article 29 (commencing with Section 74690) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 456. Article 29.5 (commencing with Section 74700) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 457. Article 29.6 (commencing with Section 74720) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 458. Article 29.6 (commencing with Section 74720) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 29.6. Siskiyou County

74720. The Siskiyou County Municipal Court District shall supersede the Western, Southeastern, and Dorris/Tulelake Judicial Districts and shall embrace the entire County of Siskiyou.

74724. The court shall maintain facilities at Yreka, Dorris, Weed, and other locations determined by the court. The court shall determine the nature and frequency of sessions to be held at additional court locations.

SEC. 459. Article 30 (commencing with Section 74740) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 460. Article 30 (commencing with Section 74740) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 30. South Bay Judicial District

74740. Notwithstanding Section 71040, there shall be a municipal court in a judicial district, embracing the Cities of Chula Vista, Coronado, Imperial Beach, National City, that portion of the City of San Diego lying southerly of the City of Chula Vista and the portion of the City of San Diego lying within San Diego Bay south of a westerly continuation of the northern boundary of National City to the point of intersection with the eastern boundary of the City of Coronado, and such other contiguous area as the board of supervisors may direct, designated the South Bay Judicial District.

This article applies to the municipal court established pursuant to this section.

74742. (a) In addition to any other compensation and benefits, each judge of the municipal court shall receive the same life insurance, accidental death and dismemberment insurance, comprehensive annual physical examinations, executive flexible benefits plan (except that if deferred compensation is selected, no adjustment based on retirement tier shall apply), and dental and vision insurance as provided by the County of San Diego for the classification of chief administrative officer. Changes in such benefits shall be effective on the same date as for those for the classification of chief administrative officer.

(b) Subject to approval by the board of supervisors, each judge of the municipal court shall receive one or more of the following benefits: the same long-term disability insurance as provided by the County of San Diego for the classification of chief administrative officer or retiree health benefits whereby each judge of the municipal court serving on or after October 1, 1987, who retires from the municipal court on or after January 1, 1989, shall receive the same amount of insurance premium for retiree health benefits under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22751) of Title 2) that the state provides to retired superior court judges under that act.

74748. The municipal court shall hold sessions in the City of Chula Vista and at such other places as the board of supervisors, by ordinance, may designate.

SEC. 461. Article 30.1 (commencing with Section 74760) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 462. Article 30.1 (commencing with Section 74760) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 30.1. Glenn County

74760. The Glenn County Municipal Court District shall supersede the Glenn County Judicial District and shall embrace the entire County of Glenn.

74764. The court shall maintain facilities at Willows and other locations determined by the court. The court shall determine the nature and frequency of sessions to be held at additional court locations.

SEC. 463. Article 31 (commencing with Section 74780) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 464. Article 31 (commencing with Section 74784) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 31. Stanislaus County

74784. (a) All sworn personnel of the former Stanislaus County marshal's office who are assigned to court services on the date of the elimination of the marshal's office shall become members of the sheriff's Court Services Bureau, with those permanent employees holding the rank of deputy marshal becoming deputy sheriff coroners.

(b) Sworn personnel may be transferred to another position in the sheriff's office at the same or equivalent classification, but shall not be involuntarily transferred out of the Court Services Bureau.

74785. (a) This article shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date.

(b) The repeal of this article does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 465. Article 32 (commencing with Section 74800) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 466. Section 74820.1 of the Government Code is repealed.

SEC. 467. Section 74820.1 is added to the Government Code, to read:

74820.1. This article applies to the abolition of the marshal's office and the consolidation of court security functions and service of process and notice functions in the sheriff's office.

SEC. 468. Section 74820.2 of the Government Code is amended to read:

74820.2. There is a court services division within the San Joaquin County Sheriff's Department to provide security within the superior court.

SEC. 469. Section 74820.3 of the Government Code is amended to read:

74820.3. (a) The sheriff shall be the appointing authority for all court services division positions and employees.

(b) Selection, appointment, and removal of chiefs of the court services division shall be made by a majority vote of the incumbent superior court judges and commissioners from a list of qualified candidates submitted by a committee comprised of the sheriff and an incumbent judge of the superior court.

SEC. 470. Section 74820.4 of the Government Code is repealed.

SEC. 471. Section 74820.5 of the Government Code is repealed.

SEC. 472. Section 74820.6 of the Government Code is repealed.

SEC. 473. Section 74820.7 of the Government Code is repealed.

SEC. 474. Section 74820.8 of the Government Code is repealed.

SEC. 475. Section 74820.9 of the Government Code is repealed.

SEC. 476. Section 74820.10 of the Government Code is repealed.

SEC. 477. Section 74820.11 of the Government Code is repealed.

SEC. 478. Section 74820.12 of the Government Code is repealed.

SEC. 479. Section 74820.13 of the Government Code is repealed.

SEC. 480. Section 74820.14 of the Government Code is repealed.

SEC. 481. Article 32.5 (commencing with Section 74830) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 482. Article 33 (commencing with Section 74840) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 483. Article 34 (commencing with Section 74860) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 484. Article 35 (commencing with Section 74900) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 485. Article 35.5 (commencing with Section 74915) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 486. Article 35.5 (commencing with Section 74915) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 35.5. Yuba County

74915. This article applies to the municipal court established in a judicial district embracing the County of Yuba. This court shall be known as the Yuba County Municipal Court.

74916. (a) Facilities for the court shall be maintained at the county seat and at court facilities provided elsewhere as determined by ordinance adopted by the board of supervisors. The court shall determine the nature and frequency of sessions held at additional court locations designated by the board of supervisors.

(b) Jurors shall be drawn from the entire county.

SEC. 487. Article 36 (commencing with Section 74920) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 488. Article 36 (commencing with Section 74920) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 36. Tulare County

74920. There is in the County of Tulare a single municipal court district known as the Tulare County Municipal Court District.

74920.5. On the order of the board of supervisors, sessions of the Tulare-Pixley Division shall be held within the territory embraced by the Pixley Judicial District as it existed on December 31, 1974.

74920.6. On order of the board of supervisors, sessions and services of the Central Division shall be held in the City of Woodlake, the City of Lindsay, and the City of Exeter.

SEC. 489. Article 37 (commencing with Section 74934) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 490. Article 37 (commencing with Section 74934) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 37. Butte County

74934. This article applies only to municipal courts established in the following judicial districts in Butte County:

(a) A district embracing the Cities of Chico and Paradise, designated as the North Butte County Judicial District headquartered in the City of Chico.

(b) A district embracing the Cities of Oroville, Biggs, and Gridley, designated as the South Butte County Judicial District which is hereby created and shall be headquartered in the City of Oroville.

74935.5. There shall be maintained in both the City of Gridley and the Town of Paradise branch court facilities, including staff and other necessary personnel, so that the citizens of those communities may utilize such facilities as needed for small claims, infractions (traffic), civil matters, and misdemeanors.

SEC. 491. Article 38 (commencing with Section 74948) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 492. Article 38 (commencing with Section 74948) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 38. Napa County

74948. This article applies to the municipal court district which embraces the entire County of Napa, which court shall be known as the Municipal Court for the County of Napa.

74950. Facilities for the court shall be maintained in the City of Napa, the City of Saint Helena, the City of Calistoga, and in such other locations within the County of Napa as are designated by the board of supervisors pursuant to the provisions of Section 71342. The court shall hold sessions at each facility as business requires.

SEC. 493. Article 39 (commencing with Section 74960) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 494. Article 39 (commencing with Section 74960) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 39. Yolo County

74960. This article applies to the municipal court established within the municipal court district which embraces the entire territory of the

County of Yolo lying within the exterior boundaries of such county, which court shall be known as the Yolo County Municipal Court.

74962. Facilities for the court shall be maintained at or near the county seat and at court facilities provided elsewhere as determined by ordinance adopted by the board of supervisors. The court shall determine the nature and frequency of sessions held at additional court locations designated by the board of supervisors.

SEC. 495. Article 40 (commencing with Section 74980) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 496. Article 40 (commencing with Section 74984) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 40. Shasta County

74984. (a) There shall be one marshal who shall be appointed by the Shasta County Superior Court.

(b) The board of supervisors may transfer certain duties of the sheriff to the marshal pursuant to Section 26608.3.

(c) All fees collected by the marshal's office shall be deposited with the county treasurer and credited to the general fund.

74985. Each employee of the marshal's office who is a county employee shall be provided the same employment benefits by Shasta County as the county provides to other county employees in equivalent categories and salary ranges in the county's merit personnel system.

74988. The marshal and employees of the office of the marshal who provide court security services, except reserve deputy marshals, are employees of the Shasta County Superior Court for all purposes.

SEC. 497. Article 41 (commencing with Section 74993) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 498. Section 75076.2 of the Government Code is amended to read:

75076.2. A judge who renders part-time service after January 1, 1990, shall receive a reduced retirement allowance. The reduction shall be based upon the relationship between the actual service rendered by the judge, including service rendered by reason of sitting on assignment, and a full-time judge's service during the period from January 1, 1990, until the date of retirement. Computations under this section and subdivision (a) of Section 75076 shall consider the salary payable to the judge of a municipal or justice court to be equal to 91.3225 percent of the salary of a superior court judge. For purposes of qualifying for retirement, part-time service shall be the equivalent of full-time service.

SEC. 499. Section 75095.5 of the Government Code is repealed.

SEC. 500. Section 75103 of the Government Code is amended to read:

75103. Except as provided in Section 75103.3, the auditor of each county shall deduct 8 percent from the portion paid by a county of the monthly salary, not including the additional compensation pursuant to Section 68203.1, of each judge of the superior court and cause this amount to be paid into the Judges' Retirement Fund.

SEC. 501. Section 75602 of the Government Code is amended to read:

75602. Except as provided in Section 75605, the Controller or the auditor of each county shall deduct 8 percent from the portion paid by a county, or the Controller and the auditor, if appropriate, of the monthly salary, not including the additional compensation pursuant to Section 68203.1, of each judge of the superior court and cause this amount to be paid into the Judges' Retirement System II Fund.

SEC. 502. Section 76200 of the Government Code is amended to read:

76200. Alameda County is authorized to establish a Courthouse Construction Fund pursuant to Section 76100 so long as the county maintains a courtroom building in the City of Berkeley. In the event that the courtroom building in the City of Berkeley is closed, Alameda County may not collect those funds.

SEC. 503. Section 76238 of the Government Code is amended to read:

76238. (a) Notwithstanding any other law, for the purpose of assisting the City and County of San Francisco in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary or incidental to the operation of the justice system, the Board of Supervisors of the City and County of San Francisco may require the amounts collected pursuant to subdivision (d) to be deposited in the Courthouse Construction Fund established pursuant to Section 76100. In the City and County of San Francisco, the moneys of the Courthouse Construction Fund together with any interest earned thereon shall be payable only for the foregoing purposes and at the time necessary therefor, and for the purposes set forth in subdivision (b) and at the time necessary therefor.

(b) In conjunction with the acquisition, rehabilitation, construction, or financing of courtrooms or of a courtroom building or buildings referred to in subdivision (a), the City and County of San Francisco may use the moneys of the Courthouse Construction Fund (1) to rehabilitate existing courtrooms or an existing courtroom building or buildings for other uses if new courtrooms or a courtroom building or buildings are acquired, constructed, or financed or (2) to acquire, rehabilitate, construct, or finance excess courtrooms or an excess courtroom building or buildings if that excess is anticipated to be needed at a later time.

(c) Any excess courtrooms or excess courtroom building or buildings that are acquired, rehabilitated, constructed, or financed pursuant to subdivision (b) may be leased or rented for uses other than the operation of the justice system until such time as the excess courtrooms or excess courtroom building or buildings are needed for the operation of the justice system. Any amounts received as lease or rental payments pursuant to this subdivision shall be deposited in the Courthouse Construction Fund.

(d) In the City and County of San Francisco, a surcharge for the purpose and for the time set forth in this section may be added to any filing fee in any civil or probate action in the superior court. The surcharge shall be in an amount, not to exceed fifty dollars ($50), and shall be collected in a manner as set forth in a resolution adopted by the Board of Supervisors of the City and County of San Francisco.

SEC. 504. Section 76245 of the Government Code is amended to read:

76245. (a) The fund established in Shasta County pursuant to Section 76100 shall be known as the Statham Courthouse Construction Fund.

(b) The fund established in Shasta County pursuant to Section 76101 shall be known as the Statham Criminal Justice Facilities Construction Fund.

SEC. 505. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, ''court operations'' means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior court judges and for subordinate judicial officers. For purposes of this paragraph, ''subordinate judicial officers'' includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to former Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under Sections 71630 and 71639.3 with respect to court employees.

(7) Subject to paragraph (1) of subdivision (d) of Section 77212, actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(8) Except as provided in subdivision (b), other matters listed as court operations in Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) However, ''court operations'' does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 506. Section 77007 of the Government Code is amended to read:

77007. As used in this chapter, ''trial court'' means a superior court.

SEC. 507. Section 77008 of the Government Code is amended to read:

77008. As used in this chapter, ''filing fees'' means any and all fees and charges, liberally construed, collected or collectible for filing, processing, including service of process, copying, endorsing, or for any other service related to court operations as defined in Section 77003.

SEC. 508. Section 82011 of the Government Code is amended to read:

82011. ''Code reviewing body'' means all of the following:

(a) The commission, with respect to the conflict-of-interest code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.

(b) The board of supervisors, with respect to the conflict-of-interest code of any county agency other than the board of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county.

(c) The city council, with respect to the conflict-of-interest code of any city agency other than the city council.

(d) The Attorney General, with respect to the conflict-of-interest code of the commission.

(e) The Chief Justice or his or her designee, with respect to the conflict-of-interest code of the members of the Judicial Council, Commission on Judicial Performance, and Board of Governors of the State Bar of California.

(f) The Board of Governors of the State Bar of California with respect to the conflict-of-interest code of the State Bar of California.

(g) The Chief Justice of California, the administrative presiding judges of the courts of appeal, and the presiding judges of superior courts, or their designees, with respect to the conflict-of-interest code of any agency of the judicial branch of government subject to the immediate administrative supervision of that court.

(h) The Judicial Council of California, with respect to the conflict-of-interest code of any state agency within the judicial branch of government not included under subdivisions (e), (f), and (g).

SEC. 509. Section 84215 of the Government Code is amended to read:

84215. All candidates, elected officers, committees, and proponents of state ballot measures or the qualification of state ballot measures, except as provided in subdivision (e), shall file two copies of the campaign statements required by Section 84200 with the clerk of the county in which they are domiciled. A committee is domiciled at the address listed on its campaign statement unless it is domiciled outside California in which case its domicile shall be deemed to be Los Angeles County for the purpose of this section. In addition, campaign statements shall be filed at the following places:

(a) Statewide elected officers and candidates for these offices other than the Board of Equalization, supreme court justices, their controlled committees, committees formed or existing primarily to support or oppose these candidates, elected officers, supreme court justices, or statewide measures, or the qualification of state ballot measures, and all state general purpose committees and filers not specified in subdivisions (b) to (e), inclusive:

(1) The original and one copy with the Secretary of State.

(2) Two copies with the Registrar-Recorder of Los Angeles County.

(3) Two copies with the Registrar of Voters of the City and County of San Francisco.

(b) Members of the Legislature or Board of Equalization, court of appeal justices, superior court judges, candidates for those offices, their controlled committees, and committees formed or existing primarily to support or oppose these candidates or officeholders:

(1) The original and one copy with the Secretary of State.

(2) Two copies with the clerk of the county with the largest number of registered voters in the districts affected.

(c) Elected officers in jurisdictions other than legislative districts, Board of Equalization districts, or appellate court districts that contain parts of two or more counties, candidates for these offices, their controlled committees, and committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one of these jurisdictions shall file the original and one copy with the clerk of the county with the largest number of registered voters in the jurisdiction.

(d) County elected officers, candidates for these offices, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in any number of jurisdictions within one county, other than those specified in subdivision (e), and county general purpose committees shall file the original and one copy with the clerk of the county.

(e) City elected officers, candidates for city office, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one city, and city general purpose committees shall file the original and one copy with the clerk of the city. These elected officers, candidates, and committees need not file with the clerk of the county in which they are domiciled.

(f) Notwithstanding the above, a committee, candidate, or elected officer is not required to file more than the original and one copy, or two copies, of a campaign statement with any one county or city clerk or with the Secretary of State.

(g) If a committee is required to file campaign statements required by Section 84200 or 84200.5 in places designated in subdivisions (d) and (e), it shall continue to file these statements in those places, in addition to any other places required by this title, until the end of the calendar year.

SEC. 510. Section 91013.5 of the Government Code is amended to read:

91013.5. In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The action may be filed as a small claims, limited civil, or unlimited civil case, depending on the jurisdictional amount. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(a) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

(b) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

(c) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

SEC. 511. Section 515 of the Harbors and Navigation Code is amended to read:

515. Before making the order, the judge shall require from the claimant a bond to the people to be approved by the judge and filed with the clerk of the court, in a penalty double the value of the property or proceeds. The bond shall be conditioned upon the payment of all damages that may be recovered against the claimant or the claimant's representatives, within three years after its date, by any person establishing title to the property or proceeds.

SEC. 512. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes ''AA,'' ''A,'' or ''B'' citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director's designee. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(b) If a licensee notifies the director that he or she intends to contest a class ''AA'' or a class ''A'' citation, the licensee may first, within 15 business days after service of the citation, notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after

a licensee notifies the director that he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court within six months after the state department files its answer in the appeal. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified. The court may affirm, modify, or dismiss the citation, the level of the citation, or the amount of the proposed assessment of the civil penalty.

(c) If a licensee desires to contest a class ''B'' citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in Section 100171 or elects to submit the matter to binding arbitration in accordance with subdivision (d). The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge or submit the matter to binding arbitration without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures. The arbitrator shall determine whether the licensee

violated the regulation or regulations cited by the department, and whether the citation meets the criteria established in Sections 1423 and 1424. If the arbitrator determines that the licensee has violated the regulation or regulations cited by the department, and that the class of the citation should be upheld, the proposed assessment of a civil penalty shall be affirmed, subject to the limitations established in Section 1424. The licensee and the department shall each bear its respective portion of the cost of arbitration. A resident, or his or her designated representative, or both, entitled to participate in the citation review conference pursuant to subdivision (f), may make an oral or written statement regarding the citation, at any arbitration hearing to which the matter has been submitted after the citation review conference.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with Section 100171, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this section. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the

violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as referred to in subdivision (d) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as referred to in subdivision (d) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents or family council shall designate which representative will participate.

The complainant, affected resident, and their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(g) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(h) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class ''A'' or class ''B'' violation shall be trebled and collected for a second and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and

payable unless and until the previous action has terminated in favor of the state department.

If the class ''B'' citation is issued for a patient's rights violation, as defined in subdivision (c) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(*l*) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients or residents of the facility.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

SEC. 513. Section 1543 of the Health and Safety Code is amended to read:

1543. Notwithstanding any other provision of this chapter, the district attorney of every county, and city attorneys in those cities which have city attorneys who have jurisdiction to prosecute misdemeanors pursuant to Section 72193 of the Government Code, shall, upon their own initiative or upon application by the state department or its authorized representative, institute and conduct the prosecution of any action for violation within his or her county of any provisions of this chapter.

SEC. 514. Section 1568.0823 of the Health and Safety Code is amended to read:

1568.0823. (a) Any person who violates this chapter, or who willfully or repeatedly violates any rule or regulation adopted under this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail for a period not to exceed 180 days, or by both fine and imprisonment.

(b) Operation of a residential care facility without a license shall be subject to a summons to appear in court.

(c) Notwithstanding any other provision of this chapter, the district attorney of every county, and the city attorneys in those cities which have city attorneys who have jurisdiction to prosecute misdemeanors pursuant to Section 72193 of the Government Code, shall, upon their own initiative or upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation within his or her county of this chapter.

SEC. 515. Section 1569.43 of the Health and Safety Code is amended to read:

1569.43. Notwithstanding any other provisions of this chapter, the district attorney of every county, and city attorneys in those cities which have city attorneys which prosecute misdemeanors pursuant to Section 72193 of the Government Code, shall, upon their own initiative or upon application by the state department or its authorized representative, institute and conduct the prosecution of any action for violation of this chapter within his or her jurisdiction.

SEC. 516. Section 102247 of the Health and Safety Code is amended to read:

102247. (a) There is hereby created in the State Treasury the Health Statistics Special Fund. The fund shall consist of revenues including, but not limited to, all of the following:

(1) Fees or charges remitted to the State Registrar for record search or issuance of certificates, permits, registrations, or other documents pursuant to Chapter 3 (commencing with Section 26801) of Part 3 of Division 2 of Title 3 of the Government Code, and Chapter 4 (commencing with Section 102525), Chapter 5 (commencing with Section 102625), Chapter 8 (commencing with Section 103050), and Chapter 15 (commencing with Section 103600), of Part 1, of Division 102.

(2) Funds remitted to the State Registrar by the federal Social Security Administration for participation in the enumeration at birth program.

(3) Funds remitted to the State Registrar by the National Center for Health Statistics pursuant to the federal Vital Statistics Cooperative Program.

(4) Any other funds collected by the State Registrar, except Children's Trust Fund fees collected pursuant to Section 18966 of the Welfare and Institutions Code, fees allocated to the Judicial Council pursuant to Section 1852 of the Family Code, and fees collected pursuant to Section 103645, all of which shall be deposited into the General Fund.

(b) Moneys in the Health Statistics Special Fund shall be expended by the State Registrar for the purpose of funding its existing programs and programs that may become necessary to carry out its mission, upon appropriation by the Legislature.

(c) Health Statistics Special Fund moneys shall be expended only for the purposes set forth in this section and Section 102249, and shall not be expended for any other purpose or for any other state program.

(d) It is the intent of the Legislature that the Health Statistics Special Fund provide for the following:

(1) Registration and preservation of vital event records and dissemination of vital event information to the public.

(2) Data analysis of vital statistics for population projections, health trends and patterns, epidemiologic research, and development of information to support new health policies.

(3) Development of uniform health data systems that are integrated, accessible, and useful in the collection of information on health status.

SEC. 517. Section 103625 of the Health and Safety Code is amended to read:

103625. (a) A fee of three dollars ($3) shall be paid by the applicant for a certified copy of a fetal death or death record.

(b) (1) A fee of three dollars ($3) shall be paid by a public agency or licensed private adoption agency applicant for a certified copy of a birth certificate that the agency is required to obtain in the ordinary course of business. A fee of seven dollars ($7) shall be paid by any other applicant for a certified copy of a birth certificate. Four dollars ($4) of any seven-dollar ($7) fee is exempt from subdivision (e) and shall be paid either to a county children's trust fund or to the State Children's Trust Fund, in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(2) The board of supervisors of any county that has established a county children's trust fund may increase the fee for a certified copy of a birth certificate by up to three dollars ($3) for deposit in the county children's trust fund in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(c) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage record, that has been filed with the county recorder or county clerk, that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage record that has been filed with the county recorder or county clerk. Three dollars ($3) of any six-dollar ($6) fee is exempt from subdivision (e) and shall be transmitted monthly by each local registrar, county recorder, and county clerk to the state for deposit into the General Fund as provided by Section 1852 of the Family Code.

(d) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage dissolution record obtained from the State Registrar that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage dissolution record obtained from the State Registrar.

(e) Each local registrar, county recorder, or county clerk collecting a fee pursuant to subdivisions (a) to (d), inclusive, shall transmit 15 percent of the fee for each certified copy to the State Registrar by the 10th day of the month following the month in which the fee was received.

(f) In addition to the fees prescribed pursuant to subdivisions (a) to (d), inclusive, all applicants for certified copies of the records described in those subdivisions shall pay an additional fee of three dollars ($3), that shall be collected by the State Registrar, the local registrar, county recorder, or county clerk, as the case may be.

(g) The local public official charged with the collection of the additional fee established pursuant to subdivision (f) may create a local vital and health statistics trust fund. The fees collected by local public officials pursuant to subdivision (f) shall be distributed as follows:

(1) Forty-five percent of the fee collected pursuant to subdivision (f) shall be transmitted to the State Registrar.

(2) The remainder of the fee collected pursuant to subdivision (f) shall be deposited into the collecting agency's vital and health statistics trust fund, except that in any jurisdiction in which a local vital and health statistics fund has not been established, the entire amount of the fee collected pursuant to subdivision (f) shall be transmitted to the State Registrar.

(3) Moneys transmitted to the State Registrar pursuant to this subdivision shall be deposited in accordance with Section 102247.

(h) Moneys in each local vital and health statistics trust fund shall be available to the local official charged with the collection of fees pursuant to subdivision (f) for the applicable jurisdiction for the purpose of defraying the administrative costs of collecting and reporting with respect to those fees and for other costs as follows:

(1) Modernization of vital record operations, including improvement, automation, and technical support of vital record systems.

(2) Improvement in the collection and analysis of health-related birth and death certificate information, and other community health data collection and analysis, as appropriate.

(i) Funds collected pursuant to subdivision (f) shall not be used to supplant funding in existence on January 1, 2002, that is necessary for the daily operation of vital record systems. It is the intent of the Legislature that funds collected pursuant to subdivision (f) be used to enhance service to the public, to improve analytical capabilities of state and local health authorities in addressing the health needs of newborn children and maternal health problems, and to analyze the health status of the general population.

(j) Each county shall annually submit a report to the State Registrar by March 1 containing information on the amount of revenues collected pursuant to subdivision (f) in the previous calendar year and on how the revenues were expended and for what purpose.

(k) Each local registrar, county recorder, or county clerk collecting the fee pursuant to subdivision (f) shall transmit 45 percent of the fee for each certified copy to which subdivision (f) applies to the State Registrar by the 10th day of the month following the month in which the fee was received.

(*l*) The additional three dollars ($3) authorized to be charged to applicants other than public agency applicants for certified copies of marriage records by subdivision (c) may be increased pursuant to Section 114.

(m) In providing for the expiration of the surcharge on birth certificate fees on June 30, 1999, the Legislature intends that juvenile dependency mediation programs pursue ancillary funding sources after that date.

SEC. 519. Section 11706 of the Insurance Code is amended to read:

11706. Such party may file a certified copy of any such award in the office of any clerk of a superior court of this state. Upon the filing of such copy the clerk shall immediately enter a judgment thereon against the surety.

SEC. 520. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner shall have the authority to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It shall be within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search,

the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, or whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, provided it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, provided it can be shown that proper service was made on the defendant or his or her agent.

SEC. 521. 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 superior court.

(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. 522. 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 superior court, 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 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 superior court 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. 523. Section 1181 of the Labor Code is amended to read:

1181. Upon the fixing of the time and place for the holding of a hearing for the purpose of considering and acting upon the proposed regulations or any matters referred to in Sections 1176 to 1180, inclusive, the commission shall:

(a) Give public notice thereof by advertisement in at least one newspaper published in each of the cities of Los Angeles, Oakland, Sacramento, San Jose, Fresno, Eureka, San Diego, Long Beach, Alameda, Berkeley, Stockton, San Bernardino, and San Francisco.

(b) Mail a copy of the notice and the proposed regulations to the clerk of the superior court of each county in the state to be posted at the courthouse; to each association of employers or employees which, in the opinion of the commission, would be affected by the hearing; and to any person or organization within this state filing with the commission a

written request for notice of such hearing. Failure to mail such notice shall not invalidate any order of the commission issued after such hearing.

The notice shall also state the time and place fixed for the hearing, which shall not be less than 30 days from the date of publication and mailing of such notices.

SEC. 524. Section 1701.10 of the Labor Code is amended to read:

1701.10. (a) Prior to engaging in the business or acting in the capacity of an advance-fee talent service, a person shall file with the Labor Commissioner a bond in the amount of ten thousand dollars ($10,000) or a deposit in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure. The bond shall be executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to ten thousand dollars ($10,000). The bond may be terminated pursuant to Section 995.440 of, or Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

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

(c) The Labor Commissioner shall charge and collect a filing fee to cover the cost of filing the bond or deposit.

(d) The Labor Commissioner shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits.

(e) (1) Whenever a deposit is made in lieu of the bond otherwise required by this section, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Labor Commissioner of a money judgment entered by a court, together with evidence that the claimant is a person described in subdivision (b).

(2) When a claimant has established the claim with the Labor Commissioner, the Labor Commissioner shall review and approve the claim and enter the date of the approval thereon. The claim shall be designated an approved claim.

(3) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Labor Commissioner. Subsequent claims that are approved by the Labor Commissioner within the same 240-day period shall similarly not be paid until the expiration of that 240-day period. Upon the expiration of the 240-day period, the Labor Commissioner shall pay all approved claims from that 240-day period

in full unless the deposit is insufficient, in which case every approved claim shall be paid a pro rata share of the deposit.

(4) Whenever the Labor Commissioner approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which paragraph (3) applies with respect to any amount remaining in the deposit.

(5) After a deposit is exhausted, no further claims shall be paid by the Labor Commissioner. Claimants who have had claims paid in full or in part pursuant to paragraph (3) or (4) shall not be required to return funds received from the deposit for the benefit of other claimants.

(6) Whenever a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the assignor of the deposit, other than as to an amount as no longer needed or required for the purposes of this chapter and that would otherwise be returned to the assignor of the deposit by the Labor Commissioner.

(7) The Labor Commissioner shall return a deposit two years from the date it receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business or act in the capacity of an advance-fee talent service or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice shall include all of the following:

(A) The name, address, and telephone number of the assignor.

(B) The name, address, and telephone number of the bank at which the deposit is located.

(C) The account number of the deposit.

(D) A statement that the assignor is ceasing to engage in the business or act in the capacity of an advance-fee talent service or has filed a bond with the Labor Commissioner. The Labor Commissioner shall forward an acknowledgement of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and the anticipated date of release of the deposit, provided there are then no outstanding claims against the deposit.

(8) A superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the court that there are no outstanding claims against the deposit, or order the Labor Commissioner to retain the deposit for a specified period beyond the two years to resolve outstanding claims against the deposit.

(9) This subdivision applies to all deposits retained by the Labor Commissioner. The Labor Commissioner shall notify each assignor of a deposit it retains and of the applicability of this section.

(10) Compliance with Sections 1700.15 and 1700.16 of this code or Section 1812.503, 1812.510, or 1812.515 of the Civil Code shall satisfy the requirements of this section.

SEC. 525. Section 2691 of the Labor Code is amended to read:

2691. Within 10 days of receipt of notice of the award, the party or parties who are required to comply with the terms of the award shall so comply and file proof of such compliance with the commissioner or shall file a notice of appeal with the superior court for the county in which the hearing was held. Upon the filing of such an appeal, a trial de novo shall be held, provided, however, that the decision reached by the panel as stated in the award shall be received as evidence by the trial court.

SEC. 526. Section 5600 of the Labor Code is amended to read:

5600. The appeals board may, upon the filing of an application by or on behalf of an injured employee, the employee's dependents, or any other party in interest, direct the clerk of the superior court of any county to issue writs of attachment authorizing the sheriff to attach the property of the defendant as security for the payment of any compensation which may be awarded in any of the following cases:

(a) In any case mentioned in Section 415.50 of the Code of Civil Procedure.

(b) Where the employer has failed to secure the payment of compensation as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1.

The attachment shall be in an amount fixed by the appeals board, not exceeding the greatest probable award against the defendant in the matter.

SEC. 527. Section 395.3 of the Military and Veterans Code is amended to read:

395.3. In the event that any public officer or employee has resigned or resigns his or her office or employment to serve or to continue to serve in the Armed Forces of the United States or in the Armed Forces of this state, he or she shall have a right to return to and reenter the office or employment prior to the time at which his or her term of office or his or her employment would have ended if he or she had not resigned, on serving a written notice to that effect upon the authorized appointing power, or if there is no authorized appointing power, upon the officer or agency having power to fill a vacancy in the office or employment, within six months of the termination of his or her active service with the Armed Forces; provided, that the right to return and reenter upon the office or position shall not extend to or be granted to any public officer or employee, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active

service with the Armed Forces of the United States or of the militia of this state.

As used in this section, ''public officers and employees'' includes all of the following:

(a) Members of the Senate and of the Assembly.

(b) Justices of the Supreme Court and the courts of appeal, judges of the superior courts, and all other judicial officers.

(c) All other state officers and employees not within Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, including all officers for whose selection and term of office provision is made in the Constitution and laws of this state.

(d) All officers and employees of any county, city and county, city, township, district, political subdivision, authority, commission, board, or other public agency within this state.

The right of reentry into public office or employment provided for in this section shall include the right to be restored to the civil service status as the officer or employee would have if he or she had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive the officer or employee of his or her right to restoration as provided for herein.

This section shall be retroactively applied to extend the right of reentry into public office or employment to public officers and employees who resigned prior to its effective date.

This section does not apply to any public officer or employee to whom the right to reenter public office or employment after service in the Armed Forces has been granted by any other provision of law.

If any provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, or the application of this section to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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 such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 528. Section 28 of the Penal Code is amended to read:

28. (a) Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect,

or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.

(b) As a matter of public policy there shall be no defense of diminished capacity, diminished responsibility, or irresistible impulse in a criminal action or juvenile adjudication hearing.

(c) This section shall not be applicable to an insanity hearing pursuant to Section 1026.

(d) Nothing in this section shall limit a court's discretion, pursuant to the Evidence Code, to exclude psychiatric or psychological evidence on whether the accused had a mental disease, mental defect, or mental disorder at the time of the alleged offense.

SEC. 529. Section 808 of the Penal Code is amended to read:

808. The following persons are magistrates:

1. The judges of the Supreme Court.

2. The judges of the courts of appeal.

3. The judges of the superior courts.

SEC. 530. Section 810 of the Penal Code is amended to read:

810. (a) The presiding judge of the superior court in a county shall, as often as is necessary, designate on a schedule not less than one judge of the court to be reasonably available on call as a magistrate for the setting of orders for discharge from actual custody upon bail, the issuance of search warrants, and for such other matters as may by the magistrate be deemed appropriate, at all times when a court is not in session in the county.

(b) The officer in charge of a jail, or a person the officer designates, in which an arrested person is held in custody shall assist the arrested person or the arrested person's attorney in contacting the magistrate on call as soon as possible for the purpose of obtaining release on bail.

(c) Any telephone call made pursuant to this section by an arrested person while in custody or by such person's attorney shall not count or be considered as a telephone call for purposes of Section 851.5 of the Penal Code.

SEC. 531. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency which performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a superior court or

county, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer or in which the peace officer serves.

(2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) Special agents and Attorney General investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of Riverside and San Diego, who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

SEC. 532. Section 851.8 of the Penal Code is amended to read:

851.8. (a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with

the concurrence of the district attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each such agency, person, or entity within the State of California receiving such a request shall destroy its records of the arrest and such request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the district attorney of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the superior court which would have had territorial jurisdiction over the matter. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift

to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy such records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the district attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of such charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to

the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which the person was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) which are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon such records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of such records has received a certified copy of the complaint in such civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(*l*) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1,

1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) The provisions of this section shall not apply to any offense which is classified as an infraction.

(o) (1) The provisions of this section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence which is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any such decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any such decision referred to in this subdivision which is a judgment by the appellate division of the superior court shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

SEC. 533. Section 859a of the Penal Code is amended to read:

859a. (a) If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him or her whether he or she pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged. While the charge remains pending before the magistrate and when the defendant's counsel is present, the defendant may plead guilty to the offense charged, or, with the consent of the magistrate and the district attorney or other counsel for the people, plead nolo contendere to the offense charged or plead guilty or nolo contendere to any other offense the commission of which is necessarily included in that with

which he or she is charged, or to an attempt to commit the offense charged and to the previous conviction or convictions of crime if charged upon a plea of guilty or nolo contendere. The magistrate may then fix a reasonable bail as provided by this code, and upon failure to deposit the bail or surety, shall immediately commit the defendant to the sheriff. Upon accepting the plea of guilty or nolo contendere the magistrate shall certify the case, including a copy of all proceedings therein and any testimony that in his or her discretion he or she may require to be taken, to the court in which judgment is to be pronounced at the time specified under subdivision (b), and thereupon the proceedings shall be had as if the defendant had pleaded guilty in that court. This subdivision shall not be construed to authorize the receiving of a plea of guilty or nolo contendere from any defendant not represented by counsel. If the defendant subsequently files a written motion to withdraw the plea under Section 1018, the motion shall be heard and determined by the court before which the plea was entered.

(b) Notwithstanding Section 1191 or 1203, the magistrate shall, upon the receipt of a plea of guilty or nolo contendere and upon the performance of the other duties of the magistrate under this section, immediately appoint a time for pronouncing judgment in the superior court and refer the case to the probation officer if eligible for probation, as prescribed in Section 1191.

SEC. 534. Section 869 of the Penal Code is amended to read:

869. The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, within 10 days after the close of the examination, if the defendant be held to answer the charge of a felony, or in any other case if either the defendant or the prosecution orders the transcript, transcribe his or her shorthand notes, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file his or her affidavit setting forth that the transcript has been delivered within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the clerk of the court shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

SEC. 535. Section 870 of the Penal Code is amended to read:

870. The magistrate or his or her clerk shall keep the depositions taken on the information or the examination, until they are returned to the proper court; and shall not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the Attorney General,

district attorney, or other prosecuting attorney, and the defendant and his or her counsel; provided however, upon demand by the defendant or his or her attorney the magistrate shall order a transcript of the depositions taken on the information, or on the examination, to be immediately furnished the defendant or his or her attorney, after the commitment of the defendant as provided by Sections 876 and 877, and the reporter furnishing the depositions, shall receive compensation in accordance with Section 869.

SEC. 536. Section 924.4 of the Penal Code is amended to read:

924.4. Notwithstanding the provisions of Sections 924.1 and 924.2, any grand jury or, if the grand jury is no longer impaneled, the presiding judge of the superior court, may pass on and provide the succeeding grand jury with any records, information, or evidence acquired by the grand jury during the course of any investigation conducted by it during its term of service, except any information or evidence that relates to a criminal investigation or that could form part or all of the basis for issuance of an indictment. Transcripts of testimony reported during any session of the grand jury shall be made available to the succeeding grand jury upon its request.

SEC. 537. Section 932 of the Penal Code is amended to read:

932. After investigating the books and accounts of the various officials of the county, as provided in the foregoing sections of this article, the grand jury may order the district attorney of the county to institute suit to recover any money that, in the judgment of the grand jury, may from any cause be due the county. The order of the grand jury, certified by the foreman of the grand jury and filed with the clerk of the superior court of the county, shall be full authority for the district attorney to institute and maintain any such suit.

SEC. 538. Section 933 of the Penal Code is amended to read:

933. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk

shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section ''agency'' includes a department.

SEC. 539. Section 938.1 of the Penal Code is amended to read:

938.1. (a) If an indictment has been found or accusation presented against a defendant, such stenographic reporter shall certify and deliver to the clerk of the superior court in the county an original transcription of the reporter's shorthand notes and a copy thereof and as many additional copies as there are defendants, other than fictitious defendants, regardless of the number of charges or fictitious defendants included in the same investigation. The reporter shall complete the certification and delivery within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time. The time shall not be extended more than 20 days. The clerk shall file the original of the transcript, deliver a copy of the transcript to the district attorney immediately upon receipt thereof and deliver a copy of such transcript to each such defendant or the defendant's attorney. If the copy of the testimony is not served as provided in this section, the court shall on motion of the defendant continue the trial to such time as may be necessary to secure to the defendant receipt of a copy of such testimony 10 days before such trial. If several criminal charges are investigated against a defendant on one

investigation and thereafter separate indictments are returned or accusations presented upon said several charges, the delivery to such defendant or the defendant's attorney of one copy of the transcript of such investigation shall be a compliance with this section as to all of such indictments or accusations.

(b) The transcript shall not be open to the public until 10 days after its delivery to the defendant or the defendant's attorney. Thereafter the transcript shall be open to the public unless the court orders otherwise on its own motion or on motion of a party pending a determination as to whether all or part of the transcript should be sealed. If the court determines that there is a reasonable likelihood that making all or any part of the transcript public may prejudice a defendant's right to a fair and impartial trial, that part of the transcript shall be sealed until the defendant's trial has been completed.

SEC. 540. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to ensure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator.

It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles' information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in a misdemeanor case, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant. Appointment of counsel in an infraction case is governed by Section 19.6.

(j) As used in this section, ''county of the first, second, or third class'' means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

SEC. 541. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section

381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the superior court or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by

the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 542. Section 1000.5 of the Penal Code is amended to read:

1000.5. (a) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a deferred entry of judgment program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

SEC. 544. Section 1050 of the Penal Code is amended to read:

1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the

failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) (1) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

(2) For purposes of this section, ''good cause'' includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of Section 187, allegations that stalking, as defined in Section 646.9, a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking or cases handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10 court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

SEC. 545. Section 1089 of the Penal Code is amended to read:

1089. Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information or complaint, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as ''alternate jurors.''

The alternate jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges; provided, that the prosecution and the defendant shall each be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called. When two or more defendants are tried jointly each defendant shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called. The prosecution shall be entitled to additional peremptory challenges equal to the number of all the additional separate challenges allowed the defendant or defendants to the alternate jurors.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and must attend at all

times upon the trial of the cause in company with the other jurors; and for a failure so to do are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff or marshal during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury the alternate jurors shall be kept in the custody of the sheriff or marshal and shall not be discharged until the original jurors are discharged, except as hereinafter provided.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take a place in the jury box, and be subject to the same rules and regulations as though the alternate juror had been selected as one of the original jurors.

SEC. 546. Section 1203.1b of the Penal Code is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation or given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 1203.7, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, whichever applies. The reasonable cost of these services and of probation supervision or a conditional sentence shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judge of the superior court. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall determine the amount of payment and

the manner in which the payments shall be made to the county, based upon the defendant's ability to pay. The probation officer shall inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver.

(b) When the defendant fails to waive the right provided in subdivision (a) to a determination by the court of his or her ability to pay and the payment amount, the probation officer shall refer the matter to the court for the scheduling of a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the report of the probation officer, or his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(3) At the hearing, 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.

(4) When the court determines that the defendant's ability to pay is different from the determination of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary or conditional sentence period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall set payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term ''ability to pay'' means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation supervision or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed fifty dollars ($50).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 547. Section 1203.1c of the Penal Code is amended to read:

1203.1c. (a) In any case in which a defendant is convicted of an offense and is ordered to serve a period of confinement in a county jail, city jail, or other local detention facility as a term of probation or a conditional sentence, the court may, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable costs of such incarceration, including incarceration pending disposition of the case. The reasonable cost of such incarceration shall not exceed the amount determined by the board of supervisors, with

respect to the county jail, and by the city council, with respect to the city jail, to be the actual average cost thereof on a per-day basis. The court may, in its discretion, hold additional hearings during the probationary period. The court may, in its discretion before such hearing, order the defendant to file a statement setting forth his or her assets, liability and income, under penalty of perjury, and may order the defendant to appear before a county officer designated by the board of supervisors to make an inquiry into the ability of the defendant to pay all or a portion of such costs. At the hearing, the defendant shall be entitled to have the opportunity to be heard in person or to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses. A defendant represented by counsel appointed by the court in the criminal proceedings shall be entitled to such representation at any hearing held pursuant to this section. If the court determines that the defendant has the ability to pay all or a part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county, or to the city with respect to incarceration in the city jail, in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Execution may be issued on the order in the same manner as on a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

If practicable, the court shall order payments to be made on a monthly basis and the payments shall be made payable to the county officer designated by the board of supervisors, or to a city officer designated by the city council with respect to incarceration in the city jail.

A payment schedule for reimbursement of the costs of incarceration pursuant to this section based upon income shall be developed by the county officer designated by the board of supervisors, or by the city council with respect to incarceration in the city jail, and approved by the presiding judge of the superior court in the county.

(b) ''Ability to pay'' means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of incarceration and includes, but is not limited to, the defendant's:

(1) Present financial obligations, including family support obligations, and fines, penalties and other obligations to the court.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonable discernible future position.

(3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing.

(4) Any other factor or factors which may bear upon the defendant's financial ability to reimburse the county or city for the costs.

(c) All sums paid by a defendant pursuant to this section shall be deposited in the general fund of the county or city.

(d) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors, and shall be operative in a city upon the adoption of an ordinance to that effect by the city council. Such ordinance shall include a designation of the officer responsible for collection of moneys ordered pursuant to this section and shall include a determination, to be reviewed annually, of the average per-day costs of incarceration in the county jail, city jail, or other local detention facility.

SEC. 548. Section 1203.6 of the Penal Code is amended to read:

1203.6. The adult probation officer shall be appointed and may be removed for good cause in a county with two superior court judges, by the presiding judge. In the case of a superior court of more than two judges, a majority of the judges shall make the appointment, and may effect removal.

The salary of the probation officer shall be established by the board of supervisors.

The adult probation officer shall appoint and may remove all assistants, deputies and other persons employed in the officer's department, and their compensation shall be established, according to the merit system or civil service system provisions of the county. If no merit system or civil service system exists in the county, the board of supervisors shall provide for appointment, removal, and compensation of such personnel.

This section is applicable in a charter county whose charter establishes the office of adult probation officer and provides that the officer shall be appointed in accordance with general law subject to the merit system provisions of the charter.

SEC. 549. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally. Any portion of a restitution fine that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the State Board of Control pursuant to this section. Notwithstanding any other provision of law prohibiting disclosure, the state, as defined in Section 900.6 of the Government Code, a local public entity, as defined in Section 900.4 of the Government Code, or any other entity, may provide the State Board of Control any and all information to assist in the collection of unpaid portions of a restitution fine for terminated probation or parole cases. For

purposes of the preceding sentence, ''state, as defined in Section 900.6 of the Government Code,'' and ''any other entity'' shall not include the Franchise Tax Board.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. The court also shall provide this information to the district attorney upon request in connection with an investigation or prosecution involving perjury or the veracity of the information contained within the defendant's financial disclosure. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 in any of the following cases may be enforced in the same manner as a money judgment in a limited civil case:

(1) In a misdemeanor case.

(2) In a case involving violation of a city or town ordinance.

(3) In a noncapital criminal case where the court has received a plea of guilty or nolo contendere.

(d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(e) (1) This section shall become operative on January 1, 2000, and shall be applicable to all courts, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f) of Section 1202.4.

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1202.4 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 550. Section 1237.5 of the Penal Code is amended to read:

1237.5. No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met:

(a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.

(b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.

SEC. 551. Section 1240.1 of the Penal Code is amended to read:

1240.1. (a) In any noncapital criminal, juvenile court, or civil commitment case wherein the defendant would be entitled to the appointment of counsel on appeal if indigent, it shall be the duty of the attorney who represented the person at trial to provide counsel and advice as to whether arguably meritorious grounds exist for reversal or modification of the judgment on appeal. The attorney shall admonish the defendant that he or she is not able to provide advice concerning his or her own competency, and that the State Public Defender or other counsel should be consulted for advice as to whether an issue regarding the competency of counsel should be raised on appeal. The trial court may require trial counsel to certify that he or she has counseled the defendant

as to whether arguably meritorious grounds for appeal exist at the time a notice of appeal is filed. Nothing in this section shall be construed to prevent any person having a right to appeal from doing so.

(b) It shall be the duty of every attorney representing an indigent defendant in any criminal, juvenile court, or civil commitment case to execute and file on his or her client's behalf a timely notice of appeal when the attorney is of the opinion that arguably meritorious grounds exist for a reversal or modification of the judgment or orders to be appealed from, and where, in the attorney's judgment, it is in the defendant's interest to pursue any relief that may be available to him or her on appeal; or when directed to do so by a defendant having a right to appeal.

With the notice of appeal the attorney shall file a brief statement of the points to be raised on appeal and a designation of any document, paper, pleading, or transcript of oral proceedings necessary to properly present those points on appeal when the document, paper, pleading or transcript of oral proceedings would not be included in the normal record on appeal according to the applicable provisions of the California Rules of Court. The executing of the notice of appeal by the defendant's attorney shall not constitute an undertaking to represent the defendant on appeal unless the undertaking is expressly stated in the notice of appeal.

If the defendant was represented by appointed counsel on the trial level, or if it appears that the defendant will request the appointment of counsel on appeal by reason of indigency, the trial attorney shall also assist the defendant in preparing and submitting a motion for the appointment of counsel and any supporting declaration or affidavit as to the defendant's financial condition. These documents shall be filed with the trial court at the time of filing a notice of appeal, and shall be transmitted by the clerk of the trial court to the clerk of the appellate court within three judicial days of their receipt. The appellate court shall act upon that motion without unnecessary delay. An attorney's failure to file a motion for the appointment of counsel with the notice of appeal shall not foreclose the defendant from filing a motion at any time it becomes known to him or her that the attorney has failed to do so, or at any time he or she shall become indigent if he or she was not previously indigent.

(c) The State Public Defender shall, at the request of any attorney representing a prospective indigent appellant or at the request of the prospective indigent appellant himself or herself, provide counsel and advice to the prospective indigent appellant or attorney as to whether arguably meritorious grounds exist on which the judgment or order to be appealed from would be reversed or modified on appeal.

(d) The failure of a trial attorney to perform any duty prescribed in this section, assign any particular point or error in the notice of appeal, or designate any particular thing for inclusion in the record on appeal shall

not foreclose any defendant from filing a notice of appeal on his or her own behalf or from raising any point or argument on appeal; nor shall it foreclose the defendant or his or her counsel on appeal from requesting the augmentation or correction of the record on appeal in the reviewing court.

(e) (1) In order to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor shall continue to represent the respective parties. Each counsel's obligations extend to taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.

(2) The duties imposed on trial counsel in paragraph (1) shall not foreclose the defendant's appellate counsel from requesting additions or corrections to the record on appeal in either the trial court or the Supreme Court in a manner provided by rules of court adopted by the Judicial Council.

SEC. 552. Section 1281a of the Penal Code is amended to read:

1281a. A judge of the superior court within the county, wherein a cause is pending against any person charged with a felony, may justify and approve bail in the said cause, and may execute an order for the release of the defendant which shall authorize the discharge of the defendant by any officer having said defendant in custody.

SEC. 553. Section 1428 of the Penal Code is amended to read:

1428. In misdemeanor and infraction cases, the clerk of the superior court may keep a docket, instead of minutes pursuant to Section 69844 of the Government Code and a register of actions pursuant to Section 69845 or 69845.5 of the Government Code. In the docket, the clerk shall enter the title of each criminal action or proceeding and under each title all the orders and proceedings in such action or proceeding. Wherever by any other section of this code made applicable to such court an entry of any judgment, order or other proceeding in the minutes or register of actions is required, an entry thereof in the docket shall be made and shall be deemed a sufficient entry in the minutes or register of actions for all purposes.

SEC. 554. Section 1429.5 of the Penal Code is repealed.

SEC. 554.1. Section 1462 of the Penal Code is repealed.

SEC. 555. Section 1463 of the Penal Code is amended to read:

1463. All fines and forfeitures imposed and collected for crimes shall be distributed in accordance with Section 1463.001.

The following definitions shall apply to terms used in this chapter:

(a) ''Arrest'' means any law enforcement action, including issuance of a notice to appear or notice of violation, which results in a criminal charge.

(b) ''City'' includes any city, city and county, district, including any enterprise special district, community service district, or community service area engaged in police protection activities as reported to the Controller for inclusion in the 1989–90 edition of the Financial Transactions Report Concerning Special Districts under the heading of Police Protection and Public Safety, authority, or other local agency (other than a county) which employs persons authorized to make arrests or to issue notices to appear or notices of violation which may be filed in court.

(c) ''City arrest'' means an arrest by an employee of a city, or by a California Highway Patrol officer within the limits of a city.

(d) ''County'' means the county in which the arrest took place.

(e) ''County arrest'' means an arrest by a California Highway Patrol officer outside the limits of a city, or any arrest by a county officer or by any other state officer.

(f) ''Court'' means the superior court or a juvenile forum established under Section 257 of the Welfare and Institutions Code, in which the case arising from the arrest is filed.

(g) ''Division of moneys'' means an allocation of base fine proceeds between agencies as required by statute including, but not limited to, Sections 1463.003, 1463.9, 1463.23, 1463.26, and Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section 11502 of the Health and Safety Code.

(h) ''Offense'' means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code, except any parking offense as defined in subdivision (i).

(i) ''Parking offense'' means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation.

(j) ''Penalty allocation'' means the deposit of a specified part of moneys to offset designated processing costs, as provided by Section 1463.16 and by Section 68090.8 of the Government Code.

(k) ''Total parking penalty'' means the total sum to be collected for a parking offense, whether as fine, forfeiture of bail, or payment of penalty to the Department of Motor Vehicles. It may include the following components:

(1) The base parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.

(2) The Department of Motor Vehicles (DMV) fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.

(3) The surcharges required by Section 76000 of the Government Code.

(4) The notice penalty added to the base parking penalty when a notice of delinquent parking violations is given.

(*l*) ''Total fine or forfeiture'' means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:

(1) The ''base fine'' upon which the state penalty and additional county penalty is calculated.

(2) The ''county penalty'' required by Section 76000 of the Government Code.

(3) The ''service charge'' permitted by Section 853.7 of the Penal Code and Section 40508.5 of the Vehicle Code.

(4) The ''special penalty'' dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.

(5) The ''state penalty'' required by Section 1464.

SEC. 556. Section 1524.1 of the Penal Code is amended to read:

1524.1. (a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.

(b) (1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, the court also finds that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in

appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(2) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds that there is probable cause to believe that the accused committed the uncharged offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(3) (A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (2) shall be admissible.

(4) A request for a probable cause hearing made by a victim under paragraph (2) shall be made before sentencing in the superior court, or before disposition on a petition in a juvenile court, of the criminal charge or charges filed against the defendant.

(c) (1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for prerequest counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.

(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).

(f) Any blood tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i). Any individual who files a false report of sexual assault in order to obtain test result information pursuant to this section shall, in addition to any other liability under law, be guilty of a misdemeanor punishable as provided in subdivision (c) of Section 120980 of the Health and Safety Code. Any individual as described in the preceding sentence who discloses test result information obtained pursuant to this section shall also be guilty of an additional misdemeanor

punishable as provided for in subdivision (c) of Section 120980 of the Health and Safety Code for each separate disclosure of that information.

(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

(k) The results of any blood tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.

SEC. 557. Section 1538.5 of the Penal Code is amended to read:

1538.5. (a) (1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(A) The search or seizure without a warrant was unreasonable.

(B) The search or seizure with a warrant was unreasonable because any of the following apply:

(i) The warrant is insufficient on its face.

(ii) The property or evidence obtained is not that described in the warrant.

(iii) There was not probable cause for the issuance of the warrant.

(iv) The method of execution of the warrant violated federal or state constitutional standards.

(v) There was any other violation of federal or state constitutional standards.

(2) A motion pursuant to paragraph (1) shall be made in writing and accompanied by a memorandum of points and authorities and proof of service. The memorandum shall list the specific items of property or evidence sought to be returned or suppressed and shall set forth the factual basis and the legal authorities that demonstrate why the motion should be granted.

(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 to 170.6, inclusive, of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

(c) Whenever a search or seizure motion is made in the superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further

proceedings authorized by this section, Section 871.5, 1238, or 1466 are utilized by the people.

(e) If a search or seizure motion is granted at a trial, the property shall be returned upon order of the court unless it is otherwise subject to lawful detention. If the motion is granted at a special hearing, the property shall be returned upon order of the court only if, after the conclusion of any further proceedings authorized by this section, Section 1238 or 1466, the property is not subject to lawful detention or if the time for initiating the proceedings has expired, whichever occurs last. If the motion is granted at a preliminary hearing, the property shall be returned upon order of court after 10 days unless the property is otherwise subject to lawful detention or unless, within that time, further proceedings authorized by this section, Section 871.5 or 1238 are utilized; if they are utilized, the property shall be returned only if, after the conclusion of the proceedings, the property is no longer subject to lawful detention.

(f) (1) If the property or evidence relates to a felony offense initiated by a complaint, the motion shall be made only upon filing of an information, except that the defendant may make the motion at the preliminary hearing, but the motion shall be restricted to evidence sought to be introduced by the people at the preliminary hearing.

(2) The motion may be made at the preliminary examination only if at least five court days before the date set for the preliminary examination the defendant has filed and personally served on the people a written motion accompanied by a memorandum of points and authorities as required by paragraph (2) of subdivision (a). At the preliminary examination, the magistrate may grant the defendant a continuance for the purpose of filing the motion and serving the motion upon the people, at least five court days before resumption of the examination, upon a showing that the defendant or his or her attorney of record was not aware of the evidence or was not aware of the grounds for suppression before the preliminary examination.

(3) Any written response by the people to the motion described in paragraph (2) shall be filed with the court and personally served on the defendant or his or her attorney of record at least two court days prior to the hearing at which the motion is to be made.

(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made before trial and heard prior to trial at a special hearing relating to the validity of the search or seizure. If the property or evidence relates to a misdemeanor filed together with a felony, the procedure provided for a felony in this section and Sections 1238 and 1539 shall be applicable.

(h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds

for the motion, the defendant shall have the right to make this motion during the course of trial.

(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 court days after notice to the people, unless the people are willing to waive a portion of this time. Any written response by the people to the motion shall be filed with the court and personally served on the defendant or his or her attorney of record at least two court days prior to the hearing, unless the defendant is willing to waive a portion of this time. If the offense was initiated by indictment or if the offense was initiated by complaint and no motion was made at the preliminary hearing, the defendant shall have the right to fully litigate the validity of a search or seizure on the basis of the evidence presented at a special hearing. If the motion was made at the preliminary hearing, unless otherwise agreed to by all parties, evidence presented at the special hearing shall be limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the people may recall witnesses who testified at the preliminary hearing. If the people object to the presentation of evidence at the special hearing on the grounds that the evidence could reasonably have been presented at the preliminary hearing, the defendant shall be entitled to an in camera hearing to determine that issue. The court shall base its ruling on all evidence presented at the special hearing and on the transcript of the preliminary hearing, and the findings of the magistrate shall be binding on the court as to evidence or property not affected by evidence presented at the special hearing. After the special hearing is held, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition filed within 30 days after the denial of his or her motion at the special hearing.

(j) If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p). In the alternative, the people may move to reinstate the complaint, or those parts of the complaint for which the defendant was not held to answer, pursuant to Section 871.5. If the property or evidence relates to a felony

offense initiated by complaint and the defendant's motion for the return or suppression of the property or evidence at the preliminary hearing is granted, and if the defendant is held to answer at the preliminary hearing, the ruling at the preliminary hearing shall be binding upon the people unless, upon notice to the defendant and the court in which the preliminary hearing was held and upon the filing of an information, the people, within 15 days after the preliminary hearing, request a special hearing, in which case the validity of the search or seizure shall be relitigated de novo on the basis of the evidence presented at the special hearing, and the defendant shall be entitled, as a matter of right, to a continuance of the special hearing for a period of time up to 30 days. The people may not request relitigation of the motion at a special hearing if the defendant's motion has been granted twice. If the defendant's motion is granted at a special hearing, the people, if they have additional evidence relating to the motion and not presented at the special hearing, shall have the right to show good cause at the trial why the evidence was not presented at the special hearing and why the prior ruling at the special hearing should not be binding, or the people may seek appellate review as provided in subdivision (o), unless the court, prior to the time the review is sought, has dismissed the case pursuant to Section 1385. If the case has been dismissed pursuant to Section 1385, or if the people dismiss the case on their own motion after the special hearing, the people may file a new complaint or seek an indictment after the special hearing, and the ruling at the special hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p). If the property or evidence seized relates solely to a misdemeanor complaint, and the defendant made a motion for the return of property or the suppression of evidence in the superior court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the appellate division, in accordance with the California Rules of Court provisions governing appeals to the appellate division in criminal cases. If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

(k) If the defendant's motion to return property or suppress evidence is granted and the case is dismissed pursuant to Section 1385, or the people appeal in a misdemeanor case pursuant to subdivision (j), the defendant shall be released pursuant to Section 1318 if he or she is in custody and not returned to custody unless the proceedings are resumed in the trial court and he or she is lawfully ordered by the court to be returned to custody.

If the defendant's motion to return property or suppress evidence is granted and the people file a petition for writ of mandate or prohibition pursuant to subdivision (o) or a notice of intention to file such a petition,

the defendant shall be released pursuant to Section 1318, unless (1) he or she is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he or she is charged with a noncapital offense defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1, and the court orders that the defendant be discharged from actual custody upon bail.

(*l*) If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section, Section 871.5, 1238, or 1466 and, except upon stipulation of the parties, pending the time for the initiation of these proceedings. Upon the termination of these proceedings, the defendant shall be brought to trial as provided by Section 1382, and, subject to the provisions of Section 1382, whenever the people have sought and been denied appellate review pursuant to subdivision (o), the defendant shall be entitled to have the action dismissed if he or she is not brought to trial within 30 days of the date of the order that is the last denial of the petition. Nothing contained in this subdivision shall prohibit a court, at the same time as it rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385 when the dismissal is upon the court's own motion and is based upon an order at the special hearing granting the defendant's motion to return property or suppress evidence. In a misdemeanor case, the defendant shall be entitled to a continuance of up to 30 days if he or she intends to file a motion to return property or suppress evidence and needs this time to prepare for the special hearing on the motion. In case of an appeal by the defendant in a misdemeanor case from the denial of the motion, he or she shall be entitled to bail as a matter of right, and, in the discretion of the trial or appellate court, may be released on his or her own recognizance pursuant to Section 1318. In case of an appeal by the defendant in a misdemeanor case from the denial of the motion, the trial court may, in its discretion, grant a stay of the trial pending disposition of the appeal.

(m) The proceedings provided for in this section, and Sections 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him or her. A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty. Review on appeal may be obtained by the defendant provided that

at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence.

(n) This section establishes only the procedure for suppression of evidence and return of property, and does not establish or alter any substantive ground for suppression of evidence or return of property. Nothing contained in this section shall prohibit a person from making a motion, otherwise permitted by law, to return property, brought on the ground that the property obtained is protected by the free speech and press provisions of the United States and California Constitutions. Nothing in this section shall be construed as altering (1) the law of standing to raise the issue of an unreasonable search or seizure; (2) the law relating to the status of the person conducting the search or seizure; (3) the law relating to the burden of proof regarding the search or seizure; (4) the law relating to the reasonableness of a search or seizure regardless of any warrant that may have been utilized; or (5) the procedure and law relating to a motion made pursuant to Section 871.5 or 995, or the procedures that may be initiated after the granting or denial of such a motion.

(o) Within 30 days after a defendant's motion is granted at a special hearing in a felony case, the people may file a petition for writ of mandate or prohibition in the court of appeal, seeking appellate review of the ruling regarding the search or seizure motion. If the trial of a criminal case is set for a date that is less than 30 days from the granting of a defendant's motion at a special hearing in a felony case, the people, if they have not filed such a petition and wish to preserve their right to file a petition, shall file in the superior court on or before the trial date or within 10 days after the special hearing, whichever occurs last, a notice of intention to file a petition and shall serve a copy of the notice upon the defendant.

(p) If a defendant's motion to return property or suppress evidence in a felony matter has been granted twice, the people may not file a new complaint or seek an indictment in order to relitigate the motion or relitigate the matter de novo at a special hearing as otherwise provided by subdivision (j), unless the people discover additional evidence relating to the motion that was not reasonably discoverable at the time of the second suppression hearing. Relitigation of the motion shall be heard by the same judge who granted the motion at the first hearing if the judge is available.

(q) The amendments to this section enacted in the 1997 portion of the 1997–98 Regular Session of the Legislature shall apply to all criminal proceedings conducted on or after January 1, 1998.

SEC. 558. Section 3075 of the Penal Code is amended to read:

3075. (a) There is in each county a board of parole commissioners, consisting of each of the following:

(1) The sheriff or, in a county with a department of corrections, the director of that department.

(2) The probation officer.

(3) A member, not a public official, to be selected from the public by the presiding judge of the superior court.

(b) The public member of the county board of parole commissioners or his or her alternate shall be entitled to his or her actual traveling and other necessary expenses incurred in the discharge of his or her duties. In addition, the public member or his or her alternate shall be entitled to per diem at any rate that may be provided by the board of supervisors. The public member or his or her alternate shall hold office for a term of one year and in no event for a period exceeding three consecutive years. The term shall commence on the date of appointment.

SEC. 559. Section 3076 of the Penal Code is amended to read:

3076. (a) The board may make, establish and enforce rules and regulations adopted under this article.

(b) The board shall act at regularly called meetings at which two-thirds of the members are present, and shall make and establish rules and regulations in writing stating the reasons therefor under which any prisoner who is confined in or committed to any county jail, work furlough facility, industrial farm, or industrial road camp, or in any city jail, work furlough facility, industrial farm, or industrial road camp under a judgment of imprisonment or as a condition of probation for any criminal offense, unless the court at the time of committing has ordered that such prisoner confined as a condition of probation upon conviction of a felony not be granted parole, may be allowed to go upon parole outside of such jail, work furlough facility, industrial farm, or industrial road camp, but to remain, while on parole, in the legal custody and under the control of the board establishing the rules and regulations for the prisoner's parole, and subject at any time to be taken back within the enclosure of any such jail, work furlough facility, industrial farm, or industrial road camp.

(c) The board shall provide a complete copy of its written rules and regulations and reasons therefor and any amendments thereto to each of the judges of the superior court of the county.

The board shall provide to the persons in charge of the county's correctional facilities a copy of the sections of its written rules and regulations and any amendments thereto which govern eligibility for parole, and the name and telephone number of the person or agency to contact for additional information. Such rules and regulations governing eligibility either shall be conspicuously posted and maintained within each county correctional facility so that all prisoners have access to a copy, or shall be given to each prisoner.

SEC. 560. Section 3085.1 of the Penal Code is amended to read:

3085.1. The presiding judge of the superior court in Contra Costa County may appoint an alternate for the public member who shall serve in the absence of the public member.

SEC. 561. Section 3607 of the Penal Code is amended to read:

3607. After the execution, the warden must make a return upon the death warrant to the clerk of the court by which the judgment was rendered, showing the time, mode, and manner in which it was executed.

SEC. 562. Section 4007 of the Penal Code is amended to read:

4007. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the judge of the superior court may, by a written order filed with the clerk of the court, designate the jail of a contiguous county for the confinement of any prisoner of his or her county, and may at any time modify or vacate the order.

When there are reasonable grounds to believe that a prisoner may be forcibly removed from a county jail, the sheriff may remove the prisoner to any California state prison for safekeeping and it is the duty of the warden of the prison to accept and detain the prisoner in his or her custody until his or her removal is ordered by the superior court of the county from which he or she was delivered. Immediately upon receiving the prisoner the warden shall advise the Director of Corrections of that fact in writing.

When a county prisoner requires medical treatment necessitating hospitalization which cannot be provided at the county jail or county hospital because of lack of adequate detention facilities, and when the prisoner also presents a serious custodial problem because of his or her past or present behavior, the judge of the superior court may, on the request of the county sheriff and with the consent of the Director of Corrections, designate by written order the nearest state prison or correctional facility which would be able to provide the necessary medical treatment and secure confinement of the prisoner. The written order of the judge shall be filed with the clerk of the court. The court shall immediately calendar the matter for a hearing to determine whether the order shall continue or be rescinded. The hearing shall be held within 48 hours of the initial order or the next judicial day, whichever occurs later. The prisoner shall not be transferred to the state prison or correctional facility prior to the hearing, except upon a determination by the physician responsible for the prisoner's health care that a medical emergency exists which requires the transfer of the prisoner to the state prison or correctional facility prior to the hearing. The prisoner shall be entitled to be present at the hearing and to be represented by counsel. The prisoner may waive his or her right to this hearing in writing at any time. If the prisoner waives his or her right to the hearing, the county sheriff shall notify the prisoner's attorney of the transfer within 48 hours, or the

next business day, whichever is later. The court may modify or vacate the order at any time.

The rate of compensation for the prisoner's medical treatment and confinement within a California state prison or correctional facility shall be established by the Department of Corrections, and shall be charged against the county making the request.

When there are reasonable grounds to believe that there is a prisoner in a county jail who is likely to be a threat to other persons in the facility or who is likely to cause substantial damage to the facility, the judge of the superior court may, on the request of the county sheriff and with the consent of the Director of Corrections, designate by written order the nearest state prison or correctional facility which would be able to secure confinement of the prisoner, subject to space available. The written order of the judge must be filed with the clerk of the court. The court shall immediately calendar the matter for a hearing to determine whether the order shall continue or be rescinded. The hearing shall be held within 48 hours of the initial order or the next judicial day, whichever occurs later. The prisoner shall be entitled to be present at the hearing and to be represented by counsel. The court may modify or vacate that order at any time. The rate of compensation for the prisoner's confinement within a California state prison or correctional facility shall be established by the Department of Corrections and shall be charged against the county making the request.

SEC. 563. Section 4008 of the Penal Code is amended to read:

4008. A copy of the appointment, certified by the clerk of the court, must be served on the sheriff or keeper of the jail designated, who must receive into the jail all prisoners authorized to be confined therein, pursuant to Section 4007, and who is responsible for the safekeeping of the persons so committed, in the same manner and to the same extent as if the sheriff or keeper of the jail were sheriff of the county for whose use the jail is designated, and with respect to the persons so committed the sheriff or keeper of the jail is deemed the sheriff of the county from which they were removed.

SEC. 564. Section 4009 of the Penal Code is amended to read:

4009. When a jail is erected in a county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the judge of the superior court of that county must, by a written revocation, filed with the clerk of the court, declare that the necessity for the designation has ceased, and that it is revoked.

SEC. 565. Section 4010 of the Penal Code is amended to read:

4010. The clerk of the court must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had.

SEC. 566. Section 4012 of the Penal Code is amended to read:

4012. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the county judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the clerk of the court, and authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

SEC. 567. Section 4024.1 of the Penal Code is amended to read:

4024.1. (a) The sheriff, chief of police, or any other person responsible for a county or city jail may apply to the presiding judge of the superior court to receive general authorization for a period of 30 days to release inmates pursuant to the provisions of this section.

(b) Whenever, after being authorized by a court pursuant to subdivision (a), the actual inmate count exceeds the actual bed capacity of a county or city jail, the sheriff, chief of police, or other person responsible for such county or city jail may accelerate the release, discharge, or expiration of sentence date of sentenced inmates up to a maximum of five days.

(c) The total number of inmates released pursuant to this section shall not exceed a number necessary to balance the inmate count and actual bed capacity.

(d) Inmates closest to their normal release, discharge, or expiration of sentence date shall be given accelerated release priority.

(e) The number of days that release, discharge, or expiration of sentence is accelerated shall in no case exceed 10 percent of the particular inmate's original sentence, prior to the application thereto of any other credits or benefits authorized by law.

SEC. 568. Section 4112 of the Penal Code is amended to read:

4112. When land has been acquired and such buildings and structures erected and improvements made as may be immediately necessary for the carrying out of the purposes of this article or arrangements have been made for an industrial road camp or camps, the board of supervisors shall adopt a resolution proclaiming that an industrial farm or road camp has been established in the county and designating a day on and after which persons will be admitted to such farm or camp. Certified copies of the resolution shall be forwarded by the clerk of the board of supervisors to each superior court judge in the county.

SEC. 569. Section 4301 of the Penal Code is amended to read:

4301. There shall be 6, 9, or 12 members of the committee. One-third shall be appointed by the board of supervisors, one-third by the sheriff, and one-third by the presiding judge of the superior court. Of

the members appointed by the presiding judge, one shall be a member of the State Bar.

SEC. 570. Section 4303 of the Penal Code is amended to read:

4303. Members of the committee shall serve without compensation, but shall be allowed their reasonable expenses as approved by the presiding judge of the superior court. The expenses shall be a charge upon the county in which the court has jurisdiction, and shall be paid out of the county treasury upon a written order of the presiding judge of the superior court directing the county auditor to draw a warrant upon the county treasurer for the specified amount of such expenses. All orders by the presiding judge upon the county treasurer shall be filed in duplicate with the county board of supervisors and sheriff.

SEC. 571. Section 4304 of the Penal Code is amended to read:

4304. The committee shall file a report within 90 days after the thirty-first day of December of the calendar year for which such report is made, copies of which shall be filed with the county board of supervisors, the presiding judge, the sheriff, the Board of Corrections, and the Attorney General.

SEC. 572. Section 4852.18 of the Penal Code is amended to read:

4852.18. The Board of Prison Terms shall furnish to the clerk of the superior court of each county a set of sample forms for a petition for certificate of rehabilitation and pardon, a notice of filing of petition for certificate of rehabilitation and pardon, and a certificate of rehabilitation. The clerk of the court shall have a sufficient number of these forms printed to meet the needs of the people of the county, and shall make these forms available at no charge to persons requesting them.

SEC. 573. Section 6031.1 of the Penal Code is amended to read:

6031.1. Inspections of local detention facilities shall be made biennially. Inspections of privately operated work furlough facilities and programs shall be made biennially unless the work furlough administrator requests an earlier inspection. Inspections shall include, but not be limited to, the following:

(a) Health and safety inspections conducted pursuant to Section 101045 of the Health and Safety Code.

(b) Fire suppression preplanning inspections by the local fire department.

(c) Security, rehabilitation programs, recreation, treatment of persons confined in the facilities, and personnel training by the staff of the Board of Corrections.

Reports of each facility's inspection shall be furnished to the official in charge of the local detention facility or, in the case of a privately operated facility, the work furlough administrator, the local governing body, the grand jury, and the presiding judge of the superior court in the county where the facility is located. These reports shall set forth the areas

wherein the facility has complied and has failed to comply with the minimum standards established pursuant to Section 6030.

SEC. 574. Section 13151 of the Penal Code is amended to read:

13151. The superior court that disposes of a case for which an arrest was required to be reported to the Department of Justice pursuant to Section 13150 or for which fingerprints were taken and submitted to the Department of Justice by order of the court shall assure that a disposition report of such case containing the applicable data elements enumerated in Section 13125, or Section 13151.1 if such disposition is one of dismissal, is furnished to the Department of Justice within 30 days according to the procedures and on a format prescribed by the department. The court shall also furnish a copy of such disposition report to the law enforcement agency having primary jurisdiction to investigate the offense alleged in the complaint or accusation. Whenever a court shall order any action subsequent to the initial disposition of a case, the court shall similarly report such proceedings to the department.

SEC. 575. Section 14154 of the Penal Code is amended to read:

14154. In a county in which the district attorney has established a community conflict resolution program, the superior court may, with the consent of the district attorney and the defendant, refer misdemeanor cases, including those brought by a city prosecutor, to that program. In determining whether to refer a case to the community conflict resolution program, the court shall consider, but is not limited to considering, all of the following:

(a) The factors listed in Section 14152.

(b) Any other referral criteria established by the district attorney for the program.

The court shall not refer any case to the community conflict resolution program which was previously referred to that program by the district attorney.

SEC. 576. Section 1513 of the Probate Code is amended to read:

1513. (a) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator may make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

(1) A social history of the guardian.

(2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional,

psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs.

(3) The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition.

(4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child. The court may waive this requirement for cases involving relative guardians.

(b) The report shall be read and considered by the court prior to ruling on the petition for guardianship, and 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.

(c) If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending.

(d) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The clerk of the court shall make provisions for the limitation of the report exclusively to persons entitled to its receipt.

(e) For the purpose of writing the report authorized by this section, the person making the investigation and report shall have access to the proposed ward's school records, probation records, and public and private social services records, and to an oral or written summary of the proposed ward's medical records and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The physician, psychologist, or psychiatrist shall be available to clarify information regarding these records pursuant to the investigator's responsibility to gather and provide information for the court.

(f) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

(g) For purposes of this section, a ''relative'' means a person who is a spouse, parent, stepparent, brother, sister, stepbrother, stepsister,

half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix ''grand'' or ''great,'' or the spouse of any of these persons, even after the marriage has been terminated by death or dissolution.

SEC. 577. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be

confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section.

SEC. 578. Section 1826 of the Probate Code is amended to read:

1826. Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally.

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Review the allegations of the petition as to why the appointment of the conservator is required and, in making his or her determination, do the following:

(1) Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(2) Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits

listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(j) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(k) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(*l*) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (k) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) Any other persons as the court orders.

(m) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long-term care ombudsman.

(n) The report required by this section is confidential and shall be made available only to parties, persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The

clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.

(o) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

(p) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

SEC. 579. Section 1827.5 of the Probate Code is amended to read:

1827.5. (a) In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court.

(b) In the case of any proceeding to establish a general conservatorship for a person with developmental disabilities, the regional center, with the consent of the proposed conservatee, may prepare an assessment as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. If an assessment is prepared, the regional center shall submit its findings and recommendations to the court.

(c) A report prepared under subdivision (a) or (b) shall include a description of the specific areas, nature, and degree of disability of the proposed conservatee or proposed limited conservatee. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed conservatee or proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed conservatee or proposed limited conservatee.

(d) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

(1) The proposed limited conservatee.

(2) The attorney, if any, for the proposed limited conservatee.

(3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

(e) The report referred to in subdivisions (a) and (b) shall be confidential and shall be made available only to parties listed in subdivision (d) unless the court, in its discretion, determines that the release of the report would serve the interests of the conservatee who is developmentally disabled. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

SEC. 580. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

SEC. 581. Section 15688 of the Probate Code is amended to read:

15688. Notwithstanding any other provision of this article and the terms of the trust, a public guardian who is appointed as a trustee of a

trust pursuant to Section 15660.5 shall be paid from the trust property for all of the following:

(a) Reasonable expenses incurred in the administration of the trust.

(b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the clerk of the court in the amount the court determines is just and reasonable.

(c) An annual bond fee in the amount of twenty-five dollars ($25) plus one-fourth of 1 percent of the amount of the trust assets greater than ten thousand dollars ($10,000). The amount charged shall be deposited in the county treasury.

SEC. 583. Section 14591.5 of the Public Resources Code is amended to read:

14591.5. After the time for judicial review under Section 11523 of the Government Code has expired, the department may apply to the small claims court or superior court, depending on the jurisdictional amount and any other remedy sought, in the county where the penalties, restitution, or other remedy was imposed by the department, for a judgment to collect any unpaid civil penalties or restitution or to enforce any other remedy provided by this division. The application, which shall include a certified copy of the final agency order or decision, shall constitute a sufficient showing to warrant the issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court. The court shall make enforcement of the judgment a priority.

SEC. 584. Section 5411.5 of the Public Utilities Code is amended to read:

5411.5. Whenever a peace officer arrests a person for a violation of Section 5411 involving the operation of a charter-party carrier of passengers without a valid certificate or permit at a public airport, within 100 feet of a public airport, or within two miles of the international border between the United States and Mexico, the peace officer may impound and retain possession of the vehicle used in violation of Section 5411.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of Section 5411

without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in superior court, for the immediate return of the vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this section is a limited civil case.

No peace officer, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 585. Section 19707 of the Revenue and Taxation Code is amended to read:

19707. The place of trial for the offenses enumerated in this chapter shall be in the county of residence or principal place of business of the defendant or defendants at the time of commission of the offense. However, if the defendant or defendants had no residence or principal place of business in this state at the time of commission of the offense, the trial shall be held in the County of Sacramento.

In a criminal case charging a defendant or defendants with committing an offense enumerated in this chapter, the place of trial may be as set forth in this section, or as provided for in Section 1462.2 or Chapter 1 (commencing with Section 777) of Title 3 of Part 2 of the Penal Code.

SEC. 586. Section 5419 of the Streets and Highways Code is amended to read:

5419. Upon the entry of judgment or dismissal of the action the clerk of the court shall forthwith mail to the street superintendent of the city having jurisdiction over the proceeding in which the assessment was levied, a certified copy of the judgment or other evidence sufficient to advise the street superintendent of the judgment of the court in the action.

SEC. 587. Section 6619 of the Streets and Highways Code is amended to read:

6619. A written notice of the pendency of any action for recovery on a bond shall be filed with the treasurer. After the filing of such notice the treasurer shall not receive any money on account of the bond and shall have no authority to cancel the entries on the bond in the register or give a discharge of the bond without the written consent of the owner thereof until judgment has been rendered in the action or until it has been dismissed.

Upon the entry of judgment or dismissal of the action the clerk of the court shall forthwith mail to the treasurer a certified copy of the judgment or other evidence sufficient to advise the treasurer of the judgment of the court in the action.

SEC. 588. Section 6621 of the Streets and Highways Code is amended to read:

6621. Whenever a bond is foreclosed pursuant to this chapter, the decree of foreclosure shall direct the clerk of the court to deliver the bond sued upon to the treasurer of the city which issued said bond together with a memorandum setting forth the title and number of the action and the fact that the bond has been foreclosed.

SEC. 589. Section 6622 of the Streets and Highways Code is amended to read:

6622. The treasurer shall cancel the bond upon the records and deliver to the clerk of the court a receipt substantially in the following form:

''Certificate of Cancellation of Street Improvement Bond Series (designating it), in the City (or County) of (naming it).

$_____/100 No. _____

I, ____, Treasurer of the City (or County) of ____ do hereby certify that I have received the above bond from the clerk of the Superior Court of ____ (naming county) in that certain foreclosure action entitled ____ vs. ____ No. ____, Superior Court of ____ County; and I have this day canceled said bond on my records, pursuant to the order of the court made in said case.

Dated at _____, this _____ day of _____, 20__.

_____

Treasurer of the City (or County) of _____

By _____

Deputy''

SEC. 590. Section 6623 of the Streets and Highways Code is amended to read:

6623. The clerk of the court shall enter the judgment or decree of foreclosure in the action upon the delivery of the certificate of cancellation.

SEC. 591. Section 8266 of the Streets and Highways Code is amended to read:

8266. The proceeding is instituted by filing with the clerk of the court a complaint setting forth:

(a) The name of the district.
(b) Its exterior boundaries.
(c) The date of its organization.
(d) A prayer that the district be judged legally formed under this part.

SEC. 592. Section 1815 of the Unemployment Insurance Code is amended to read:

1815. If any employing unit is delinquent in the payment of any contributions, penalties or interest provided for in this division, the director may, not later than 10 years after the payment became delinquent or within 10 years after the last entry of a judgment under this article or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, file in the office of the Clerk of the Superior Court of Sacramento County, or with the clerk of the superior court of the county in which the employer has its principal place of business, a certificate specifying the amount of the contributions, interest and penalty due and the name and last known address of the employer liable therefor. The certificate shall also contain a statement that the director has complied with all the provisions of this division in relation to the computation and levy of the contributions, interest and penalty, and a request that judgment be entered against the employer in the amount set forth in the certificate. The clerk immediately upon the filing of the certificate shall enter a judgment for the State of California against the employer in the amount set forth in the certificate. Such judgment may be filed by the clerk in a looseleaf book entitled ''Unemployment Contributions Judgments.''

SEC. 593. Section 9805 of the Vehicle Code is amended to read:

9805. (a) The department may file in the office of the Clerk of the Superior Court of Sacramento County, or any other county, a certificate specifying the amount of any fee, tax, penalty, and collection cost due, the name and last known address of the individual, company, or corporation liable for the amount due, and the fact that the department has complied with all the provisions of this division in the computation of the amount due, and a request that judgment be entered against the individual, company, or corporation in the amount of the fee, tax, penalty, and collection cost set forth in the certificate if the fee, tax, penalty, or collection cost constitutes either of the following:

(1) A lien under this division on the vehicle on which it is due is not paid when due, and there is evidence that the vehicle has been operated in violation of this code or any regulations adopted pursuant to this code.

(2) A lessee liability as provided in Section 10879 of the Revenue and Taxation Code.

(b) Prior to the filing of the certificate, the department shall, by mail, notify the individual, company, or corporation of the amount which is due and of the opportunity for a hearing as provided in this subdivision.

At the request of the individual, company, or corporation, the department shall conduct a hearing pursuant to Section 9801, at which it shall be determined whether the claimed fee, tax, penalty, or collection cost in the amount claimed by the department is due and constitutes a lien on the vehicle, and whether the individual, company, or corporation is liable therefor.

(c) If no hearing is requested within 15 days after mailing the notice required by subdivision (b), the certificate required by subdivision (b) may be filed.

SEC. 594. Section 9806 of the Vehicle Code is amended to read:

9806. The clerk of the court, immediately upon the filing of the certificate specified in Section 9805, shall enter a judgment for the people of the State of California against the individual, company, or corporation in the amount of any fee, tax, penalty, and collection cost set forth in the certificate. The clerk may file the judgment in a looseleaf book entitled ''Department of Motor Vehicles Registration Judgments.''

SEC. 595. Section 9872.1 of the Vehicle Code is amended to read:

9872.1. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or her possession any vessel, or component part thereof, from which the hull identification number has been removed, defaced, altered, or destroyed, unless the vessel or component part has attached thereto a hull identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vessel, or component part thereof, from which the hull identification number has been removed, defaced, altered, or destroyed, and which does not have attached thereto an assigned or approved number as described in subdivision (a), comes into the custody of a peace officer, the seized vessel or component part is subject, in accordance with the procedures specified in this section, to impoundment and to such disposition as may be provided by order of a court having jurisdiction. This subdivision does not apply with respect to a seized vessel or component part used as evidence in any criminal action or proceeding.

(c) Whenever a vessel or component part described in subdivision (a) comes into the custody of a peace officer, any person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the department, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required in subdivision (e). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vessel or component part as provided in subdivision (b), any person from whom the property was seized shall be provided a notice of impoundment of the vessel or

component part which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vessel or component part seized has been impounded for investigation of a violation of this section and that the property will be released upon a determination that the hull identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of ownership of the vessel or component part, provided that no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vessel or component part shall take place in the proper court.

(3) A statement that any person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the department, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vessel or component part may be presented.

(5) A statement of the contents of this section.

(e) A hearing on the disposition of the property shall be held by the superior court within 60 days after the seizure. The hearing shall be before the court without a jury. A proceeding under this section is a limited civil case.

(1) If the evidence reveals either that the hull identification number has not been removed, altered, or destroyed or that the hull identification number has been removed, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or court, the property shall be released to the person entitled thereto.

(2) If the evidence reveals that the hull identification number has been removed, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the property shall be destroyed, sold, or otherwise disposed of as provided by court order.

(3) At the hearing, the seizing agency shall have the burden of establishing that the hull identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.

(f) Nothing in this section precludes the return of a seized vessel or component part to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vessel or component part by the department.

SEC. 596. Section 10751 of the Vehicle Code is amended to read:

10751. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or her possession, any vehicle, or component part thereof, from which any serial or identification number, including, but not limited to, any number used for registration purposes, that is affixed by the manufacturer to the vehicle or component part, in whatever manner deemed proper by the manufacturer, has been removed, defaced, altered, or destroyed, unless the vehicle or component part has attached thereto an identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vehicle described in subdivision (a), including a vehicle assembled with any component part which is in violation of subdivision (a), comes into the custody of a peace officer, it shall be destroyed, sold, or otherwise disposed of under the conditions as provided in an order by the court having jurisdiction. No court order providing for disposition shall be issued unless the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, are provided a postseizure hearing by the court having jurisdiction within 90 days after the seizure. This subdivision shall not apply with respect to a seized vehicle or component part used as evidence in any criminal action or proceeding. Nothing in this section shall, however, preclude the return of a seized vehicle or a component part to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vehicle or component part by the department.

(c) Whenever a vehicle described in subdivision (a) comes into the custody of a peace officer, the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required in subdivision (b). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vehicle described in subdivision (a), the person from whom the property was seized shall be provided a notice of impoundment of the vehicle which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vehicle seized has been impounded for investigation of a violation of Section 10751 of the California Vehicle Code and that the property will be released upon a determination that the serial or identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of

ownership of the vehicle or a component part, if no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vehicle shall take place in the proper court.

(3) A statement that the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vehicle or component part may be presented.

(5) A statement of the contents of Section 10751 of the Vehicle Code.

(e) A hearing on the disposition of the property shall be held by the superior court within 90 days after the seizure. The hearing shall be before the court without a jury. A proceeding under this section is a limited civil case.

(1) If the evidence reveals either that the serial or identification number has not been removed, defaced, altered, or destroyed or that the number has been removed, defaced, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or court, the property shall be released to the person entitled thereto. Nothing in this section precludes the return of the vehicle or a component part to a good faith purchaser following presentation of satisfactory evidence of ownership thereof upon the assignment of an identification number to the vehicle or component part by the department.

(2) If the evidence reveals that the identification number has been removed, defaced, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the vehicle shall be destroyed, sold, or otherwise disposed of as provided by court order.

(3) At the hearing, the seizing agency has the burden of establishing that the serial or identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.

(f) This section does not apply to a scrap metal processor engaged primarily in the acquisition, processing, and shipment of ferrous and nonferrous scrap, and who receives dismantled vehicles from licensed dismantlers, licensed junk collectors, or licensed junk dealers as scrap metal for the purpose of recycling the dismantled vehicles for their metallic content, the end product of which is the production of material for recycling and remelting purposes for steel mills, foundries, smelters, and refiners.

SEC. 597. Section 11102.1 of the Vehicle Code is amended to read:

11102.1. If a deposit is given instead of the bond required by Section 11102:

(a) The director may order the deposit returned at the expiration of three years from the date a driving school licensee has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(b) If either the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

SEC. 598. Section 11203 of the Vehicle Code is amended to read:

11203. In lieu of the bond otherwise required by paragraph (3) of subdivision (a) of Section 11202, the applicant may make a deposit pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure. The director may order the deposit returned at the expiration of three years from the date a traffic violator school licensee has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A superior court may, upon petition, order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the court that there are no outstanding claims against the deposit. If either the director, department, or state is a defendant in any civil action instituted to recover all or any part of the deposit, or any civil action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the licensee recoverable from the deposit.

SEC. 599. Section 11301.5 of the Vehicle Code is amended to read:

11301.5. If a deposit is given instead of the bond required by Section 11301:

(a) The Director of Motor Vehicles may order the refund of the deposit three years from the date a vehicle verifier has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a superior court may order the return of the deposit prior to the expiration of three years from the date a vehicle verifier has ceased to be licensed if there is evidence satisfactory to the court that there are no outstanding claims against the deposit.

(b) If the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

SEC. 600. Section 11710.2 of the Vehicle Code is amended to read:

11710.2. If a deposit is given instead of the bond required by Section 11710 both of the following apply:

(a) The director may order the deposit returned at the expiration of three years from the date an applicant for a dealer's license who has operated a business of selling vehicles under a temporary permit has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(b) If either the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

SEC. 601. Section 27362 of the Vehicle Code is amended to read:

27362. (a) No manufacturer, wholesaler, or retailer shall sell, offer for sale, or install in any motor vehicle any child passenger restraint system not conforming to all applicable federal motor vehicle safety standards on the date of sale or installation. Responsibility for compliance with this section shall rest with the individual selling, offering for sale, or installing the system. Every person who violates this section is guilty of a misdemeanor and shall be punished as follows:

(1) Upon a first conviction, by a fine not exceeding four hundred dollars ($400) or by imprisonment in the county jail for a period of not more than 90 days, or both.

(2) Upon a second or subsequent conviction, by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for a period of not more than 180 days, or both.

(b) The fines collected for a violation of this section shall be allocated as follows:

(1) Sixty percent to county health departments where the violation occurred, to be used for a child passenger restraint low-cost purchase or

loaner program which shall include, but not be limited to, education on the proper installation and use of a child passenger restraint system. The county health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the superior court to facilitate the transfer of funds to the program. The county may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall receive information relating to the importance of utilizing that system.

As the proceeds from fines become available, county health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency and the courts, birthing centers, community child health and disability prevention programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

SEC. 602. Section 40256 of the Vehicle Code is amended to read:

40256. (a) Within 20 days after the mailing of the final decision described in subdivision (b) of Section 40255, the contestant may seek review by filing an appeal to the superior court, where the same shall be heard de novo, except that the contents of the processing agency's file in the case on appeal shall be received in evidence. A copy of the notice of toll evasion violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 20-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) Notwithstanding Section 72055 of the Government Code, the fee for filing the notice of appeal shall be twenty-five dollars ($25). If the appellant prevails, this fee, together with any deposit of toll evasion penalty, shall be promptly refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the hearing on appeal under this section is a subordinate judicial duty which may be performed by commissioners

and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the toll evasion penalty has not been deposited and the decision is adverse to the contestant, the processing agency may, promptly after the decision becomes final, proceed to collect the penalty under Section 40267.

SEC. 603. Section 40502 of the Vehicle Code is amended to read:

40502. The place specified in the notice to appear shall be any of the following:

(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(b) Upon demand of the person arrested, before a judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed. This subdivision applies only if the person arrested resides, or the person's principal place of employment is located, closer to the county seat than to the court or other magistrate nearest or most accessible to the place where the arrest is made.

(c) Before a person authorized to receive a deposit of bail.

The clerk and deputy clerks of the superior court are persons authorized to receive bail in accordance with a schedule of bail approved by the judges of that court.

(d) Before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom the appearance is to be made.

In a county that has implemented the provisions of Section 603.5 of the Welfare and Institutions Code, if the offense alleged to have been committed by a minor is classified as an infraction under this code, or is a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, the citation shall be issued as provided in subdivision (a), (b), or (c); provided, however, that if the citation combines an infraction and a misdemeanor, the place specified shall be as provided in subdivision (d).

If the place specified in the notice to appear is within a county where a department of the superior court is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person

arrested that the person may appear before such a night session of the court.

SEC. 604. Section 40506.5 of the Vehicle Code is amended to read:

40506.5. Prior to the date upon which the defendant promised to appear and without depositing bail, the defendant may request a continuance of the written promise to appear. A judge of the superior court may authorize the clerk to grant the continuance.

SEC. 604.5. Section 40508.6 of the Vehicle Code is amended to read:

40508.6. The superior court in any county may establish administrative assessments, not to exceed ten dollars ($10), for clerical and administrative costs incurred for the following activities:

(a) An assessment for the cost of recording and maintaining a record of the defendant's prior convictions for violations of this code. The assessment shall be payable at the time of payment of a fine or when bail is forfeited for any subsequent violations of this code other than parking, pedestrian, or bicycle violations.

(b) An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

SEC. 605. Section 42003 of the Vehicle Code is amended to read:

42003. (a) A judgment that a person convicted of an infraction be punished by a fine may also provide for the payment to be made within a specified time or in specified installments. A judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.

(b) A judgment that a person convicted of any other violation of this code be punished by a fine may also order, adjudge, and decree that the person be imprisoned until the fine is satisfied. In all of these cases, the judgment shall specify the extent of the imprisonment which shall not exceed one day for every thirty dollars ($30) of the fine, nor extend in this case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he or she was convicted.

(c) In any case when a person appears before a traffic referee or judge of the superior court for adjudication of a violation of this code, the court, upon request of the defendant, shall consider the defendant's ability to pay. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. The reasonable cost of these services and of probation shall not

exceed the amount determined to be the actual average cost thereof. The court shall order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of those costs or the court or traffic referee may make this determination at a hearing. At that hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to a written statement of the findings of the court or the county officer. If the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability; or, with the consent of a defendant who is placed on probation, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county. 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.

The court may hold additional hearings during the probationary period. If practicable, the court or the probation officer shall order payments to be made on a monthly basis. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judge of the superior court.

(d) The term ''ability to pay'' means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation, and includes, but is not limited to, all of the following regarding the defendant:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant will be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(e) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

SEC. 606. Section 42008 of the Vehicle Code is amended to read:

42008. (a) Any county may operate an amnesty program for delinquent fines and bail imposed for an infraction or misdemeanor violation of the Vehicle Code, except parking violations of the Vehicle Code and violations of Section 23103, 23104, 23152, or 23153. The program shall be implemented by the courts in accordance with Judicial Council guidelines, and shall apply to infraction or misdemeanor violations of the Vehicle Code, except parking violations, upon which a fine or bail was delinquent on or before April 1, 1991.

(b) Under the amnesty program, any person owing a fine or bail due on or before April 1, 1991, that was imposed for an infraction or misdemeanor violation of the Vehicle Code, except violations of Section 23103, 23104, 23152, or 23153 or parking violations, may pay to the superior court the amount scheduled by the court, which shall be either (1) 70 percent of the total fine or bail or (2) the amount of one hundred dollars ($100) for an infraction or five hundred dollars ($500) for a misdemeanor. This amount shall be accepted by the court in full satisfaction of the delinquent fine or bail.

(c) No criminal action shall be brought against any person for a delinquent fine or bail paid under this amnesty program and no other additional penalties shall be assessed for the late payment of the fine or bail made under the amnesty program.

(d) Notwithstanding Section 1463 of the Penal Code, the total amount of funds collected by the courts pursuant to the amnesty program created by this section shall be deposited in the county treasury.

SEC. 607. Section 42008.5 of the Vehicle Code is amended to read:

42008.5. (a) A county may establish a one-time amnesty program for fines and bail that have been delinquent for not less than six months as of the date upon which the program commences and were imposed for an infraction or misdemeanor violation of this code, except parking violations of this code and violations of Section 23103, 23104, 23152, or 23153.

(b) Any person owing a fine or bail that is eligible for amnesty under the program may pay to the superior or juvenile court the amount scheduled by the court, which shall be accepted by the court in full

satisfaction of the delinquent fine or bail and shall be either of the following:

(1) Seventy percent of the total fine or bail.

(2) The amount of one hundred dollars ($100) for an infraction or five hundred dollars ($500) for a misdemeanor.

(c) The amnesty program shall be implemented by the courts of the county on a one-time basis and conducted in accordance with Judicial Council guidelines for a period of not less than 120 days. The program shall operate not longer than six months from the date the court initiates the program.

(d) No criminal action shall be brought against any person for a delinquent fine or bail paid under the amnesty program and no other additional penalties, except as provided in Section 1214.1 of the Penal Code, shall be assessed for the late payment of the fine or bail made under the amnesty program.

(e) Notwithstanding Section 1463 of the Penal Code, the total amount of funds collected by the courts pursuant to the amnesty program shall be deposited in the county treasury until 150 percent of the cost of operating the program, excluding capital expenditures, have been so deposited. Thereafter, 37 percent of the amount of the delinquent fines and bail deposited in the county treasury shall be distributed by the county pursuant to Section 1464 of the Penal Code, 26 percent of the amount deposited shall be distributed by the county pursuant to Article 2 (commencing with Section 76100) of Chapter 12 of Title 8 of the Government Code, and the remaining 37 percent of the amount deposited shall be retained by the county.

(f) The deposit of fines and bails in the county treasury as described in subdivision (e) is limited to the amnesty program described in this section, and it is the intent of the Legislature that it shall not be considered a precedent with respect to affecting programs that receive funding pursuant to Section 1463 of the Penal Code.

(g) Each county participating in the program shall file, not later than six months after the termination of the program, a written report with the Assembly Committee on Judiciary and the Senate Committee on Judiciary. The report shall summarize the amount of money collected, operating costs of the program, distribution of funds collected, and when possible, how the funds were expended.

SEC. 608. Section 42203 of the Vehicle Code is amended to read:

42203. Notwithstanding Section 42201 or 42201.5, 50 percent of all fines and forfeitures collected in a superior court upon conviction or upon the forfeiture of bail for violations of any provisions of the Vehicle Code, or of any local ordinance or resolution, relating to stopping, standing, or parking a vehicle, that have occurred upon the premises of facilities physically located in such county, but which are owned by

another county, which other county furnishes law enforcement personnel for the premises, shall be transmitted pursuant to this section to the county which owns the facilities upon which the violations occurred. The court receiving such moneys shall, once each month, transmit such moneys received in the preceding month to the county treasurer of the county in which the court is located. Once each month in which the county treasurer receives such moneys, the county treasurer shall transmit to the county which owns such facilities an amount equal to 50 percent thereof. The county owning such facilities shall, upon receipt of such moneys from the superior court of the county in which the facilities are physically located, deposit such moneys in its county treasury for use solely in meeting traffic control and law enforcement expenses on the premises upon which the violations occurred.

This section shall not apply when the county in which such facilities are located performs all law enforcement functions with respect to such facilities.

SEC. 609. Section 246 of the Welfare and Institutions Code is amended to read:

246. The presiding judge of the superior court shall annually, in the month of January, designate one or more judges of the court to hear all cases under this chapter during the ensuing year, and shall, from time to time, designate such additional judges as may be necessary for the prompt disposition of the judicial business before the juvenile court.

In all counties where more than one judge is designated as a judge of the juvenile court, the presiding judge of the superior court shall also designate one such judge as presiding judge of the juvenile court.

SEC. 610. Section 255 of the Welfare and Institutions Code is amended to read:

255. The court may appoint as subordinate judicial officers one or more persons of suitable experience, who may be a probation officer or assistant or deputy probation officers, to serve as juvenile hearing officers on a full-time or part-time basis. A hearing officer shall serve at the pleasure of the court, and unless the court makes an order terminating the appointment of a hearing officer, the hearing officer shall continue to serve until the appointment of his or her successor. The court shall determine whether any compensation shall be paid to hearing officers, not otherwise employed by a public agency or holding another public office, and shall establish the amounts and rates thereof. An appointment of a probation officer, assistant probation officer, or deputy probation officer as a juvenile hearing officer may be made only with the consent of the probation officer. A juvenile court shall be known as the Informal Juvenile and Traffic Court when a hearing officer appointed pursuant to this section hears a case specified in Section 256.

SEC. 611. Section 270 of the Welfare and Institutions Code is amended to read:

270. Except as provided in Section 69906.5 of the Government Code, there shall be in each county the offices of probation officer, assistant probation officer, and deputy probation officer. A probation officer shall be appointed in every county.

Probation officers in any county shall be nominated by the juvenile justice commission or regional juvenile justice commission of such county in such manner as the judge of the juvenile court in that county shall direct, and shall then be appointed by such judge.

The probation officer may appoint as many deputies or assistant probation officers as the probation officer desires; but such deputies or assistant probation officers shall not have authority to act until their appointments have been approved by a majority vote of the members of the juvenile justice commission, and by the judge of the juvenile court. The term of office of each such deputy or assistant probation officer shall expire with the term of the probation officer who appointed the deputy or assistant probation officer, but the probation officer, with the written approval of the majority of the members of the juvenile justice commission and of the judge of the juvenile court, may, in the probation officer's discretion, revoke and terminate any such appointment at any time.

Probation officers may at any time be removed by the judge of the juvenile court for good cause shown; and the judge of the juvenile court may in the judge's discretion at any time remove any such probation officer with the written approval of a majority of the members of the juvenile justice commission.

SEC. 612. Section 601.4 of the Welfare and Institutions Code is amended to read:

601.4. (a) The juvenile court judge may be assigned to sit as a superior court judge to hear any complaint alleging that a parent, guardian, or other person having control or charge of a minor has violated Section 48293 of the Education Code. The jurisdiction of the juvenile court granted by this section shall not be exclusive and the charge may be prosecuted instead in a superior court. However, upon motion, that action shall be transferred to the juvenile court.

(b) Notwithstanding Section 737 of the Penal Code, a violation of Section 48293 of the Education Code may be prosecuted pursuant to subdivision (a), by written complaint filed in the same manner as an infraction may be prosecuted. The juvenile court judge, sitting as a superior court judge, may coordinate the action involving the minor with any action involving the parent, guardian, or other person having control or charge of the minor. Both matters may be heard and decided at the same time unless the parent, guardian, other person having control or

charge of the minor, or any member of the press or public objects to a closed hearing of the proceedings charging violation of Section 48293 of the Education Code.

SEC. 613. Section 656 of the Welfare and Institutions Code is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to the petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 may make that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section 601, notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a superior court judge. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of Section 594.2, 640.5, 640.6, or 640.7 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated either or both of these provisions that (1) any community service which may be required of the minor may be performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to either or both of these provisions, and (2) if the minor is personally unable to pay any fine levied for the violation of either or both of these provisions, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to those sections.

(k) A notice to the parent or guardian of the minor that if the minor is ordered to make restitution to the victim pursuant to Section 729.6, as operative on or before August 2, 1995, Section 731.1, as operative on or before August 2, 1995, or Section 730.6, or to pay fines or penalty assessments, the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

SEC. 614. Section 661 of the Welfare and Institutions Code is amended to read:

661. In addition to the notice provided in Sections 658 and 659, the juvenile court may issue its citation directing any parent, guardian, or foster parent of the person concerning whom a petition has been filed to appear at the time and place set for any hearing or financial evaluation under the provisions of this chapter, including a hearing under the provisions of Section 257, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring the minor with him or her. The notice shall in addition state that a parent, guardian, or foster parent may be required to participate in a counseling or education program with the minor concerning whom the petition has been filed. If the proceeding is one alleging that the minor comes within the provisions of Section 601, the notice shall in addition contain notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the

juvenile court judge sitting as a superior court judge. In those cases, the notice shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure. Personal service of the citation shall be made at least 24 hours before the time stated therein for the appearance.

SEC. 615. Section 742.16 of the Welfare and Institutions Code is amended to read:

742.16. (a) If a minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6 or 640.7 of the Penal Code, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate, shall require the minor to wash, paint, repair, or replace the property defaced, damaged, or destroyed by the minor or otherwise pay restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both. In any case in which the minor is not granted probation or in which the minor's cleanup, repair, or replacement of the property will not return the property to its condition before it was defaced, damaged, or destroyed, the court shall make a finding of the amount of restitution that would be required to fully compensate the owner and possessor of the property for their damages. The court shall order the minor or the minor's estate to pay that restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both, to the extent the court determines that the minor or the minor's estate have the ability to do so, except in any case in which the court makes a finding and states on the record its reasons why full restitution would be inappropriate. If full restitution is found to be inappropriate, the court shall require the minor to perform specified community service, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate.

(b) If a minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code, and the graffiti or other material inscribed by the minor has been removed, or the property defaced by the minor has been repaired or replaced by a public entity that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section and has made cost findings in accordance with subdivisions (c) or (d) of Section 742.14, the court shall determine the total cost incurred

by the public entity for said removal, repair, or replacement, using, if applicable, the cost findings most recently adopted by the public entity pursuant to subdivision (c) or (d) of Section 742.14. The court shall order the minor or the minor's estate to pay those costs to the probation officer of the county to the extent the court determines that the minor or the minor's estate have the ability to do so.

(c) If the minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code and the minor was identified or apprehended by the law enforcement agency of a city or county that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section, the court shall determine the cost of identifying or apprehending the minor, or both, using, if applicable, the cost findings adopted by the city or county pursuant to subdivision (b) of Section 742.14. The court shall order the minor or the minor's estate to pay those costs to the probation officer of the county to the extent the court determines that the minor or the minor's estate have the ability to do so.

(d) If the court determines that the minor or the minor's estate is unable to pay in full the costs and damages determined pursuant to subdivisions (a), (b), and (c), and if the minor's parent or parents have been cited into court pursuant to Section 742.18, the court shall hold a hearing to determine the liability of the minor's parent or parents pursuant to Section 1714.1 of the Civil Code for those costs and damages. Except when the court makes a finding setting forth unusual circumstances in which parental liability would not serve the interests of justice, the court shall order the minor's parent or parents to pay those costs and damages to the probation officer of the county to the extent the court determines that the parent or parents have the ability to pay, if the minor was in the custody or control of the parent or parents at the time he or she committed the act that forms the basis for the finding that the minor is a person described in Section 602. In evaluating the parent's or parents' ability to pay, the court shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income.

(e) The hearing described in subdivision (d) may be held immediately following the disposition hearing or at a later date, at the option of the court.

(f) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) is five thousand dollars ($5,000) or less, the parent or parents may not be represented by counsel and the probation officer of the county shall be represented by his or her nonattorney designee. The court shall conduct such a hearing in

accordance with Sections 116.510 and 116.520 of the Code of Civil Procedure. Notwithstanding the foregoing, if the court determines that a parent cannot properly present his or her defense, the court may, in its discretion, allow another individual to assist that parent. In addition, a husband or wife may appear and participate in the hearing on behalf of his or her spouse if the representative's spouse has given his or her consent and the court determines that the interest of justice would be served thereby.

(g) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) exceeds five thousand dollars ($5,000), the parent or parents may be represented by counsel of his or her or their own choosing, and the probation officer of the county shall be represented by the district attorney or an attorney or nonattorney designee of the probation officer. The parent or parents shall not be entitled to court-appointed counsel or to counsel compensated at public expense.

(h) At the hearing conducted pursuant to subdivision (d), there shall be a presumption affecting the burden of proof that the findings of the court made pursuant to subdivisions (a), (b), and (c) represent the actual damages and costs attributable to the act of the minor that forms the basis of the finding that the minor is a person described in Section 602.

(i) If the parent or parents, after having been cited to appear pursuant to Section 742.18, fail to appear as ordered, the court shall order the parent or parents to pay the full amount of the costs and damages determined by the court pursuant to subdivisions (a), (b), and (c).

(j) Execution may be issued on an order issued by the court pursuant to this section in the same manner as on a judgment in a civil action, including any balance unpaid at the termination of the court's jurisdiction over the minor.

(k) At any time prior to the satisfaction of a judgment entered pursuant to this section, a person against whom the judgment was entered may petition the rendering court to modify or vacate the judgment on the showing of a change in circumstances relating to his or her ability to pay the judgment.

(*l*) For purposes of a hearing conducted pursuant to subdivision (d), the judge of the juvenile court shall have the jurisdiction of a judge of the superior court in a limited civil case, and where the amount of the demand is five thousand dollars ($5,000) or less, the judge of the juvenile court shall have the powers of a judge presiding over the small claims court.

(m) Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

(n) The options available to the court pursuant to subdivisions (a), (b), (c), (d), and (k), to order payment by the minor and his or her parent or

parents of less than the full costs described in subdivisions (a), (b), and (c), on grounds of financial inability or for reasons of justice, shall not be available to a superior court in an ordinary civil proceeding pursuant to subdivision (b) of Section 1714.1 of the Civil Code, except that in any proceeding pursuant to either subdivision (b) of Section 1714.1 of the Civil Code or this section, the maximum amount that a parent or a minor may be ordered to pay shall not exceed twenty thousand dollars ($20,000) for each tort of the minor.

SEC. 616. Section 872 of the Welfare and Institutions Code is amended to read:

872. Where there is no juvenile hall in the county of residence of minors, or when the juvenile hall becomes unfit or unsafe for detention of minors, the presiding or sole juvenile court judge may, with the recommendation of the probation officer of the sending county and the consent of the probation officer of the receiving county, by written order filed with the clerk of the court, designate the juvenile hall of any county in the state for the detention of an individual minor for a period not to exceed 60 days. The court may, at any time, modify or vacate the order and shall require notice of the transfer to be given to the parent or guardian. The county of residence of a minor so transferred shall reimburse the receiving county for costs and liability as agreed upon by the two counties in connection with the order.

As used in this section, the terms ''unfit'' and ''unsafe'' shall include a condition in which a juvenile hall is considered by the juvenile court judge, the probation officer of that county, or the Board of Corrections to be too crowded for the proper and safe detention of minors.

SEC. 617. Section 1737 of the Welfare and Institutions Code is amended to read:

1737. When a person has been committed to the custody of the authority, if it is deemed warranted by a diagnostic study and recommendation approved by the director, the judge who ordered the commitment or, if the judge is not available, the presiding judge of the court, within 120 days of the date of commitment on his or her own motion, or the court, at any time thereafter upon recommendation of the director, may recall the commitment previously ordered and resentence the person as if he or she had not previously been sentenced. The time served while in custody of the authority shall be credited toward the term of any person resentenced pursuant to this section.

As used in this section, ''time served while in custody of the authority'' means the period of time during which the person was physically confined in a state institution by order of the Youth Authority or the Youthful Offender Parole Board.

SEC. 618. Section 5205 of the Welfare and Institutions Code is amended to read:

5205. The petition shall be in substantially the following form:

In the Superior Court of the State of California
for the County of _____

_____

The People of the State of California
Concerning
_____ and
_____
Respondents
_____

No. _____
Petition for
Evaluation

_____, residing at _____ (tel. ____), being duly sworn, alleges: That there is now in the county, in the City or Town of _____, a person named _____, who resides at _____, and who is, as a result of mental disorder:

(1) A danger to others.
(2) A danger to himself.
(3) Gravely disabled as defined in subdivision (h) of Section 5008 of the Welfare and Institutions Code (Strike out all inapplicable classifications).

That the person is ____ years of age; that __ the person is ____(sex); and that __ the person is _____ (single, married, widowed, or divorced); and that _____ occupation is _____.

That the facts upon which the allegations of the petition are based are as follows: That __ the person, at _____ in the county, on the _____ day of _____, 20__, _____
_____
_____

That petitioner's interest in the case is _____
_____

That the person responsible for the care, support, and maintenance of the person, and their relationship to the person are, so far as known to the petitioner, as follows: (Give names, addresses, and relationship of persons named as respondents)

Wherefore, petitioner prays that evaluation be made to determine the condition of ____, alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled.

_____
Petitioner

Subscribed and sworn to before me this ____ day of _____ 20__.

_____, Clerk of the Court
By _____ Deputy

SEC. 619. Section 6251 of the Welfare and Institutions Code is amended to read:

6251. Wherever, on the basis of a petition, provision is made in this code for issuing and delivering an order for examination and detention directing that a person be apprehended and taken before a judge of a superior court for a hearing and examination on an allegation of being a person subject to judicial commitment, the petition shall be in substantially the following form:

In the Superior Court of the State of California

For the County of ____

The People For the Best Interest and Protection of _____ as a _____ and Concerning _____ and _____ Respondents _____	Petition

_____, residing at _____ (tel. _____), being duly sworn deposes and says: That there is now in the county in the City or Town of _____ a person named _____, who resides at _____, and who is believed to be a _____. That the person is ____ years of age; that __ the person is ____ (sex) and that __ the person is ____ (single, married, widowed, or divorced); and that ____ occupation is ____.

That the facts because of which petitioner believes that the person is a ____ are as follows: That __ the person, at _____ in the county, on the____ day of ____, 20__,

_____

That petitioner's interest in and case is _____

_____

That petitioner believes that said person is ____ as defined in Section ____.

That the persons responsible for the care, support, and maintenance of the ____, and their relationship to the person are, so far as known to the petitioner, as follows:

(Give names, addresses, and relationship of persons named as respondents)

Wherefore, petitioner prays that examination be made to determine the state of the mental health of ____, alleged to be ____, and that such measures be taken for the best interest and protection of said ____, in respect to the person's supervision, care and treatment, as may be necessary and provided by law.

_____

Petitioner

Subscribed and sworn to before me this ____ day of _____,20__.

_____, Clerk of the Court

By _____ Deputy

SEC. 620. Section 6776 of the Welfare and Institutions Code is amended to read:

6776. In each county where the office of counselor in mental health has been created under the provisions of this chapter, the judge of the superior court may appoint two such counselors. In Los Angeles County, the number, compensation, and benefits of counselors in mental health are governed by the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8 of the Government Code).

SEC. 621. Section 14172 of the Welfare and Institutions Code is amended to read:

14172. (a) Except as provided in subdivision (b), if any amount is due and payable and unpaid as the result of an overpayment to a provider of health care services, durable medical equipment, or incontinence supplies identified through an audit or examination conducted by or on behalf of the director, and the findings of the audit or examination are completed and no appeal is taken or the director has issued a final decision on the appeal pursuant to Section 14171, and 90 days has elapsed from the completion of that audit or examination or issuance of that final decision on appeal, the director may, not later than three years after the payment became due and owing, file in the office of the Clerk of the Superior Court of Sacramento County, and with the clerk of the superior court of the county in which the provider has its principal place of business, a certificate containing the following:

(1) Interest, as prescribed by Section 14171.

(2) A statement that the director has complied with this article prior to the filing of the certificate.

(3) A request that judgment be entered against the provider in the amount set forth in the certificate.

The clerk immediately upon the filing of the certificate shall enter a judgment for the State of California against the provider in the amount set forth in the certificate. The judgment may be filed by the clerk in a looseleaf book entitled ''Health Care Overpayment Recovery Judgments.''

(b) If the provider seeks judicial review of the final decision of the director pursuant to subdivision (k) of Section 14171 and notice of that action is properly served on the director within 90 days of the issuance of the final decision of the director, the director shall not file any certificate as provided in subdivision (a).

If the provider does not seek judicial review of the final decision of the director pursuant to subdivision (k) of Section 14171 and does not properly serve notice within 90 days from the date of the final decision of the director, the director may file the certificate provided in subdivision (a). If the provider seeks judicial review of the final decision of the director more than 90 days from the date of the decision in accordance with subdivision (k) of Section 14171, the director shall within 10 days after receiving notice of that action release any lien imposed pursuant to this article and any judgment entered is for all purposes null and void.

SEC. 622. If a right, privilege, duty, authority, or status, including, but not limited to, a qualification for office, salary range, or employment benefit, is based on a provision of law repealed by this act, and if a statute, order, rule of court, memorandum of understanding, or other legally effective instrument provides that the right, duty, authority, or status continues for a period beyond the effective date of the repeal, that provision of law continues in effect for that purpose, notwithstanding its repeal by this act.

SEC. 623. Nothing in this act is intended to change the extent to which official reporter services or electronic reporting may be used in the courts.

SEC. 624. Sections 41, 42, 43, 44, and 45 of this act shall become operative on January 1, 2004.

SEC. 625. Any section of any act enacted by the Legislature during the 2002 calendar year, other than a section of Assembly Bill No. 3034, that takes effect on or before January 1, 2003, and that amends, amends and renumbers, amends and repeals, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, amended and repealed, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is chaptered before or after this act.

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CHAPTER 785

An act to amend Section 56028 of the Education Code, to amend Section 7579.5 of the Government Code, and to amend Sections 358.1, 366, 366.1, 366.3, 706.5, and 727.2 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 56028 of the Education Code is amended to read:

56028. (a) ''Parent,'' includes any of the following:

(1) A person having legal custody of a child.

(2) Any adult pupil for whom no guardian or conservator has been appointed.

(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives). ''Parent'' also includes a parent surrogate.

(b) ''Parent'' does not include the state or any political subdivision of government.

(4) A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations.

SEC. 1.5. Section 7579.5 of the Government Code is amended to read:

7579.5. (a) A local educational agency shall appoint a surrogate parent for a child in accordance with clause (iii) of paragraph (2) of subsection (c) of Section 300.515 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

(1) (A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(b) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

(c) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter.

(d) The surrogate parent is required to meet with the child at least one time. He or she may also meet with the child on additional occasions, attend the child's individualized education program meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.

(h) The local educational agency shall terminate the appointment of a surrogate parent if (1) the person is not properly performing the duties of a surrogate parent or (2) the person has an interest that conflicts with interests of the child entrusted to his or her care.

(i) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed as a surrogate parent. ''An individual who would have a conflict of interest,'' for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.

(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.

(1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

(k) The surrogate parent may represent the child until (1) the child is no longer in need of special education, (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent, (3) another responsible adult is appointed to make educational decisions for the minor, or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

(*l*) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(m) The Department of Education shall develop a model surrogate parent training module and manual that shall be made available to local educational agencies.

(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(o) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-0890 of the annual Budget Act.

SEC. 2. 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) (1) Whether the child has 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.

(2) 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) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the study or evaluation makes that recommendation, it shall

identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) 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.

(g) 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.

(h) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration may not be cause for continuance of the dispositional hearing.

SEC. 3. 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 there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(D) (i) 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.

(ii) 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.

(E) 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 may 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. 4. 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) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) (1) 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.

(2) 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. 5. 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, except as provided for in Section 366.29. 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 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 if 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 that 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. If 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 if 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) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(5) 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.

(6) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(7) 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.

(8) 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.

(9) 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. Section 706.5 of the Welfare and Institutions Code is amended to read:

706.5. (a) If placement in foster care is recommended by the probation officer, or where the minor is already in foster care placement or pending placement pursuant to an earlier order, the social study prepared by the probation officer that is received into evidence at disposition pursuant to Section 706 shall include a case plan, as

described in Section 706.6. If the court elects to hold the first status review at the disposition hearing, the social study shall also include, but not be limited to, the factual material described in subdivision (c).

(b) If placement in foster care is not recommended by the probation officer prior to disposition, but the court orders foster care placement, the court shall order the probation officer to prepare a case plan, as described in Section 706.6, within 30 days of the placement order. The case plan shall be filed with the court.

(c) At each status review hearing, the social study shall include, but not be limited to, an updated case plan as described in Section 706.6 and the following information:

(1) The continuing necessity for and appropriateness of the placement.

(2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the minor to the minor's home or to complete whatever steps are necessary to finalize the permanent placement of the minor.

(3) The extent of progress that has been made by the minor and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care.

(4) If the first permanency planning hearing has not yet occurred, the social study shall include the likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, permanently placed with a fit and willing relative, or referred to another planned permanent living arrangement.

(5) Whether the minor has been or will be referred to educational services and what services the minor is receiving, including special education and related services if the minor has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or accommodations if the child has disabilities as described in Chapter 16 (commencing with Section 701) of Title 29 of the United States Code Annotated. The probation officer or child advocate shall solicit comments from the appropriate local education agency prior to completion of the social study.

(6) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the probation department shall consider whether the right of the parent or guardian to make educational decisions for the minor should be limited. If the study makes that recommendation, it shall identify whether there is a responsible adult available to make educational decisions for the minor pursuant to Section 726.

(d) At each permanency planning hearing, the social study shall include, but not be limited to, an updated case plan as described in Section 706.6, the factual material described in subdivision (c) of this section, and a recommended permanent plan for the minor.

SEC. 7. Section 727.2 of the Welfare and Institutions Code is amended to read:

727.2. The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor.

(a) If the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of reunification services to facilitate the safe return of the minor to his or her home or the permanent placement of the minor, and to address the needs of the minor while in foster care, except as provided in subdivision (b) of this section.

(b) Reunification services need not be provided to a parent or legal guardian if the court finds by clear and convincing evidence that one or more of the following is true:

(1) Reunification services were previously terminated for that parent or guardian, pursuant to Section 366.21 or 366.22, or not offered, pursuant to subdivision (b) of Section 361.5, in reference to the same minor.

(2) The parent has been convicted of any of the following:

(A) Murder of another child of the parent.

(B) Voluntary manslaughter of another child of the parent.

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit that murder or manslaughter described in subparagraph (A) or (B).

(D) A felony assault that results in serious bodily injury to the minor or another child of the parent.

(3) The parental rights of the parent with respect to a sibling have been terminated involuntarily, and it is not in the best interest of the minor to reunify with his or her parent or legal guardian.

If no reunification services are offered to the parent or guardian, the permanency planning hearing, as described in Section 727.3, shall occur within 30 days of the date of the hearing at which the decision is made not to offer services.

(c) The status of every minor declared a ward and ordered to be placed in foster care shall be reviewed by the court no less frequently than once every six months. The six-month time periods shall be calculated from

the date the minor entered foster care, as defined in paragraph (4) of subdivision (d) of Section 727.4. If the court so elects, the court may declare the hearing at which the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727 at the first status review hearing. It shall be the duty of the probation officer to prepare a written social study report including an updated case plan, pursuant to subdivision (b) of Section 706.5, and submit the report to the court prior to each status review hearing, pursuant to subdivision (b) of Section 727.4. The social study report shall include all reports the probation officer relied upon in making his or her recommendations.

(d) Prior to any status review hearing involving a minor in the physical custody of a community care facility or foster family agency, the facility or agency may provide the probation officer with a report containing its recommendations. Prior to any status review hearing involving the physical custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations filed pursuant to subdivision (c) and pursuant to this subdivision.

(e) At any status review hearing prior to the first permanency planning hearing, the court shall consider the safety of the minor and make findings and orders which determine the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the minor to the minor's home or to complete whatever steps are necessary to finalize the permanent placement of the minor.

(3) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the minor. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the minor. If the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the minor pursuant to Section 361.

(4) The extent of progress that has been made by the minor and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care.

(5) The likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, permanently placed with a fit and willing relative or referred to another planned permanent living arrangement.

(6) In the case of a minor who has reached 16 years of age, the court shall, in addition, determine the services needed to assist the minor to make the transition from foster care to independent living.

The court shall make these determinations on a case-by-case basis and reference in its written findings the probation officer's report and any other evidence relied upon in reaching its decision.

(f) At any status review hearing prior to the first permanency hearing, the court shall order return of the minor to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of evidence, that the return of the minor 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 minor. The probation department shall have the burden of establishing that detriment. In making its determination, the court shall review and consider the social study report, recommendations, and the case plan pursuant to subdivision (b) of Section 706.5, the report and recommendations of any child advocate appointed for the minor in the case, and any other reports submitted to the court pursuant to subdivision (d), and shall consider the efforts or progress, or both, demonstrated by the minor and family and the extent to which the minor availed himself or herself of the services provided.

(g) At all status review hearings subsequent to the first permanency planning hearing, the court shall consider the safety of the minor and make the findings and orders as described in paragraphs (1), (2), (4), and (6) of subdivision (e). The court shall either make a finding that the previously ordered permanent plan continues to be appropriate or shall order that a new permanent plan be adopted pursuant to subdivision (b) of Section 727.3. However, the court shall not order a permanent plan of ''return to the physical custody of the parent or legal guardian after further reunification services are offered,'' as described in paragraph (2) of subdivision (b) of Section 727.3.

(h) The status review hearings required by subdivision (c) may be heard by an administrative review panel, provided that the administrative panel meets all of the requirements listed in subparagraph (B) of paragraph (7) of subdivision (d) of Section 727.4.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 9. The amendments made by this act to Sections 358.1, 366, 366.1, 366.3, 706.5, and 727.2 of the Welfare and Institutions Code, shall only take effect if Assembly Bill 886 of the 2001–02 Regular Session is enacted.

SEC. 10. The Legislature recommends that the Judicial Council adopt appropriate rules, standards, and forms regarding the implementation of this act and Assembly Bill 886 of the 2001–02 Regular Session if that bill is enacted.

CHAPTER 786

An act to amend Sections 1785.11.2, 1785.11.6, and 1798.85 of the Civil Code, relating to personal information.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 1785.11.2 of the Civil Code is amended to read:

1785.11.2. (a) A consumer may elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. ''Security freeze'' means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer credit reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d), shall comply with the request no later than three business days after receiving the request.

(f) A consumer credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d) in an expedited manner.

(g) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request, pursuant to subdivision (d) or (j).

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze within three business days of receiving a

request for removal from the consumer, who provides both of the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(k) A consumer credit reporting agency shall require proper identification, as defined in subdivision (c) of Section 1785.15, of the person making a request to place or remove a security freeze.

(*l*) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, ''reviewing the account'' includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subdivision (d) of Section 1785.11.2 for purposes of facilitating the extension of credit or other permissible use.

(3) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.

(4) A child support agency acting pursuant to Chapter 2 of Division 17 of the Family Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

(5) The State Department of Health Services or its agents or assigns acting to investigate Medi-Cal fraud.

(6) The Franchise Tax Board or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(8) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(9) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(m) This act does not prevent a consumer credit reporting agency from charging a reasonable fee to a consumer who elects to freeze, remove the freeze, or temporarily lift the freeze regarding access to a consumer credit report, except that a consumer credit reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report or valid Department of Motor Vehicles investigative report that alleges a violation of Section 530.5 of the Penal Code.

SEC. 2. Section 1785.11.6 of the Civil Code is amended to read:

1785.11.6. The following entities are not required to place in a credit report either a security alert, pursuant to Section 1785.11.1, or a security freeze, pursuant to Section 1785.11.2:

(a) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments.

(b) A demand deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

SEC. 3. Section 1798.85 of the Civil Code is amended to read:

1798.85. (a) A person or entity, not including a state or local agency, may not do any of the following:

(1) Publicly post or publicly display in any manner an individual's social security number. ''Publicly post'' or ''publicly display'' means to intentionally communicate or otherwise make available to the general public.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding this paragraph, social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an

account, contract or policy, or to confirm the accuracy of the social security number.

(b) Except as provided in subdivision (c), subdivision (a) applies only to the use of social security numbers on or after July 1, 2002.

(c) Except as provided in subdivision (f), a person or entity, not including a state or local agency, that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, if all of the following conditions are met:

(1) The use of the social security number is continuous. If the use is stopped for any reason, subdivision (a) shall apply.

(2) The individual is provided an annual disclosure, commencing in the year 2002, that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subdivision (a).

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) shall be implemented within 30 days of the receipt of the request. There shall be no fee or charge for implementing the request.

(4) A person or entity, not including a state or local agency, shall not deny services to an individual because the individual makes a written request pursuant to this subdivision.

(d) This section does not prevent the collection, use, or release of a social security number as required by state or federal law or the use of a social security number for internal verification or administrative purposes.

(e) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(f) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor as defined in Section 56.05, or the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or administrative services only, this section shall become operative in the following manner:

(A) On or before January 1, 2003, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1), (3), (4), and (5) of subdivision (a) as these requirements pertain to individual policyholders or individual contract holders.

(B) On or before January 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) as these requirements pertain to new individual policyholders or new individual contractholders and new groups, including new groups administered or issued on or after January 1, 2004.

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all individual policyholders and individual contractholders, for all groups, and for all enrollees of the Healthy Families and Medi-Cal programs, except that for individual policyholders, individual contractholders and groups in existence prior to January 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply upon the renewal date of the policy, contract, or group on or after July 1, 2004, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor, or another person or entity as described in paragraph (1) of subdivision (f) shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

(3) Notwithstanding paragraph (2), the Director of the Department of Managed Health Care, pursuant to the authority granted under Section 1346 of the Health and Safety Code, or the Insurance Commissioner, pursuant to the authority granted under Section 12921 of the Insurance Code, and upon a determination of good cause, may grant extensions not to exceed six months for compliance by health care service plans and insurers with the requirements of this section when requested by the health care service plan or insurer. Any extension granted shall apply to the health care service plan or insurer's affected providers, pharmacy benefits manager, and contractors.

(g) If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, a provider of health care, a health care service plan, a licensed health care professional, or a contractor, as those terms are defined in Section 56.05, that complies with the federal law shall be deemed in compliance with this section.

CHAPTER 787

An act to amend Section 17400.5 of the Family Code, to amend Sections 11372, 11479, 11479.1, and 11479.5 of the Health and Safety Code, to amend Section 1698 of the Labor Code, to amend Sections 88, 182, 289, 374a, 471, 487, 504, 599b, 653t, 667.6, 803, 1042, 1203.1bb, 1203.72, 1203.73, 1524.1, 2933.1, 5058, 11051, 11460, 12280, 13823.11, 13861, 13897.2, and 14202 of, and to repeal Sections 969c and 969d of, the Penal Code, to amend Sections 13377 and 15302 of the Vehicle Code, and to amend Section 1732.6 of the Welfare and Institutions Code, relating to public safety.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 17400.5 of the Family Code is amended to read:

17400.5. If an obligor has an ongoing child support order being enforced by a local child support agency pursuant to Title IV-D of the Social Security Act and the obligor is disabled, meets the SSI resource test, and is receiving Supplemental Security Income/State Supplemental Payments (SSI/SSP) or, but for excess income as described in Section 416.1100 et seq. of Part 416 of Title 20 of the Code of Federal Regulations, would be eligible to receive as SSI/SSP, pursuant to Section 12200 of the Welfare and Institutions Code, and the obligor has supplied the local child support agency with proof of his or her eligibility for, and, if applicable, receipt of, SSI/SSP or Social Security Disability Insurance benefits, then the local child support agency shall prepare and file a motion to modify the support obligation within 30 days of receipt of verification from the noncustodial parent or any other source of the receipt of SSI/SSP or Social Security Disability Insurance benefits. The local child support agency shall serve the motion on both the noncustodial parent and custodial person and any modification of the support order entered pursuant to the motion shall be effective as provided in Section 3653 of the Family Code.

SEC. 2. Section 11372 of the Health and Safety Code is amended to read:

11372. (a) In addition to the term of imprisonment provided by law for persons convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11359, 11360, or 11361, the trial court may impose a fine not exceeding twenty thousand dollars ($20,000) for each offense. In no event shall a fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of these offenses.

(b) Any person receiving an additional term pursuant to paragraph (1) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not exceeding one million dollars ($1,000,000) for each offense.

(c) Any person receiving an additional term pursuant to paragraph (2) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed four million dollars ($4,000,000) for each offense.

(d) Any person receiving an additional term pursuant to paragraph (3) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed eight million dollars ($8,000,000) for each offense.

(e) The court shall make a finding, prior to the imposition of the fines authorized by subdivisions (b) to (e), inclusive, that there is a reasonable expectation that the fine, or a substantial portion thereof, could be collected within a reasonable period of time, taking into consideration the defendant's income, earning capacity, and financial resources.

SEC. 3. Section 11479 of the Health and Safety Code is amended to read:

11479. Notwithstanding Sections 11473 and 11473.5, at any time after seizure by a law enforcement agency of a suspected controlled substance, that amount in excess of 10 pounds in gross weight may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed. These samples shall be in addition to the 10 pounds required above. When the suspected controlled substance consists of growing or harvested marijuana plants, at least one 10 pound sample (which may include stalks, branches, or leaves) and five representative samples consisting of leaves or buds shall be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed.

(b) Photographs have been taken which reasonably demonstrate the total amount of the suspected controlled substance to be destroyed.

(c) The gross weight of the suspected controlled substance has been determined, either by actually weighing the suspected controlled substance or by estimating that weight after dimensional measurement of the total suspected controlled substance.

(d) The chief of the law enforcement agency has determined that it is not reasonably possible to preserve the suspected controlled substance in place, or to remove the suspected controlled substance to another location. In making this determination, the difficulty of transporting and

storing the suspected controlled substance to another site and the storage facilities may be taken into consideration.

Subsequent to any destruction of a suspected controlled substance pursuant to this section, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d) together with information establishing the location of the suspected controlled substance, and specifying the date and time of the destruction. In the event that there are no criminal proceedings pending which pertain to that suspected controlled substance, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom those criminal charges might be filed.

SEC. 4. Section 11479.1 of the Health and Safety Code is amended to read:

11479.1. (a) Notwithstanding the provisions of Sections 11473, 11473.5, and 11479, at any time after seizure by a law enforcement agency and identification by a forensic chemist or criminalist of phencyclidine, or an analog thereof, that amount in excess of one gram of a crystalline substance containing phencyclidine or its analog, 10 milliliters of a liquid substance containing phencyclidine or its analog, two grams of plant material containing phencyclidine or its analog, or five hand-rolled cigarettes treated with phencyclidine or its analog, may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(1) At least one gram of a crystalline substance containing phencyclidine or its analog, 10 milliliters of a liquid substance containing phencyclidine or its analog, two grams of plant material containing phencyclidine or its analog, or five hand-rolled cigarettes treated with phencyclidine or its analog have been taken as samples from the phencyclidine or analog to be destroyed.

(2) Photographs have been taken which reasonably demonstrate the total amount of phencyclidine or its analog to be destroyed.

(3) The gross weight of the phencyclidine or its analog has been determined by actually weighing the phencyclidine or analog.

(b) Subsequent to any destruction of phencyclidine or its analog, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that phencyclidine or its analog, reciting the applicable information required by paragraphs (1), (2), and (3) of subdivision (a), together with information establishing the location of the phencyclidine or analog and specifying the date and time of the destruction. In the event that there are no criminal

proceedings pending which pertain to that phencyclidine or analog, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom these criminal charges might be filed.

SEC. 5. Section 11479.5 of the Health and Safety Code is amended to read:

11479.5. Notwithstanding Sections 11473 and 11473.5, at any time after seizure by a law enforcement agency of a suspected hazardous chemical believed to have been used or intended to have been used in the unlawful manufacture of controlled substances, that amount in excess of one fluid ounce if liquid, or one avoirdupois ounce if solid, of each different type of suspected hazardous chemical and its container, may be disposed of without a court order by the seizing agency. For the purposes of this section, ''hazardous chemical'' means any material that is believed by the chief of the law enforcement agency to be toxic, carcinogenic, explosive, corrosive, or flammable, and that is believed by the chief of the law enforcement agency to have been used or intended to have been used in the unlawful manufacture of controlled substances.

Destruction pursuant to this section of suspected hazardous chemicals or suspected hazardous chemicals and controlled substances in combination, shall not take place until all of the following requirements are met:

(a) At least a one ounce sample is taken from each different type of suspected hazardous chemical to be destroyed.

(b) At least a one ounce sample has been taken from each container of a mixture of a suspected hazardous chemical with a suspected controlled substance.

(c) Photographs have been taken which reasonably demonstrate the total amount of suspected controlled substances and suspected hazardous chemicals to be destroyed.

(d) The gross weight or volume of the suspected hazardous chemical seized has been determined.

Subsequent to any disposal of a suspected hazardous chemical and its container pursuant to this section, the law enforcement agency involved shall maintain records concerning the details of its compliance with, and reciting the applicable information required by subdivisions (a), (b), (c), and (d), together with the information establishing the location of the suspected hazardous chemical and its container, and specifying the date and time of the disposal.

Subsequent to any destruction of a suspected controlled substance in combination with a hazardous chemical pursuant to this section, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that suspected

controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d).

A law enforcement agency responsible for the disposal of any hazardous chemical shall comply with the provisions of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as well as all applicable state and federal statutes and regulations.

SEC. 6. Section 1698 of the Labor Code is amended to read:

1698. All fines collected for violations of this chapter shall be paid into the Farmworker Remedial Account and shall be available, upon appropriation, for purposes of this chapter. Of the moneys collected for licenses issued pursuant to this chapter, fifty dollars ($50) of each annual license fee shall be deposited in the Farmworker Remedial Account pursuant to paragraph (4) of subdivision (a) of Section 1684, three hundred fifty dollars ($350) of each annual license fee shall be expended by the Labor Commissioner to fund the Farm Labor Contractor Enforcement Unit and the Farm Labor Contractor License Verification Unit, both within the department, and the remaining money shall be paid into the State Treasury and credited to the General Fund.

SEC. 7. Section 88 of the Penal Code is amended to read:

88. Every Member of the Legislature convicted of any crime defined in this title, in addition to the punishment prescribed, forfeits his or her office and is forever disqualified from holding any office in this state.

SEC. 8. Section 182 of the Penal Code is amended to read:

182. (a) If two or more persons conspire:

(1) To commit any crime.

(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

(3) Falsely to move or maintain any suit, action, or proceeding.

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows:

When they conspire to commit any crime against the person of any official specified in paragraph (6), they are guilty of a felony and are punishable by imprisonment in the state prison for five, seven, or nine years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony the defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in the county jail for not more than one year, or in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect the conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

SEC. 9. Section 289 of the Penal Code is amended to read:

289. (a) (1) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable,

because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, ''unconscious of the nature of the act'' means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, ''public official'' means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) ''Sexual penetration'' is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) ''Foreign object, substance, instrument, or device'' shall include any part of the body, except a sexual organ.

(3) ''Unknown object'' shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(*l*) As used in subdivision (a), ''threatening to retaliate'' means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, ''victim'' includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 10. Section 374a of the Penal Code is amended to read:

374a. Every person giving information leading to the arrest and conviction of any person for a violation of Section 374.3 or 374c is entitled to a reward therefor.

The amount of the reward for each arrest and conviction shall be 50 percent of the fine levied against and collected from the person who violated Section 374.3 or 374c and shall be paid by the court. If the reward is payable to two or more persons, it shall be divided equally. The amount of collected fine to be paid under this section shall be paid prior to any distribution of the fine that may be prescribed by any other section, including Section 1463.9, with respect to the same fine.

SEC. 11. Section 471 of the Penal Code is amended to read:

471. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in Section 470, is guilty of forgery.

SEC. 12. Section 487 of the Penal Code is amended to read:

487. Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($100).

(B) For the purposes of establishing that the value of avocados or citrus fruit under this paragraph exceeds one hundred dollars ($100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars ($100) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding one hundred dollars ($100).

(3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and

aggregates four hundred dollars ($400) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is any of the following:

(1) An automobile, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig.

(2) A firearm.

(e) This section shall become operative on January 1, 1997.

SEC. 13. Section 504 of the Penal Code is amended to read:

504. Every officer of this state, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of that officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of that person's trust, any property in his or her possession or under his or her control by virtue of that trust, or secretes it with a fraudulent intent to appropriate it to that use or purpose, is guilty of embezzlement.

SEC. 14. Section 599b of the Penal Code is amended to read:

599b. In this title, the word ''animal'' includes every dumb creature; the words ''torment,'' ''torture,'' and ''cruelty'' include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words ''owner'' and ''person'' include corporations as well as individuals; and the knowledge and acts of any agent of, or person employed by, a corporation in regard to animals transported, owned, or employed by, or in the custody of, the corporation, must be held to be the act and knowledge of the corporation as well as the agent or employee.

SEC. 15. Section 653t of the Penal Code is amended to read:

653t. (a) A person commits a public offense if the person knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over an amateur or a citizen's band radio frequency, the purpose of which communication is to inform or inquire about an emergency.

(b) For purposes of this section, ''emergency'' means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury, in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of extensive damage or destruction, or in which that injury or destruction has occurred and the person transmitting is attempting to summon assistance.

(c) A violation of subdivision (a) is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), by imprisonment in a county jail not to exceed six months, or by both, unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of ten thousand dollars ($10,000) occurs, in which event the offense is a felony.

(d) Any person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of an emergency communication over a public safety radio frequency, when the offense results in serious bodily injury or property loss in excess of ten thousand dollars ($10,000), is guilty of a felony.

SEC. 16. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(b) Any person convicted of an offense specified in subdivision (a) who has served two or more prior prison terms as defined in Section 667.5 for any offense specified in subdivision (a), shall receive a 10-year enhancement for each of those prior terms provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for any person sentenced

under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction. If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be served for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions

and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) If the court orders a fine to be imposed pursuant to subdivision (a) or (b), the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 17. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a ''responsible adult'' or ''agency'' means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding

any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

(h) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person under 21 years of age, alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) This subdivision applies to a cause of action arising before, on, or after January 1, 2002, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if the complaint or indictment was filed within the time period specified by this subdivision.

(i) (1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, provided, however, that the one-year period from the establishment of the identity

of the suspect shall only apply when either of the following conditions is met:

(A) For an offense committed prior to January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004.

(B) For an offense committed on or after January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) In the event the conditions set forth in subparagraph (A) or (B) of paragraph (1) are not met, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.

(3) For purposes of this section, ''DNA'' means deoxyribonucleic acid.

(j) As used in subdivisions (f), (g), and (h), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991, penetration by an unknown object.

SEC. 18. Section 969c of the Penal Code is repealed.

SEC. 19. Section 969d of the Penal Code is repealed.

SEC. 20. Section 1042 of the Penal Code is amended to read:

1042. Issues of fact shall be tried in the manner provided in Article I, Section 16 of the Constitution of this state.

SEC. 21. Section 1203.1bb of the Penal Code is amended to read:

1203.1bb. (a) The reasonable cost of probation determined under subdivision (a) of Section 1203.1b shall include the cost of purchasing and installing an ignition interlock device pursuant to Section 13386 of the Vehicle Code. Any defendant subject to this section shall pay the manufacturer of the ignition interlock device directly for the cost of its purchase and installation, in accordance with the payment schedule ordered by the court. If practicable, the court shall order payment to be made to the manufacturer of the ignition interlock device within a six-month period.

(b) This section does not require any county to pay the costs of purchasing and installing any ignition interlock devices ordered pursuant to Section 13386 of the Vehicle Code. The Office of Traffic Safety shall consult with the presiding judge or his or her designee in each county to determine an appropriate means, if any, to provide for installation of ignition interlock devices in cases in which the defendant has no ability to pay.

SEC. 22. Section 1203.72 of the Penal Code is amended to read:

1203.72. Except as provided in subparagraph (D) of paragraph (2) of subdivision (b) of Section 1203, no court shall pronounce judgment upon any defendant, as to whom the court has requested a probation report pursuant to Section 1203.7, unless a copy of the probation report has been made available to the court, the prosecuting attorney, and the defendant or his or her attorney, at least two days or, upon the request of the defendant, five days prior to the time fixed by the court for consideration of the report with respect to pronouncement of judgment. The report shall be filed with the clerk of the court as a record in the case at the time the court considers the report.

If the defendant is not represented by an attorney, the court, upon ordering the probation report, shall also order the probation officer who prepares the report to discuss its contents with the defendant.

SEC. 23. Section 1203.73 of the Penal Code is amended to read:

1203.73. The probation officers and deputy probation officers in all counties of the state shall be allowed those necessary incidental expenses incurred in the performance of their duties as required by any law of this state, as may be authorized by a judge of the superior court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction and shall be paid out of the county treasury upon a warrant issued therefor by the county auditor upon the order of the court; provided, however, that in counties in which the probation officer is appointed by the board of supervisors, the expenses shall be authorized by the probation officer and claims therefor shall be audited, allowed and paid in the same manner as other county claims.

SEC. 24. Section 1524.1 of the Penal Code is amended to read:

1524.1. (a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.

(b) (1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood with any HIV test, as defined in Section

120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(2) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds that there is probable cause to believe that the accused committed the uncharged offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim. As used in this paragraph, Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991, penetration by an unknown object.

(3) (A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present. During the hearing, only affidavits,

counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (2) shall be admissible.

(4) A request for a probable cause hearing made by a victim under paragraph (2) shall be made before sentencing in the superior court, or before disposition on a petition in a juvenile court, of the criminal charge or charges filed against the defendant.

(c) (1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for prerequest counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.

(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).

(f) Any blood tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure

authorized by subdivisions (g) and (i). Any individual who files a false report of sexual assault in order to obtain test result information pursuant to this section shall, in addition to any other liability under law, be guilty of a misdemeanor punishable as provided in subdivision (c) of Section 120980 of the Health and Safety Code. Any individual as described in the preceding sentence who discloses test result information obtained pursuant to this section shall also be guilty of an additional misdemeanor punishable as provided for in subdivision (c) of Section 120980 of the Health and Safety Code for each separate disclosure of that information.

(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

(k) The results of any blood tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.

SEC. 25. Section 2933.1 of the Penal Code is amended to read:

2933.1. (a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.

(b) The 15-percent limitation provided in subdivision (a) shall apply whether the defendant is sentenced under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2 or sentenced under some other law. However, nothing in subdivision (a) shall affect the requirement of any statute that the defendant serve a specified period of time prior to minimum parole eligibility, nor shall any offender otherwise statutorily ineligible for credit be eligible for credit pursuant to this section.

(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).

(d) This section shall only apply to offenses listed in subdivision (a) that are committed on or after the date on which this section becomes operative.

SEC. 26. 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 and Sections 5058.1 to 5058.3, inclusive. 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 pursuant to this section and Sections 5058.1 to 5058.3, inclusive.

(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 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 Sections 6650 to 6670, inclusive, of the State Administrative Manual.

(3) Rules issued by the director that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code.

SEC. 27. Section 11051 of the Penal Code is amended to read:

11051. The Department of Justice shall perform duties in the investigation, detection, apprehension, prosecution or suppression of crimes as may be assigned by the Attorney General in the performance of his or her duties under Article V, Section 13 of the Constitution.

SEC. 28. Section 11460 of the Penal Code is amended to read:

11460. (a) Any two or more persons who assemble as a paramilitary organization for the purpose of practicing with weapons shall be punished by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

As used in this subdivision, ''paramilitary organization'' means an organization which is not an agency of the United States government or of the State of California, or which is not a private school meeting the requirements set forth in Section 48222 of the Education Code, but which engages in instruction or training in guerrilla warfare or sabotage, or which, as an organization, engages in rioting or the violent disruption of, or the violent interference with, school activities.

(b) (1) Any person who teaches or demonstrates to any other person the use, application, or making of any firearm, explosive, or destructive device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that these objects or techniques will be unlawfully employed for use in, or in the furtherance of a civil disorder, or any person who assembles with one or more other persons for the purpose of training with, practicing with, or being instructed in the use of any firearm, explosive, or destructive device, or technique capable of causing injury or death to persons, with the intent to cause or further a civil disorder, shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

Nothing in this subdivision shall make unlawful any act of any peace officer or a member of the military forces of this state or of the United States, performed in the lawful course of his or her official duties.

(2) As used in this section:

(A) ''Civil disorder'' means any disturbance involving acts of violence which cause an immediate danger of or results in damage or injury to the property or person of any other individual.

(B) ''Destructive device'' has the same meaning as in Section 12301.

(C) ''Explosive'' has the same meaning as in Section 12000 of the Health and Safety Code.

(D) ''Firearm'' means any device designed to be used as a weapon, or which may readily be converted to a weapon, from which is expelled a projectile by the force of any explosion or other form of combustion, or the frame or receiver of this weapon.

(E) ''Peace officer'' means any peace officer or other officer having the powers of arrest of a peace officer, specified in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 29. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, and in subdivisions (c) and (d), any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to the date it was specified as an assault weapon, and has since either registered the firearm and any other lawfully obtained firearm specified by Section 12276 or 12276.5 pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars ($500), but not less than three hundred fifty dollars ($350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the firearm shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(c) A first-time violation of subdivision (b) shall be an infraction punishable by a fine of up to five hundred dollars ($500), if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(2) The person is not found in possession of a firearm specified as an assault weapon pursuant to Section 12276 or Section 12276.5.

(3) The person has not previously been convicted of violating this section.

(4) The person was found to be in possession of the assault weapons within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(5) The person has since registered the firearms and any other lawfully obtained firearms defined by Section 12276.1, pursuant to Section 12285, except as provided for by this section, or relinquished them pursuant to Section 12288.

(d) Firearms seized pursuant to subdivision (c) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(e) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(f) Subdivisions (a) and (b) shall not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties.

(g) (1) Subdivision (b) shall not prohibit the possession or use of assault weapons by sworn peace officer members of those agencies specified in subdivision (f) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a) and (b) shall not prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a sworn peace officer member of an agency specified in subdivision (f), provided that the peace officer is authorized by his or her employer to possess or receive the assault weapon. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. For this exemption to apply, in the case of a peace officer who possesses or receives the assault weapon prior to January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 on or before April 1, 2002; in the case of a peace officer who possesses or receives the assault weapon on or after January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt. The peace officer must include with

the registration, a copy of the authorization required pursuant to this paragraph.

(3) Nothing in this section shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon.

(h) Subdivisions (a) and (b) shall not prohibit the sale or transfer of assault weapons by an entity specified in subdivision (f) to a person, upon retirement, who retired as a sworn officer from that entity.

(i) Subdivision (b) shall not apply to the possession of an assault weapon by a retired peace officer who received that assault weapon pursuant to subdivision (h).

(j) Subdivision (b) shall not apply to the possession of an assault weapon, as defined in Section 12276, by any person during the 1990 calendar year, during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon described in paragraph (1) prior to June 1, 1989, if the weapon is specified as an assault weapon pursuant to Section 12276, or prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(k) Subdivisions (a) and (b) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons for sale to the following:

(1) Exempt entities listed in subdivision (f).

(2) Entities and persons who have been issued permits pursuant to Section 12286.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(*l*) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g)

or (i) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(m) Subdivision (b) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g) or (i), if the assault weapon is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(n) Subdivision (a) shall not apply to:

(1) A person who lawfully possesses and has registered an assault weapon pursuant to this chapter, or who lawfully possesses an assault weapon pursuant to subdivision (i), who lends that assault weapon to another if all the following apply:

(A) The person to whom the assault weapon is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon is lent remains in the presence of the registered possessor of the assault weapon, or the person who lawfully possesses an assault weapon pursuant to subdivision (i).

(C) The assault weapon is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon to the registered possessor, or the lawful possessor, which is lent by the same pursuant to paragraph (1).

(o) Subdivision (b) shall not apply to the possession of an assault weapon by a person to whom an assault weapon is lent pursuant to subdivision (n).

(p) Subdivisions (a) and (b) shall not apply to the possession and importation of an assault weapon into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon.

(2) The competition or match is conducted on the premises of one of the following:

(i) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(q) Subdivision (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286.

(2) A person who has a permit to possess an assault weapon issued pursuant to Section 12286 when he or she is acting in accordance with Section 12285 or 12286.

(r) Subdivisions (a) and (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286 or 12290.

(s) Subdivision (b) shall not apply to the registered owner of an assault weapon possessing that firearm in accordance with subdivision (c) of Section 12285.

(t) Subdivision (a) shall not apply to the importation into this state of an assault weapon by the registered owner of that assault weapon, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

SEC. 30. Section 13823.11 of the Penal Code is amended to read:

13823.11. The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation and the collection and preservation of evidence therefrom include all of the following:

(a) Law enforcement authorities shall be notified.

(b) In conducting the physical examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.

(c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.

(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.

(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with usual hospital policy.

(3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that this refusal is not a ground for denial of treatment of injuries and for possible pregnancy and venereal disease, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken.

The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

(1) A history of the circumstances of the assault.

(2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by the parent or person accompanying the child.

(3) Physical injuries reported.

(4) Sexual acts reported, whether or not ejaculation is suspected, and whether or not a condom or lubricant was used.

(5) Record of relevant medical history.

(e) Each adult and minor victim of sexual assault who consents to a medical examination for collection of evidentiary material shall have a physical examination which includes, but is not limited to, all of the following:

(1) Inspection of the clothing, body, and external genitalia for injuries and foreign materials.

(2) Examination of the mouth, vagina, cervix, penis, anus, and rectum, as indicated.

(3) Documentation of injuries and evidence collected.

Prepubertal children shall not have internal vaginal or anal examinations unless absolutely necessary (this does not preclude careful collection of evidence using a swab).

(f) The collection of physical evidence shall conform to the following procedures:

(1) Each victim of sexual assault who consents to an examination for collection of evidence shall have the following items of evidence collected, except where he or she specifically objects:

(A) Clothing worn during assault.

(B) Foreign materials revealed by an examination of the clothing, body, external genitalia, and pubic hair combings.

(C) Swabs and slides from the mouth, vagina, rectum, and penis, as indicated, to determine the presence or absence of sperm and sperm motility, and for genetic marker typing.

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except when he or she specifically objects thereto. A reference specimen is a standard from which to obtain baseline information (for example: pubic and head hair, blood, and saliva for genetic marker typing). These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) A baseline gonorrhea culture, and syphilis serology, shall be taken, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact.

(g) Preservation and disposition of physical evidence shall conform to the following procedures:

(1) All swabs and slides shall be air-dried prior to packaging.

(2) All items of evidence including laboratory specimens shall be clearly labeled as to the identity of the source and the identity of the person collecting them.

(3) The evidence shall have a form attached which documents its chain of custody and shall be properly sealed.

(4) The evidence shall be turned over to the proper law enforcement agency.

SEC. 31. Section 13861 of the Penal Code is amended to read:

13861. There is hereby created in the Office of Criminal Justice Planning the Suppression of Drug Abuse in Schools Program. All funds made available to the Office of Criminal Justice Planning for the purposes of this chapter shall be administered and disbursed by the executive director of the office in consultation with the State Suppression of Drug Abuse in Schools Advisory Committee established pursuant to Section 13863.

(a) The executive director, in consultation with the State Suppression of Drug Abuse in Schools Advisory Committee, is authorized to allocate and award funds to local law enforcement agencies and public schools jointly working to develop drug abuse prevention and drug trafficking suppression programs in substantial compliance with the policies and criteria set forth in Sections 13862 and 13863.

(b) The allocation and award of funds shall be made upon the joint application by the chief law enforcement officer of the coapplicant law enforcement agency and approved by the law enforcement agency's legislative body and the superintendent and board of the school district coapplicant. The joint application of the law enforcement agency and the school district shall be submitted for review to the Local Suppression on Drug Abuse in Schools Advisory Committee established pursuant to paragraph (4) of subdivision (a) of Section 13862. After review, the application shall be submitted to the Office of Criminal Justice Planning. Funds disbursed under this chapter may enhance but shall not supplant local funds that would, in the absence of the Suppression of Drug Abuse in Schools Program, be made available to suppress and prevent drug abuse among school-age children and to curtail drug trafficking in and around school areas.

(c) The coapplicant local law enforcement agency and the coapplicant school district may enter into interagency agreements between themselves which will allow the management and fiscal tasks created pursuant to this chapter and assigned to both the law enforcement agency and the school district to be performed by only one of them.

(d) Within 90 days of the effective date of this chapter, the Executive Director of the Office of Criminal Justice Planning in consultation with the State Suppression of Drug Abuse in Schools Advisory Committee established pursuant to Section 13863 shall prepare and issue administrative guidelines and procedures for the Suppression of Drug Abuse in Schools Program consistent with this chapter. In addition to all other formal requirements that may apply to the enactment of these guidelines and procedures, a complete and final draft shall be submitted within 60 days of the effective date of this chapter to the Chairpersons

of the Committee on Criminal Law and Public Safety of the Assembly and the Judiciary Committee of the Senate of the California Legislature.

SEC. 32. Section 13897.2 of the Penal Code is amended to read:

13897.2. (a) The Office of Criminal Justice Planning shall grant an award to an appropriate private, nonprofit organization, to provide a statewide resource center, as described in Section 13897.1.

(b) The center shall:

(1) Provide callers with information about victims' legal rights to compensation pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code and, where appropriate, provide victims with guidance in exercising these rights.

(2) Provide callers who provide services to victims of crime with legal information regarding the legal rights of victims of crime.

(3) Advise callers about any potential civil causes of action and, where appropriate, provide callers with references to local legal aid and lawyer referral services.

(4) Advise and assist callers in understanding and implementing their rights to participate in sentencing and parole eligibility hearings as provided by statute.

(5) Advise callers about victims' rights in the criminal justice system, assist them in overcoming problems, including the return of property, and inform them of any procedures protecting witnesses.

(6) Refer callers, as appropriate, to local programs, which include victim-witness programs, rape crisis units, domestic violence projects, and child sexual abuse centers.

(7) Refer callers to local resources for information about appropriate public and private benefits and the means of obtaining aid.

(8) Publicize the existence of the toll-free service through the print and electronic media, including public service announcements, brochures, press announcements, various other educational materials, and agreements for the provision of publicity, by private entities.

(9) Compile comprehensive referral lists of local resources that include the following: victims' assistance resources, including legal and medical services, financial assistance, personal counseling and support services, and victims' support groups.

(10) Produce promotional materials for distribution to law enforcement agencies, state and local agencies, print, radio, and television media outlets, and the general public. These materials shall include placards, video and audio training materials, written handbooks, and brochures for public distribution. Distribution of these materials shall be coordinated with the local victims' service programs.

(11) Research, compile, and maintain a library of legal information concerning crime victims and their rights.

(12) Provide a 20-percent minimum cash match for all funds appropriated pursuant to this chapter which match may include federal and private funds in order to supplement any funds appropriated by the Legislature.

(c) The resource center shall be located so as to assure convenient and regular access between the center and those state agencies most concerned with crime victims. The entity receiving the grant shall be a private, nonprofit organization, independent of law enforcement agencies, and have qualified staff knowledgeable in the legal rights of crime victims and the programs and services available to victims throughout the state. The subgrantee shall have an existing statewide, toll-free information service and have demonstrated substantial capacity and experience serving crime victims in areas required by this act.

(d) The services of the resource center shall not duplicate the victim service activities of the Office of Criminal Justice Planning or those activities of local victim programs funded through the office.

(e) The subgrantee shall be compensated at its federally approved indirect cost rate, if any. For the purposes of this section, ''federally approved indirect cost rate'' means that rate established by the federal Department of Health and Human Services or other federal agency for the subgrantee. Nothing in this section shall be construed as requiring the Office of Criminal Justice Planning to permit the use of federally approved indirect cost rates for other subgrantees of other grants administered by the office.

(f) All information and records retained by the center in the course of providing services under this chapter shall be confidential and privileged pursuant to Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code and Article 4 (commencing with Section 6060) of Chapter 4 of Division 3 of the Business and Professions Code. Nothing in this subdivision shall prohibit compilation and distribution of statistical data by the center.

SEC. 33. Section 14202 of the Penal Code is amended to read:

14202. (a) The Attorney General shall establish and maintain within the center an investigative support unit and an automated violent crime method of operation system to facilitate the identification and apprehension of persons responsible for murder, kidnap, including parental abduction, false imprisonment, or sexual assault. This unit shall be responsible for identifying perpetrators of violent felonies collected from the center and analyzing and comparing data on missing persons in order to determine possible leads which could assist local law enforcement agencies. This unit shall only release information about active investigations by police and sheriffs' departments to local law enforcement agencies.

(b) The Attorney General shall make available to the investigative support unit files organized by category of offender or victim and shall seek information from other files as needed by the unit. This set of files may include, among others, the following:

(1) Missing or unidentified, deceased persons' dental files filed pursuant to this title, Section 27521 of the Government Code, or Section 102870 of the Health and Safety Code.

(2) Child abuse reports filed pursuant to Section 11169.

(3) Sex offender registration files maintained pursuant to Section 290.

(4) State summary criminal history information maintained pursuant to Section 11105.

(5) Information obtained pursuant to the parent locator service maintained pursuant to Section 11478.5 of the Welfare and Institutions Code.

(6) Information furnished to the Department of Justice pursuant to Section 11107.

(7) Other Attorney General's office files as requested by the investigative support unit.

This section shall become operative on July 1, 1989.

SEC. 34. Section 13377 of the Vehicle Code is amended to read:

13377. (a) The department shall not issue or renew, or shall revoke, the tow truck driver certificate of an applicant or holder for any of the following causes:

(1) The tow truck driver certificate applicant or holder has been convicted of a violation of Section 220 of the Penal Code.

(2) The tow truck driver certificate applicant or holder has been convicted of a violation of paragraph (1), (2), (3), or (4) of subdivision (a) of Section 261 of the Penal Code.

(3) The tow truck driver certificate applicant or holder has been convicted of a violation of Section 264.1, 267, 288, or 289 of the Penal Code.

(4) The tow truck driver certificate applicant or holder has been convicted of any felony or three misdemeanors which are crimes of violence, as defined in paragraph (3) of subdivision (h) of Section 11105.3 of the Penal Code.

(5) The tow truck driver certificate applicant's or holder's driving privilege has been suspended or revoked in accordance with any provisions of this code.

(b) For purposes of this section, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. For purposes of this section, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, is conclusive evidence of the conviction.

(c) Whenever the department receives information from the Department of Justice, or the Federal Bureau of Investigation, that a tow truck driver has been convicted of an offense specified in paragraph (1), (2), (3), or (4) of subdivision (a), the department shall immediately notify the employer and the Department of the California Highway Patrol.

(d) An applicant or holder of a tow truck driver certificate, whose certificate was denied or revoked, may reapply for a certificate whenever the applicable felony or misdemeanor conviction is reversed or dismissed. If the cause for the denial or revocation was based on the suspension or revocation of the applicant's or holder's driving privilege, he or she may reapply for a certificate upon restoration of his or her driving privilege. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

SEC. 35. Section 15302 of the Vehicle Code is amended to read:

15302. No driver of a commercial motor vehicle may operate a commercial motor vehicle for the rest of his or her life if convicted of more than one violation of any of the following:

(a) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance.

(b) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(c) Using a commercial motor vehicle in the commission of more than one felony arising out of separate occasions of arrest or citation.

(d) Driving a commercial motor vehicle when the driver's commercial driver's license is revoked, suspended, or canceled based on the driver's operation of a commercial motor vehicle or when the driver is disqualified from operating a commercial motor vehicle based on the driver's operation of a commercial motor vehicle.

(e) Causing a fatality involving conduct defined pursuant to subparagraph (E) of paragraph (1) of subsection (c) of Title 49 of Section 31310 of the United States Code.

(f) A violation of Section 2800.1, 2800.2, or 2800.3 that involves a commercial motor vehicle.

(g) Any combination of the above violations.

SEC. 36. Section 1732.6 of the Welfare and Institutions Code is amended to read:

1732.6. (a) No minor shall be committed to the Youth Authority when he or she is convicted in a criminal action for an offense described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 of the Penal Code and is sentenced to incarceration for life, an indeterminate period to life, or a determinate period of years such that

the maximum number of years of potential confinement when added to the minor's age would exceed 25 years. Except as specified in subdivision (b), in all other cases in which the minor has been convicted in a criminal action, the court shall retain discretion to sentence the minor to the Department of Corrections or to commit the minor to the Youth Authority.

(b) No minor shall be committed to the Youth Authority when he or she is convicted in a criminal action for:

(1) An offense described in subdivision (b) of Section 602, or

(2) An offense described in paragraphs (1), (2), or (3) of subdivision (d) of Section 707, if the circumstances enumerated in those paragraphs are found to be true by the trier of fact.

(3) An offense described in subdivision (b) of Section 707, if the minor had attained the age of 16 years of age or older at the time of commission of the offense.

(c) Notwithstanding any other provision of law, no person under the age of 16 years shall be housed in any facility under the jurisdiction of the Department of Corrections.

SEC. 37. Except for SB 1316, any section of any act enacted by the Legislature during the 2002 calendar year that takes effect on or before January 1, 2003, and that amends, amends and renumbers, adds, repeals and adds, or repeals any one or more of the sections affected 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 2002 calendar year and takes effect on or before January 1, 2003, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 788

An act to amend Section 1050 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 21, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 1050 of the Penal Code is amended to read:

1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the

failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) (1) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

(2) For purposes of this section, ''good cause'' includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of Section 187, allegations that stalking, as defined in Section 646.9, a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, or a hate crime, as defined in Title 11.6 (commencing with Section 422.6) of Part 1, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10 court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

CHAPTER 789

An act to add Article 5 (commencing with Section 125115) to Chapter 1 of Part 5 of Division 106 of the Health and Safety Code, relating to medical research.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

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

(a) An estimated 128 million Americans suffer from the crippling economic and psychological burden of chronic, degenerative, and acute diseases, including diabetes, Parkinson's disease, cancer, and Alzheimer's disease.

(b) The costs of treatment and lost productivity of chronic, degenerative, and acute diseases in the United States constitutes hundreds of billions of dollars every year. Estimates of the economic

costs of these diseases does not account for the extreme human loss and suffering associated with these conditions.

(c) Stem cell research offers immense promise for developing new medical therapies for these debilitating diseases and a critical means to explore fundamental questions of biology. Stem cell research could lead to unprecedented treatments and potential cures for diabetes, Alzheimer's disease, cancer, and other diseases.

(d) The United States and California have historically been a haven for open scientific inquiry and technological innovation and this environment, coupled with the commitment of public and private resources, has made the United States the preeminent world leader in biomedicine and biotechnology.

(e) California's biomedical industry is a critical component of the state's economy that provides employment in over 2,500 companies to over 225,000 Californians, pays $12.8 billion in wages and salaries, invests more than $2.1 billion in research, and reports nearly $7.8 billion in worldwide revenue, and would be significantly diminished by limitations imposed on stem cell research.

(f) Open scientific inquiry and publicly funded research will be essential to realizing the promise of stem cell research and to maintain California's worldwide leadership in biomedicine and biotechnology. Publicly funded stem cell research, conducted under established standards of open scientific exchange, peer review, and public oversight, offers the most efficient and responsible means of fulfilling the promise of stem cells to provide regenerative medical therapies.

(g) Stem cell research, including the use of embryonic stem cells for medical research, raises significant ethical and policy concerns, and, while not unique, the ethical and policy concerns associated with stem cell research must be carefully considered.

(h) Public policy on stem cell research must balance ethical and medical considerations. The policy must be based on an understanding of the science associated with stem cell research and grounded on a thorough consideration of the ethical concerns regarding this research. Public policy on stem cell research must be carefully crafted to ensure that researchers have the tools necessary to fulfill the promise of stem cell research.

SEC. 2. Article 5 (commencing with Section 125115) is added to Chapter 1 of Part 5 of Division 106 of the Health and Safety Code, to read:

Article 5. Stem Cell Research

125115. The policy of the State of California shall be as follows:

(a) That research involving the derivation and use of human embryonic stem cells, human embryonic germ cells, and human adult stem cells from any source, including somatic cell nuclear transplantation, shall be permitted and that full consideration of the ethical and medical implications of this research be given.

(b) That research involving the derivation and use of human embryonic stem cells, human embryonic germ cells, and human adult stem cells, including somatic cell nuclear transplantation, shall be reviewed by an approved institutional review board.

125116. (a) A physician, surgeon, or other health care provider delivering fertility treatment shall provide his or her patient with timely, relevant, and appropriate information to allow the individual to make an informed and voluntary choice regarding the disposition of any human embryos remaining following the fertility treatment.

(b) Any individual to whom information is provided pursuant to subdivision (a) shall be presented with the option of storing any unused embryos, donating them to another individual, discarding the embryos, or donating the remaining embryos for research.

(c) Any individual who elects to donate embryos remaining after fertility treatments for research shall provide written consent.

125117. (a) A person may not knowingly, for valuable consideration, purchase or sell embryonic or cadaveric fetal tissue for research purposes pursuant to this chapter.

(b) For purposes of this section, ''valuable consideration'' does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transplantation, or implantation of a part.

(c) Embryonic or cadaveric fetal tissue may be donated for research purposes pursuant to this chapter.

CHAPTER 790

An act to amend, repeal, and add Section 1356 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 1356 of the Health and Safety Code is amended to read:

1356. (a) Each plan applying for licensure under this chapter shall reimburse the director for the actual cost of processing the application, including overhead, up to an amount not to exceed twenty-five thousand dollars ($25,000). The cost shall be billed not more frequently than monthly and shall be remitted by the applicant to the director within 30 days of the date of billing. The director shall not issue a license to any applicant prior to receiving payment in full for all amounts charged pursuant to this subdivision.

(b) (1) In addition to other fees and reimbursements required to be paid under this chapter, each licensed plan shall pay to the director an amount as estimated by the director for the ensuing fiscal year, as a reimbursement of its share of all costs and expenses, including, but not limited to, costs and expenses associated with routine financial examinations, grievances and complaints including maintaining a toll-free number for consumer grievances and complaints, investigation and enforcement, medical surveys and reports, and overhead, reasonably incurred in the administration of this chapter and not otherwise recovered by the director under this chapter or from the Managed Care Fund. The amount may be paid in two equal installments. The first installment shall be paid on or before August 1 of each year, and the second installment shall be paid on or before December 15 of each year.

(2) The amount paid by each plan shall be ten thousand dollars (10,000), plus an amount up to, but not exceeding, an amount computed in accordance with paragraph (3).

(3) (A) In addition to the amount specified in paragraph (2), all plans, except specialized plans, shall pay 65 percent of the total amount of the department's costs and expenses for the ensuing fiscal year as estimated by the director. The amount per plan shall be calculated on a per enrollee basis as specified in paragraph (4).

(B) In addition to the amount specified in paragraph (2), all specialized plans shall pay 35 percent of the total amount of the department's costs and expenses for the ensuing fiscal year as estimated by the director. The amount per plan shall be calculated on a per enrollee basis as specified in paragraph (4).

(4) The amount paid by each plan shall be for each enrollee enrolled in its plan in this state as of the preceding March 31, and shall be fixed by the director by notice to all licensed plans on or before June 15 of each year. A plan that is unable to report the number of enrollees enrolled in the plan because it does not collect that data, shall provide the director with an estimate of the number of enrollees enrolled in the plan and the method used for determining the estimate. The director may, upon giving written notice to the plan, revise the estimate if the director determines that the method used for determining the estimate was not reasonable.

(5) In determining the amount assessed, the director shall consider all appropriations from the Managed Care Fund for the support of this chapter and all reimbursements provided for in this chapter.

(c) Each licensed plan shall also pay two thousand dollars ($2,000), plus an amount up to, but not exceeding, forty-eight hundredths of one cent ($0.0048) for each enrollee for the purpose of reimbursing its share of all costs and expenses, including overhead, reasonably anticipated to be incurred by the department in administering Sections 1394.7 and 1394.8 during the current fiscal year. The amount charged shall be remitted within 30 days of the date of billing.

(d) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead, reasonably incurred in the administration of this chapter.

(e) The director by notice to all licensed plans on or before September 15 of each year, may require health care service plans to pay an additional assessment to provide the department with sufficient revenues to support costs and expenses as set forth in this section and subdivision (b) of Section 1341.4 for the 2000–01, 2001–02, and 2002–03 fiscal years. A plan that did not pay its assessment as required by this subdivision for the 2001–02 fiscal year, shall be assessed the amount due for the 2001–02 fiscal year in the 2002–03 fiscal year, in addition to the amount due in the 2002–03 fiscal year. The assessment pursuant to this subdivision is separate and independent of the assessment in subdivision (b), and may not be aggregated for the purposes of limitation or otherwise with the assessment in subdivision (b). The assessment pursuant to this subdivision is not subject to the limitations imposed on assessments pursuant to Section 1356.1. In imposing an assessment pursuant to this subdivision, the director shall levy on each plan an amount determined by the director using the categories of plans in the schedules set forth in subdivision (b). The assessment shall be paid in full or in two equal installments, as determined by the department. On July 1, 2003, and thereafter, the director may raise the assessment limit pursuant to subdivision (b) to incorporate annual expenditure levels set forth in this subdivision.

(f) For the purpose of calculating the assessment under this section, an enrollee who is enrolled in one plan and who receives health care services under arrangements made by another plan or plans, whether pursuant to a contract, agreement, or otherwise, shall be considered to be enrolled in each of the plans.

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

SEC. 2. Section 1356 is added to the Health and Safety Code, to read:

1356. (a) Each plan applying for licensure under this chapter shall reimburse the director for the actual cost of processing the application, including overhead, up to an amount not to exceed twenty-five thousand dollars ($25,000). The cost shall be billed not more frequently than monthly and shall be remitted by the applicant to the director within 30 days of the date of billing. The director shall not issue a license to any applicant prior to receiving payment in full for all amounts charged pursuant to this subdivision.

(b) (1) In addition to other fees and reimbursements required to be paid under this chapter, each licensed plan shall pay to the director an amount as estimated by the director for the ensuing fiscal year, as a reimbursement of its share of all costs and expenses, including, but not limited to, costs and expenses associated with routine financial examinations, grievances, and complaints including maintaining a toll-free telephone number for consumer grievances and complaints, investigation and enforcement, medical surveys and reports, and overhead reasonably incurred in the administration of this chapter and not otherwise recovered by the director under this chapter or from the Managed Care Fund. The amount may be paid in two equal installments. The first installment shall be paid on or before August 1 of each year, and the second installment shall be paid on or before December 15 of each year.

(2) The amount paid by each plan shall be ten thousand dollars ($10,000) plus an amount up to, but not exceeding, an amount computed in accordance with paragraph (3).

(3) (A) In addition to the amount specified in paragraph (2), all plans, except specialized plans, shall pay 65 percent of the total amount of the department's costs and expenses for the ensuing fiscal year as estimated by the director. The amount per plan shall be calculated on a per enrollee basis as specified in paragraph (4).

(B) In addition to the amount specified in paragraph (2), all specialized plans shall pay 35 percent of the total amount of the department's costs and expenses for the ensuing fiscal year as estimated by the director. The amount per plan shall be calculated on a per enrollee basis as specified in paragraph (4).

(4) The amount paid by each plan shall be for each enrollee enrolled in its plan in this state as of the preceding March 31, and shall be fixed by the director by notice to all licensed plans on or before June 15 of each year. A plan that is unable to report the number of enrollees enrolled in the plan because it does not collect that data, shall provide the director with an estimate of the number of enrollees enrolled in the plan and the method used for determining the estimate. The director may, upon

giving written notice to the plan, revise the estimate if the director determines that the method used for determining the estimate was not reasonable.

(5) In determining the amount assessed, the director shall consider all appropriations from the Managed Care Fund for the support of this chapter and all reimbursements provided for in this chapter.

(c) Each licensed plan shall also pay two thousand dollars ($2,000), plus an amount up to, but not exceeding, forty-eight hundredths of one cent ($0.0048), for each enrollee for the purpose of reimbursing its share of all costs and expenses, including overhead, reasonably anticipated to be incurred by the department in administering Sections 1394.7 and 1394.8 during the current fiscal year. The amount charged shall be remitted within 30 days of the date of billing.

(d) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead, reasonably incurred in the administration of this chapter.

(e) For the purpose of calculating the assessment under this section, an enrollee who is enrolled in one plan and who receives health care services under arrangements made by another plan or plans, whether pursuant to a contract, agreement, or otherwise, shall be considered to be enrolled in each of the plans.

(f) This section shall become operative on July 1, 2003.

CHAPTER 791

An act to amend Sections 1367.215, 1367.24, 1367.25, 1367.45, 1367.51, and 1374.72 of, and to add Section 1342.7 to, the Health and Safety Code, relating to health care.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 1342.7 is added to the Health and Safety Code, to read:

1342.7. (a) The Legislature finds that in enacting Sections 1367.215, 1367.25, 1367.45, 1367.51, and 1374.72, it did not intend to limit the department's authority to regulate the provision of medically necessary prescription drug benefits by a health care service plan to the extent that the plan provides coverage for those benefits.

(b) (1) Nothing in this chapter shall preclude a plan from filing relevant information with the department pursuant to Section 1352 to

seek the approval of a copayment, deductible, limitation, or exclusion to a plan's prescription drug benefits. If the department approves an exclusion to a plan's prescription drug benefits, the exclusion shall not be subject to review through the independent medical review process pursuant to Section 1374.30 on the grounds of medical necessity. The department shall retain its role in assessing whether issues are related to coverage or medical necessity pursuant to paragraph (2) of subdivision (d) of Section 1374.30.

(2) A plan seeking approval of a copayment or deductible may file an amendment pursuant to Section 1352.1. A plan seeking approval of a limitation or exclusion shall file a material modification pursuant to subdivision (b) of Section 1352.

(c) Nothing in this chapter shall prohibit a plan from charging a subscriber or enrollee a copayment or deductible for a prescription drug benefit or from setting forth by contract, a limitation or an exclusion from, coverage of prescription drug benefits, if the copayment, deductible, limitation, or exclusion is reported to, and found unobjectionable by, the director and disclosed to the subscriber or enrollee pursuant to the provisions of Section 1363.

(d) The department in developing standards for the approval of a copayment, deductible, limitation, or exclusion to a plan's prescription drug benefits, shall consider alternative benefit designs, including, but not limited to, the following:

(1) Different out-of-pocket costs for consumers, including copayments and deductibles.

(2) Different limitations, including caps on benefits.

(3) Use of exclusions from coverage of prescription drugs to treat various conditions, including the effect of the exclusions on the plan's ability to provide basic health care services, the amount of subscriber or enrollee premiums, and the amount of out-of-pocket costs for an enrollee.

(4) Different packages negotiated between purchasers and plans.

(5) Different tiered pharmacy benefits, including the use of generic prescription drugs.

(6) Current and past practices.

(e) The department shall develop a regulation outlining the standards to be used in reviewing a plan's request for approval of its proposed copayment, deductible, limitation, or exclusion on its prescription drug benefits.

(f) Nothing in subdivision (b) or (c) shall permit a plan to limit prescription drug benefits provided in a manner that is inconsistent with Sections 1367.215, 1367.25, 1367.45, 1367.51, and 1374.72.

(g) Nothing in this section shall be construed to require or authorize a plan that contracts with the State Department of Health Services to

provide services to Medi-Cal beneficiaries or with the Managed Risk Medical Insurance Board to provide services to enrollees of the Healthy Families Program to provide coverage for prescription drugs that are not required pursuant to those programs or contracts, or to limit or exclude any prescription drugs that are required by those programs or contracts.

(h) Nothing in this section shall be construed as prohibiting or otherwise affecting a plan contract that does not cover outpatient prescription drugs except for coverage for limited classes of prescription drugs because they are integral to treatments covered as basic health care services, including, but not limited to, immunosuppressives, in order to allow for transplants of bodily organs.

(i) (1) The department shall periodically review its regulations developed pursuant to this section.

(2) On or before July 1, 2004, and annually thereafter, the department shall report to the Legislature on the ongoing implementation of this section.

(j) This section shall become operative on January 2, 2003, and shall only apply to contracts issued, amended, or renewed on or after that date.

SEC. 2. Section 1367.215 of the Health and Safety Code is amended to read:

1367.215. (a) Every health care service plan contract that covers prescription drug benefits shall provide coverage for appropriately prescribed pain management medications for terminally ill patients when medically necessary. The plan shall approve or deny the request by the provider for authorization of coverage for an enrollee who has been determined to be terminally ill in a timely fashion, appropriate for the nature of the enrollee's condition, not to exceed 72 hours of the plan's receipt of the information requested by the plan to make the decision. If the request is denied or if additional information is required, the plan shall contact the provider within one working day of the determination, with an explanation of the reason for the denial or the need for additional information. The requested treatment shall be deemed authorized as of the expiration of the applicable timeframe. The provider shall contact the plan within one business day of proceeding with the deemed authorized treatment, to do all of the following:

(1) Confirm that the timeframe has expired.

(2) Provide enrollee identification.

(3) Notify the plan of the provider or providers performing the treatment.

(4) Notify the plan of the facility or location where the treatment was rendered.

(b) This section does not apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the federal Food and Drug

Administration. Coverage for different-use drugs is subject to Section 1367.21.

(c) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for prescription drugs.

SEC. 3. Section 1367.24 of the Health and Safety Code is amended to read:

1367.24. (a) Every health care service plan that provides prescription drug benefits shall maintain an expeditious process by which prescribing providers may obtain authorization for a medically necessary nonformulary prescription drug. On or before July 1, 1999, every health care service plan that provides prescription drug benefits shall file with the department a description of its process, including timelines, for responding to authorization requests for nonformulary drugs. Any changes to this process shall be filed with the department pursuant to Section 1352. Each plan shall provide a written description of its most current process, including timelines, to its prescribing providers. For purposes of this section, a prescribing provider shall include a provider authorized to write a prescription, pursuant to subdivision (a) of Section 4040 of the Business and Professions Code, to treat a medical condition of an enrollee.

(b) Any plan that disapproves a request made pursuant to subdivision (a) by a prescribing provider to obtain authorization for a nonformulary drug shall provide the reasons for the disapproval in a notice provided to the enrollee. The notice shall indicate that the enrollee may file a grievance with the plan if the enrollee objects to the disapproval, including any alternative drug or treatment offered by the plan. The notice shall comply with subdivision (b) of Section 1368.02.

(c) The process described in subdivision (a) by which prescribing providers may obtain authorization for medically necessary nonformulary drugs shall not apply to a nonformulary drug that has been prescribed for an enrollee in conformance with the provisions of Section 1367.22.

(d) The process described in subdivision (a) by which enrollees may obtain medically necessary nonformulary drugs, including specified timelines for responding to prescribing provider authorization requests, shall be described in evidence of coverage and disclosure forms, as required by subdivision (a) of Section 1363, issued on or after July 1, 1999.

(e) Every health care service plan that provides prescription drug benefits shall maintain, as part of its books and records under Section 1381, all of the following information, which shall be made available to the director upon request:

(1) The complete drug formulary or formularies of the plan, if the plan maintains a formulary, including a list of the prescription drugs on the formulary of the plan by major therapeutic category with an indication of whether any drugs are preferred over other drugs.

(2) Records developed by the pharmacy and therapeutic committee of the plan, or by others responsible for developing, modifying, and overseeing formularies, including medical groups, individual practice associations, and contracting pharmaceutical benefit management companies, used to guide the drugs prescribed for the enrollees of the plan, that fully describe the reasoning behind formulary decisions.

(3) Any plan arrangements with prescribing providers, medical groups, individual practice associations, pharmacists, contracting pharmaceutical benefit management companies, or other entities that are associated with activities of the plan to encourage formulary compliance or otherwise manage prescription drug benefits.

(f) If a plan provides prescription drug benefits, the department shall, as part of its periodic onsite medical survey of each plan undertaken pursuant to Section 1380, review the performance of the plan in providing those benefits, including, but not limited to, a review of the procedures and information maintained pursuant to this section, and describe the performance of the plan as part of its report issued pursuant to Section 1380.

(g) The director shall not publicly disclose any information reviewed pursuant to this section that is determined by the director to be confidential pursuant to state law.

(h) For purposes of this section, ''authorization'' means approval by the health care service plan to provide payment for the prescription drug.

(i) Nonformulary prescription drugs shall include any drug for which an enrollee's copayment or out-of-pocket costs are different than the copayment for a formulary prescription drug, except as otherwise provided by law or regulation or in cases in which the drug has been excluded in the plan contract pursuant to Section 1342.7.

(j) Nothing in this section shall be construed to restrict or impair the application of any other provision of this chapter, including, but not limited to, Section 1367, which includes among its requirements that a health care service plan furnish services in a manner providing continuity of care and demonstrate that medical decisions are rendered by qualified medical providers unhindered by fiscal and administrative management.

SEC. 4. Section 1367.25 of the Health and Safety Code is amended to read:

1367.25. (a) Every group health care service plan contract, except for a specialized health care service plan contract, that is issued, amended, renewed, or delivered on or after January 1, 2000, and every

individual health care service plan contract that is amended, renewed, or delivered on or after January 1, 2000, except for a specialized health care service plan contract, shall provide coverage for the following, under general terms and conditions applicable to all benefits:

(1) A health care service plan contract that provides coverage for outpatient prescription drug benefits shall include coverage for a variety of federal Food and Drug Administration approved prescription contraceptive methods designated by the plan. In the event the patient's participating provider, acting within his or her scope of practice, determines that none of the methods designated by the plan is medically appropriate for the patient's medical or personal history, the plan shall also provide coverage for another federal Food and Drug Administration approved, medically appropriate prescription contraceptive method prescribed by the patient's provider.

(2) Outpatient prescription benefits for an enrollee shall be the same for an enrollee's covered spouse and covered nonspouse dependents.

(b) Notwithstanding any other provision of this section, a religious employer may request a health care service plan contract without coverage for federal Food and Drug Administration approved contraceptive methods that are contrary to the religious employer's religious tenets. If so requested, a health care service plan contract shall be provided without coverage for contraceptive methods.

(1) For purposes of this section, a ''religious employer'' is an entity for which each of the following is true:

(A) The inculcation of religious values is the purpose of the entity.

(B) The entity primarily employs persons who share the religious tenets of the entity.

(C) The entity serves primarily persons who share the religious tenets of the entity.

(D) The entity is a nonprofit organization as described in Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

(2) Every religious employer that invokes the exemption provided under this section shall provide written notice to prospective enrollees prior to enrollment with the plan, listing the contraceptive health care services the employer refuses to cover for religious reasons.

(c) Nothing in this section shall be construed to exclude coverage for prescription contraceptive supplies ordered by a health care provider with prescriptive authority for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for prescription contraception that is necessary to preserve the life or health of an enrollee.

(d) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for prescription drugs.

(e) Nothing in this section shall be construed to require an individual or group health care service plan to cover experimental or investigational treatments.

SEC. 5. Section 1367.45 of the Health and Safety Code is amended to read:

1367.45. (a) Every individual or group health care service plan contract that is issued, amended, or renewed on or after January 1, 2002, that covers hospital, medical, or surgery expenses shall provide coverage for a vaccine for acquired immune deficiency syndrome (AIDS) that is approved for marketing by the federal Food and Drug Administration and that is recommended by the United States Public Health Service.

(b) This section may not be construed to require a health care service plan to provide coverage for any clinical trials relating to an AIDS vaccine or for any AIDS vaccine that has been approved by the federal Food and Drug Administration in the form of an investigational new drug application.

(c) A health care service plan that contracts directly with an individual provider or provider organization may not delegate the risk adjusted treatment cost of providing services under this section unless the requirements of Section 1375.5 are met.

(d) Nothing in this section is to be construed in any manner to limit or impede a health care service plan's power or responsibility to negotiate the most cost-effective price for vaccine purchases.

(e) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for prescription drugs.

SEC. 6. 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.

(i) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for prescription drugs.

SEC. 7. Section 1374.72 of the Health and Safety Code is amended to read:

1374.72. (a) Every health care service plan contract issued, amended, or renewed on or after July 1, 2000, that provides hospital, medical, or surgical coverage shall provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and of serious emotional disturbances of a child, as specified in subdivisions (d) and (e), under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(b) These benefits shall include the following:

(1) Outpatient services.

(2) Inpatient hospital services.

(3) Partial hospital services.

(4) Prescription drugs, if the plan contract includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the plan contract, shall include, but not be limited to, the following:

(1) Maximum lifetime benefits.

(2) Copayments.

(3) Individual and family deductibles.

(d) For the purposes of this section, ''severe mental illnesses'' shall include:

(1) Schizophrenia.

(2) Schizoaffective disorder.

(3) Bipolar disorder (manic-depressive illness).

(4) Major depressive disorders.

(5) Panic disorder.

(6) Obsessive-compulsive disorder.

(7) Pervasive developmental disorder or autism.

(8) Anorexia nervosa.

(9) Bulimia nervosa.

(e) For the purposes of this section, a child suffering from, ''serious emotional disturbances of a child'' shall be defined as a child who (1) has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, that result in behavior inappropriate to the child's age according to expected developmental norms, and (2) who meets the criteria in paragraph (2) of subdivision (a) of Section 5600.3 of the Welfare and Institutions Code.

(f) This section shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Division 9 of Part 3 of the Welfare and Institutions Code, between the State Department of Health Services and a health care service plan for enrolled Medi-Cal beneficiaries.

(g) (1) For the purpose of compliance with this section, a plan may provide coverage for all or part of the mental health services required by this section through a separate specialized health care service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A plan shall provide the mental health coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, health care service plan contracts that provide benefits to enrollees through preferred provider contracting arrangements are not precluded from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans.

(3) Notwithstanding any other provision of law, in the provision of benefits required by this section, a health care service plan may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing.

(h) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for prescription drugs.

CHAPTER 792

An act to add and repeal Section 1348.9 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. (a) The Legislature finds and declares that consumer participation programs at the Public Utilities Commission and the Department of Insurance have been a cost-effective and successful means of encouraging consumer protection, expertise, and participation in rate setting and adjudicatory and quasi-legislative proceedings.

(b) The Legislature further finds and declares that by ensuring that these proceedings have the benefit of consumer expertise and evidence, consumer participation programs have saved California taxpayers billions of dollars and have significantly improved the decisions made by the affected agencies.

(c) It is the intent of the Legislature to establish a consumer participation program administered by the Department of Managed Health Care that will promote the interests and effective representation of consumers and assist the department in ensuring affordable and effective delivery of health care to the people of this state who are eligible to enroll in or subscribe to a health care service plan or a specialized health care service plan.

(d) It is further the intent of the Legislature that this act shall be administered in a manner that encourages the effective and efficient participation of all organizations representing the interests of consumers that have a stake in the regulation of health care service plans or specialized health care service plans.

SEC. 2. Section 1348.9 is added to the Health and Safety Code, to read:

1348.9. (a) On or before July 1, 2003, the director shall adopt regulations to establish the Consumer Participation Program, which shall allow for the director to award reasonable advocacy and witness fees to any person or organization that demonstrates that the person or organization represents the interests of consumers and has made a substantial contribution on behalf of consumers to the adoption of any regulation or to an order or decision made by the director if the order or decision has the potential to impact a significant number of enrollees.

(b) The regulations adopted by the director shall include specifications for eligibility of participation, rates of compensation, and procedures for seeking compensation. The regulations shall require that the person or organization demonstrate a record of advocacy on behalf of health care consumers in administrative or legislative proceedings in order to determine whether the person or organization represents the interests of consumers.

(c) This section shall apply to all proceedings of the department, but shall not apply to resolution of individual grievances, complaints, or cases.

(d) Fees awarded pursuant to this section may not exceed three hundred fifty thousand dollars ($350,000) each fiscal year.

(e) The fees awarded pursuant to this section shall be considered costs and expenses pursuant to Section 1356 and shall be paid from the assessment made under that section. Notwithstanding the provisions of this subdivision, the amount of the assessment shall not be increased to pay the fees awarded under this section.

(f) The department shall report to the appropriate policy and fiscal committees of the Legislature before March 1, 2004, and annually thereafter, the following information:

(1) The amount of reasonable advocacy and witness fees awarded each fiscal year.

(2) The individuals or organization to whom advocacy and witness fees were awarded pursuant to this section.

(3) The orders, decisions, and regulations pursuant to which the advocacy and witness fees were awarded.

(g) 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.

CHAPTER 793

An act to add Section 1342.4 to the Health and Safety Code, and to add Section 12923.5 to the Insurance Code, relating to health care.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 1342.4 is added to the Health and Safety Code, to read:

1342.4. (a) The Department of Managed Health Care and the Department of Insurance shall maintain a joint senior level working group to ensure clarity for health care consumers about who enforces their patient rights and consistency in the regulations of these departments.

(b) The joint working group shall undertake a review and examination of the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code as they apply to the Department of Managed Health Care and the Department of Insurance to ensure consistency in consumer protection.

(c) The joint working group shall review and examine all of the following processes in each department:

(1) Grievance and consumer complaint processes, including, but not limited to, outreach, standard complaints, including coverage and medical necessity complaints, independent medical review, and information developed for consumer use.

(2) The processes used to ensure enforcement of the law, including, but not limited to, the medical survey and audit process in the Health and Safety Code and market conduct exams in the Insurance Code.

(3) The processes for regulating the timely payment of claims.

(d) The joint working group shall report its findings to the Insurance Commissioner and the Director of the Department of Managed Health Care for review and approval. The commissioner and the director shall submit the approved final report under signature to the Legislature by January 1 of every year for five years.

SEC. 2. Section 12923.5 is added to the Insurance Code, to read:

12923.5. (a) The Department of Managed Health Care and the Department of Insurance shall maintain a joint senior level working group to ensure clarity for health care consumers about who enforces their patient rights and consistency in the regulations of these departments.

(b) The joint working group shall undertake a review and examination of the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code as they apply to the Department of Managed Health Care and the Department of Insurance to ensure consistency in consumer protection.

(c) The joint working group shall review and examine all of the following processes in each department:

(1) Grievance and consumer complaint processes, including, but not limited to, outreach, standard complaints, including coverage and medical necessity complaints, independent medical review, and information developed for consumer use.

(2) The processes used to ensure enforcement of the law, including, but not limited to, the medical survey and audit process in the Health and Safety Code and market conduct exams in the Insurance Code.

(3) The processes for regulating the timely payment of claims.

(d) The joint working group shall report its findings to the Insurance Commissioner and the Director of the Department of Managed Health Care for review and approval. The commissioner and the director shall submit the approved final report under signature to the Legislature by January 1 of every year for five years.

CHAPTER 794

An act to amend Section 1366.27, to amend, repeal, and add Section 1373.6 of, to add Sections 1363.06, 1363.07, 1366.29, and 1373.622 to, and to add and repeal Section 1373.62 of, the Health and Safety Code, and to amend Sections 10128.57, 12711, 12725, 12739, 12739.1, and

12739.2 of, to add Sections 10113.8, 10127.14, 10127.16, 10128.59, and 12682.1 to, and to add and repeal Sections 10127.15 and 12712.5 of, the Insurance Code, relating to health care coverage, and making an appropriation therefor.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 1363.06 is added to the Health and Safety Code, to read:

1363.06. (a) The Department of Managed Health Care and the Department of Insurance shall compile information as required by this section and Section 10127.14 of the Insurance Code into two comparative benefit matrices. The first matrix shall compare benefit packages offered pursuant to Section 1373.62 and Section 10127.15 of the Insurance Code. The second matrix shall compare benefit packages offered pursuant to Sections 1366.35, 1373.6, and 1399.804 and Sections 10785, 10901.2, and 12682.1 of the Insurance Code.

(b) The comparative benefit matrix shall include:

(1) Benefit information submitted by health care service plans pursuant to subdivision (d) and by health insurers pursuant to Section 10127.14 of the Insurance Code.

(2) The following statements in at least 12-point type at the top of the matrix:

(A) ''This benefit summary is intended to help you compare coverage and benefits and is a summary only. For a more detailed description of coverage, benefits, and limitations, please contact the health care service plan or health insurer.''

(B) ''The comparative benefit summary is updated annually, or more often if necessary to be accurate.''

(C) ''The most current version of this comparative benefit summary is available on (address of the plan's or insurer's site).''

This subparagraph applies only to those plans or insurers that maintain an Internet Web site.

(3) The telephone number or numbers that may be used by an applicant to contact either the department or the Department of Insurance, as appropriate, for further assistance.

(c) The Department of Managed Health Care and the Department of Insurance shall jointly prepare two standardized templates for use by health care service plans and health insurers in submitting the information required pursuant to subdivision (d) and subdivision (d) of Section 10127.14 of the Insurance Code. The templates shall be exempt

from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Health care service plans, except specialized health care service plans, shall submit the following to the department by January 31, 2003, and annually thereafter:

(1) A summary explanation of the following for each product described in subdivision (a).

(A) Eligibility requirements.

(B) The full premium cost of each benefit package in the service area in which the individual and eligible dependents work or reside.

(C) When and under what circumstances benefits cease.

(D) The terms under which coverage may be renewed.

(E) Other coverage that may be available if benefits under the described benefit package cease.

(F) The circumstances under which choice in the selection of physicians and providers is permitted.

(G) Lifetime and annual maximums.

(H) Deductibles.

(2) A summary explanation of coverage for the following, together with the corresponding copayments and limitations, for each product described in subdivision (a):

(A) Professional services.

(B) Outpatient services.

(C) Hospitalization services.

(D) Emergency health coverage.

(E) Ambulance services.

(F) Prescription drug coverage.

(G) Durable medical equipment.

(H) Mental health services.

(I) Residential treatment.

(J) Chemical dependency services.

(K) Home health services.

(L) Custodial care and skilled nursing facilities.

(3) The telephone number or numbers that may be used by an applicant to access a health care service plan customer service representative and to request additional information about the plan contract.

(4) Any other information specified by the department in the template.

(e) Each health care service plan shall provide the department with updates to the information required by subdivision (d) at least annually, or more often if necessary to maintain the accuracy of the information.

(f) The department and the Department of Insurance shall make the comparative benefit matrices available on their respective Internet Web

sites and to the health care service plans and health insurers for dissemination as required by Section 1373.6 and Section 12682.1 of the Insurance Code, after confirming the accuracy of the description of the matrices with the health care service plans and health insurers.

(g) As used in this section and Section 1363.07, ''benefit matrix'' shall have the same meaning as benefit summary.

SEC. 2. Section 1363.07 is added to the Health and Safety Code, to read:

1363.07. (a) Each health care service plan shall send copies of the comparative benefit matrix prepared pursuant to Section 1363.06 on an annual basis, or more frequently as the matrix is updated by the department and the Department of Insurance, to solicitors and solicitor firms and employers with whom the plan contracts.

(b) Each health care service plan shall require its representatives and solicitors and soliciting firms with which it contracts, to provide a copy of the comparative benefit matrix to individuals when presenting any benefit package for examination or sale.

(c) Each health care service plan that maintains an Internet Web site shall make a downloadable copy of the comparative benefit matrix described in Section 1373.06 available through its site and shall ensure that the most current update of the matrix is available on its site.

SEC. 3. Section 1366.27 of the Health and Safety Code is amended to read:

1366.27. (a) The continuation coverage provided pursuant to this article shall terminate at the first to occur of the following:

(1) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 1366.21, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event.

(2) The end of the period for which premium payments were made, if the qualified beneficiary ceases to make payments or fails to make timely payments of a required premium, in accordance with the terms and conditions of the plan contract. In the case of nonpayment of premiums, reinstatement shall be governed by the terms and conditions of the plan contract.

(3) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (1), (3), (4), or (5) of subdivision (d) of Section 1366.21, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated by reason of a qualifying event.

(4) The requirements of this article no longer apply to the qualified beneficiary pursuant to the provisions of Section 1366.22.

(5) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 1366.21, and determined, under Title II or Title XVI of the Social Security Act, to be disabled at any time during the first 60 days of continuation coverage, and the spouse or dependent who has elected coverage pursuant to this article, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event. The qualified beneficiary shall notify the plan, or the employer or administrator that contracts to perform administrative services, of the social security determination within 60 days of the date of the determination letter and prior to the end of the original 36-month continuation coverage period in order to be eligible for coverage pursuant to this subdivision. If the qualified beneficiary is no longer disabled under Title II or Title XVI of the Social Security Act, the benefits provided in this paragraph shall terminate on the later of the date provided by paragraph (1), or the month that begins more than 31 days after the date of the final determination under Title II or Title XVI of the United States Social Security Act that the qualified beneficiary is no longer disabled. A qualified beneficiary eligible for 36 months of continuation coverage as a result of a disability shall notify the plan, or the employer or administrator that contracts to perform the notice and administrative services, within 30 days of a determination that the qualified beneficiary is no longer disabled.

(6) In the case of a qualified beneficiary who is initially eligible for and elects continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 1366.21, but who has another qualifying event, as described in paragraph (1), (3), (4), or (5) of subdivision (d) of Section 1366.21, within 36 months of the date of the first qualifying event, and the qualified beneficiary has notified the plan, or the employer or administrator under contract to provide administrative services, of the second qualifying event within 60 days of the date of the second qualifying event, the date 36 months after the date of the first qualifying event.

(7) The employer, or any successor employer or purchaser of the employer, ceases to provide any group benefit plan to his or her employees.

(8) The qualified beneficiary moves out of the plan's service area or the qualified beneficiary commits fraud or deception in the use of plan services.

(b) If the group contract between the plan and the employer is terminated prior to the date the qualified beneficiary's continuation coverage would terminate pursuant to this section, coverage under the prior plan shall terminate and the qualified beneficiary may elect continuation coverage under the subsequent group benefit plan, if any,

pursuant to the requirements of subdivision (b) of Section 1366.23 and subdivision (c) of Section 1366.24.

(c) The amendments made to this section by Assembly Bill 1401 of the 2001–02 Regular Session shall apply to individuals who begin receiving continuation coverage under this article on or after January 1, 2003.

SEC. 4. Section 1366.29 is added to the Health and Safety Code, to read:

1366.29. (a) A health care service plan shall offer an enrollee who has exhausted continuation coverage under COBRA the opportunity to continue coverage for up to 36 months from the date the enrollee's continuation coverage began, if the enrollee is entitled to less than 36 months of continuation coverage under COBRA. The health care service plan shall offer coverage pursuant to the terms of this article, including the rate limitations contained in Section 1366.26.

(b) Notification of the coverage available under this section shall be included in the notice of the pending termination of COBRA coverage that is required to be provided to COBRA beneficiaries and that is required to be provided under Section 1366.24.

(c) For purposes of this section, ''COBRA'' means Section 4980B of Title 26 of the United States Code, Sections 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code.

(d) This section shall not apply to specialized health care service plans providing noncore coverage, as defined in subdivision (g) of Section 1366.21.

(e) This section shall become operative on September 1, 2003, and shall apply to individuals who begin receiving COBRA coverage on or after January 1, 2003.

SEC. 5. Section 1373.6 of the Health and Safety Code is amended to read:

1373.6. This section does not apply to a specialized health care service plan contract or to a plan contract that primarily or solely supplements Medicare. The director may adopt rules consistent with federal law to govern the discontinuance and replacement of plan contracts that primarily or solely supplement Medicare.

(a) (1) Every group contract entered into, amended, or renewed on or after September 1, 2003, that provides hospital, medical, or surgical expense benefits for employees or members shall provide that an employee or member whose coverage under the group contract has been terminated by the employer shall be entitled to convert to nongroup membership, without evidence of insurability, subject to the terms and conditions of this section.

(2) If the health care service plan provides coverage under an individual health care service plan contract, other than conversion coverage under this section, it shall offer one of the two plans that it is required to offer to a federally eligible defined individual pursuant to Section 1366.35. The plan shall provide this coverage at the same rate established under Section 1399.805 for a federally eligible defined individual. A health care service plan that is federally qualified under the federal Health Maintenance Organization Act (42 U.S.C. Sec. 300e et seq.) may charge a rate for the coverage that is consistent with the provisions of that act.

(3) If the health care service plan does not provide coverage under an individual health care service plan contract, it shall offer a health benefit plan contract that is the same as a health benefit contract offered to a federally eligible defined individual pursuant to Section 1366.35. The health care service plan may offer either the most popular health maintenance organization model plan or the most popular preferred provider organization plan, each of which has the greatest number of enrolled individuals for its type of plan as of January 1 of the prior year, as reported by plans that provide coverage under an individual health care service plan contract to the department or the Department of Insurance by January 31, 2003, and annually thereafter. A health care service plan subject to this paragraph shall provide this coverage with the same cost-sharing terms and at the same premium as a health care service plan providing coverage to that individual under an individual health care service plan contract pursuant to Section 1399.805. The health care service plan shall file the health benefit plan it will offer, including the premium it will charge and the cost-sharing terms of the plan, with the Department of Managed Health Care.

(b) A conversion contract shall not be required to be made available to an employee or member if termination of his or her coverage under the group contract occurred for any of the following reasons:

(1) The group contract terminated or an employer's participation terminated and the group contract is replaced by similar coverage under another group contract within 15 days of the date of termination of the group coverage or the subscriber's participation.

(2) The employee or member failed to pay amounts due the health care service plan.

(3) The employee or member was terminated by the health care service plan from the plan for good cause.

(4) The employee or member knowingly furnished incorrect information or otherwise improperly obtained the benefits of the plan.

(5) The employer's hospital, medical, or surgical expense benefit program is self-insured.

(c) A conversion contract is not required to be issued to any person if any of the following facts are present:

(1) The person is covered by or is eligible for benefits under Title XVIII of the United States Social Security Act.

(2) The person is covered by or is eligible for hospital, medical, or surgical benefits under any arrangement of coverage for individuals in a group, whether insured or self-insured.

(3) The person is covered for similar benefits by an individual policy or contract.

(4) The person has not been continuously covered during the three-month period immediately preceding that person's termination of coverage.

(d) Benefits of a conversion contract shall meet the requirements for benefits under this chapter.

(e) Unless waived in writing by the plan, written application and first premium payment for the conversion contract shall be made not later than 63 days after termination from the group. A conversion contract shall be issued by the plan which shall be effective on the day following the termination of coverage under the group contract if the written application and the first premium payment for the conversion contract are made to the plan not later than 63 days after the termination of coverage, unless these requirements are waived in writing by the plan.

(f) The conversion contract shall cover the employee or member and his or her dependents who were covered under the group contract on the date of their termination from the group.

(g) A notification of the availability of the conversion coverage shall be included in each evidence of coverage. However, it shall be the sole responsibility of the employer to notify its employees of the availability, terms, and conditions of the conversion coverage which responsibility shall be satisfied by notification within 15 days of termination of group coverage. Group coverage shall not be deemed terminated until the expiration of any continuation of the group coverage. For purposes of this subdivision, the employer shall not be deemed the agent of the plan for purposes of notification of the availability, terms, and conditions of conversion coverage.

(h) As used in this section, ''hospital, medical, or surgical benefits under state or federal law'' do not include benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Title XIX of the United States Social Security Act.

(i) Every group contract entered into, amended, or renewed before September 1, 2003, shall be subject to the provisions of this section as it read prior to its amendment by Assembly Bill 1401 of the 2001–02 Regular Session.

SEC. 6. Section 1373.62 is added to the Health and Safety Code, to read:

1373.62. (a) (1) This section shall apply only to a health care service plan offering hospital, medical, or surgical benefits in the individual market in California and shall not apply to a specialized health care service plan, a health care service plan contract in the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code), a health care service plan conversion contract offered pursuant to Section 1373.6, or a health care service plan contract in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code).

(2) A local initiative, as defined in subdivision (v) of Section 53810 of Title 22 of the California Code of Regulations, that is awarded a contract by the State Department of Health Services pursuant to subdivision (b) of Section 53800 of Title 22 of the California Code of Regulations shall not be subject to the requirements of this section.

(b) For the purposes of this section, ''program'' means the California Major Risk Medical Insurance Program (Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code).

(c) (1) Each health care service plan subject to this section shall offer a standard benefit plan. The calendar year limit on benefits under the plan shall be at least two hundred thousand dollars ($200,000), and the lifetime maximum benefit under the plan shall be at least seven hundred fifty thousand dollars ($750,000). No health care service plan is required to provide calendar year benefits or a lifetime maximum benefit under the plan that exceed these limits. In calculating the calendar year and lifetime maximum benefits for any person receiving coverage through a standard benefit plan, the health care service plan shall not include any health care benefits or services that person received while enrolled in the program.

(2) The standard benefit plan of a health care service plan participating in the program shall be the same benefit design it offers through the program, except for the annual limit required under paragraph (1). If the health care service plan offers more than one benefit design in the program, it shall offer only one of those benefit designs as its standard benefit plan.

(3) (A) The standard benefit plan of a health care service plan that is not a participating health plan within the program shall be any one benefit design that is offered through the program by a health care service plan participating in the program, except for the annual limit required under paragraph (1).

(B) A health care service plan that is not a participating health plan in the program that is under common ownership with, is affiliated with,

or files consolidated income tax returns with, a health insurer that is also an insurer in the individual market may satisfy the requirements of this section and Section 10127.15 of the Insurance Code if either the plan or insurer offers a standard benefit plan.

(C) A health care service plan that is not a participating health plan in the program that is under common ownership with, is affiliated with, or files consolidated income tax returns with, a health insurer that is in the individual market and that is a participating health plan in the program is exempt from the provisions of this section if the insurer meets the requirements of Section 10127.15 of the Insurance Code in offering a standard benefit plan.

(d) (1) A health care service plan may not reject an application for coverage under its standard benefit plan for an individual who meets any of the following criteria: (A) Applies for coverage within 63 days of the termination date of his or her previous coverage under the program if the individual has had continuous coverage under the program for a period of 36 consecutive months.

(B) Has been enrolled in a standard benefit plan, moves to an area within the state that is not in the service area of the health care service plan or health insurer he or she has chosen, and applies for coverage within 63 days of the termination date of his or her previous coverage.

(C) Has been enrolled in standard benefit plan that is no longer available where he or she resides, and applies for coverage within 63 days of the termination date of his or her previous coverage.

(2) Notwithstanding any other provision of this section, a health care service plan is not required by this section to accept an application for coverage under its standard benefit plan for any individual who is eligible for Part A and Part B of Medicare at the time of application and who is not on Medicare solely because of end-stage renal disease.

(e) The amount paid by an individual for the standard benefit plan shall be 110 percent of the contribution the individual would pay in the program for the benefit design providing the same coverage, using the same methodology in effect on July 1, 2002, for calculating the rates in the program. If a health care service plan offers calendar year and lifetime maximum benefits in its standard benefit plan that exceed those in the benefit design offered through the program, it may not increase the amount paid by the individual for the standard benefit plan. The limitation on the amount paid by an individual pursuant to this section for a standard benefit plan shall not apply to any individual who is eligible for Part A and Part B of Medicare and who is not on Medicare solely because of end-stage renal disease.

(f) (1) Prior to offering a health benefit plan contract pursuant to this section, every health care service plan shall file a notice of material modification pursuant to Section 1352. Prior to renewing the contract,

the plan shall file an amendment or a notice of material modification, as appropriate, pursuant to Section 1352.

(2) Prior to making any changes in the premium charged for its standard benefit plan, the health care service plan shall file an amendment in accordance with the provisions of Section 1352 and shall include a statement certifying the plan is in compliance with subdivision (e).

(3) All other changes to a plan contract that was previously filed with the director shall be filed as an amendment in accordance with the provisions of Section 1352, unless the change otherwise would require the filing of a material modification.

(g) (1) Each health care service plan shall report to the Managed Risk Medical Insurance Board the amount it has expended for health care services for individuals covered under a standard benefit plan under this section and the total amount of individual payments it has charged individuals for the standard benefit plan. The board shall establish by regulation the format for these reports. The report shall be prepared for each of the following reporting periods and shall be submitted within 12 months of the final date of the reporting period:

(A) September 1, 2003, to December 31, 2003, inclusive.

(B) January 1, 2004, to December 31, 2004, inclusive.

(C) January 1, 2005, to December 31, 2005, inclusive.

(D) January 1, 2006, to December 31, 2006, inclusive.

(E) January 1, 2007, to August 30, 2007, inclusive.

(2) ''Health care services'' means the aggregate health care expenses paid by the health care service plan or insurer during the reporting period plus the aggregate value of the standard monthly administrative fee. Health care expenses do not include costs that have been incurred but not reported by the health care service plan. The calculation of health care expenses shall be consistent with the methodology used on July 1, 2002, to calculate such expenses for participating health plans in the program. The ''standard monthly administrative fee'' is the average monthly, per person administrative fee paid by the program to participating health plans during the reporting period.

(3) The ''total amount of individual payments'' is the aggregate of the monthly individual payments charged by the health care service plan during the reporting period. The calculation of the total amount of individual payments charged shall be consistent with the methodology used on July 1, 2002, to calculate subscriber contributions in the program. The Managed Risk Medical Insurance Board shall by regulation establish the format for submitting documentation of the individual payments.

(4) The Managed Risk Medical Insurance Board may verify the health care expenses incurred by a health care service plan and the

individual payments received by the plan. The verification shall include assurance that the individual was enrolled in the standard benefit plan during the reporting period in which the health care service plan paid health care expenses on the individual's behalf, and that the expenses reported are consistent with the standard benefit plan.

(h) (1) The program shall pay each health care service plan an amount that is equal to one-half of the difference between the total aggregate amount the health care service plan expended for health care services for individuals covered under a standard benefit plan who have had 36 consecutive months of coverage under the program and the total aggregate amount of individual payments charged to those individuals who have had continuous coverage under the program for a period of 36 consecutive months. For purposes of determining the amount the program shall pay each health care service plan, the total aggregate amount the health care service plan expended and the total aggregate amount of individual payments shall not include amounts paid by or on behalf of an individual who is eligible for Medicare Part A and Medicare Part B and who is not on Medicare solely because of end-stage renal disease. The program shall make this payment from the Major Risk Medical Insurance Fund or from any funds appropriated in the annual Budget Act or by another statute to the program for the purposes of this section. The state shall not be liable for any amount in excess of the moneys in the Major Risk Medical Insurance Fund or other funds that were appropriated for the purposes of this section. If the state fails to expend, pursuant to this section, sufficient funds for the state's contribution amount to any health care service plan, the health care service plan may increase the monthly payments that individuals are required to pay for any standard benefit plan to the amount that the Managed Risk Medical Insurance Board would charge without a state subsidy for the same plan issued to the same individual within the program.

(2) The Managed Risk Medical Insurance Board shall make a biannual interim payment to each health care service plan providing coverage pursuant to this section. For the first two reporting periods described in this section, biannual interim payments shall be calculated for each individual as the product of the average premium in the program for the period of time the individual was enrolled during that reporting period and one-half of the difference between the program's prior calendar year loss ratio and 110 percent. For subsequent reporting periods, the Managed Risk Medical Insurance Board may, by regulation, adopt for each health care service plan a specific method for calculating biannual interim payments based on the plan's actual experience in providing the benefits described in this section. Each health care service plan shall submit a six-month interim report of monthly individual

enrollment in its standard benefit plan. The Managed Risk Medical Insurance Board shall make an interim payment to each health care service plan pursuant to this section no later than 45 days after the receipt of the plan's enrollment reports. Final payment by the board or refund from the health care service plan shall be made upon the completion of verification activities conducted pursuant to this section.

(i) The provisions of this section constitute a pilot program that shall terminate on September 1, 2007.

(j) This section shall become operative on September 1, 2003, and shall become inoperative on September 1, 2007. As of January 1, 2008, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which this section becomes inoperative and is repealed.

SEC. 7. Section 1373.622 is added to the Health and Safety Code, to read:

1373.622. (a) After the termination of the pilot program under Section 1373.62, a health care service plan shall continue to provide coverage under the same terms and conditions specified in Section 1376.62 as it existed on January 1, 2006, including the terms of the standard benefit plan and the subscriber payment amount, to each individual who was terminated from the program pursuant to subdivision (f) of Section 12725 of the Insurance Code during the term of the pilot program and who enrolled or applied to enroll in a standard benefit plan within 63 days of termination. The Managed Risk Medical Insurance Board shall continue to pay the amount described in Section 1376.62 for each of those individuals. A health care service plan shall not be required to offer the coverage described in Section 1373.62 after the termination of the pilot program to individuals not already enrolled in the program.

(b) If the state fails to expend, pursuant to this section, sufficient funds for the state's contribution amount to any health care service plan, the health care service plan may increase the monthly payments that its subscribers are required to pay for any standard benefit plan to the amount that the Managed Risk Medical Insurance Board would charge without a state subsidy for the same plan issued to the same individual within the program.

SEC. 8. Section 10113.8 is added to the Insurance Code, to read:

10113.8. (a) Each health insurer that maintains an Internet Web site shall make a downloadable copy of the comparative benefit matrix prepared pursuant to Section 10127.14 available through its site and ensure that the most current update of the matrix is available on its site.

(b) Each health insurer shall send copies of the comparative benefit matrix on an annual basis, or more frequently as the matrix is updated by the department and the Department of Managed Health Care, to

solicitors and solicitor firms and employers with whom it contracts. Each health insurer shall require its representatives and the solicitors and soliciting firms with which it contracts, to provide a copy of the comparative benefit matrix to individuals when presenting any benefit package for examination or sale.

(c) This section shall not apply to accident-only, specified disease, hospital indemnity, CHAMPUS supplement, long-term care, Medicare supplement, dental-only, or vision-only insurance policies.

SEC. 9. Section 10127.14 is added to the Insurance Code, to read:

10127.14. (a) The department and the Department of Managed Health Care shall compile information required by this section and Section 1363.06 of the Health and Safety Code into two comparative benefit matrices. The first matrix shall compare benefit packages offered pursuant to Section 1373.62 of the Health and Safety Code and Section 10127.15. The second matrix shall compare benefit packages offered pursuant to Sections 1366.35, 1373.6, and 1399.804 of the Health and Safety Code and Sections 10785, 10901.2, and 12682.1.

(b) The comparative benefit matrix shall include:

(1) Benefit information submitted by health care service plans pursuant to Section 1363.06 of the Health and Safety Code and by health insurers pursuant to subdivision (d).

(2) The following statements in at least 12-point type at the top of the matrix:

(A) ''This benefit summary is intended to help you compare coverage and benefits and is a summary only. For a more detailed description of coverage, benefits, and limitations, please contact the health care service plan or health insurer.''

(B) ''The comparative benefit summary is updated annually, or more often if necessary to be accurate.''

(C) ''The most current version of this comparative benefit summary is available on (address of the plan's or insurer's site).''

This subparagraph applies only to those health insurers that maintain an Internet Web site.

(3) The telephone number or numbers that may be used by an applicant to contact either the department or the Department of Managed Health Care, as appropriate, for further assistance.

(c) The department and the Department of Managed Health Care shall jointly prepare two standardized templates for use by health care service plans and health insurers in submitting the information required pursuant to subdivision (d) of Section 1363.06 and subdivision (d). The templates shall be exempt from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Health insurers shall submit the following to the department by January 31, 2003, and annually thereafter:

(1) A summary explanation of the following for each product described in subdivision (a):

(A) Eligibility requirements.

(B) The full premium cost of each benefit package in the service area in which the individual and eligible dependents work or reside.

(C) When and under what circumstances benefits cease.

(D) The terms under which coverage may be renewed.

(E) Other coverage that may be available if benefits under the described benefit package cease.

(F) The circumstances under which choice in the selection of physicians and providers is permitted.

(G) Lifetime and annual maximums.

(H) Deductibles.

(2) A summary explanation of the following coverages, together with the corresponding copayments and limitations, for each product described in subdivision (a):

(A) Professional services.

(B) Outpatient services.

(C) Hospitalization services.

(D) Emergency health coverage.

(E) Ambulance services.

(F) Prescription drug coverage.

(G) Durable medical equipment.

(H) Mental health services.

(I) Residential treatment.

(J) Chemical dependency services.

(K) Home health services.

(L) Custodial care and skilled nursing facilities.

(3) The telephone number or numbers that may be used by an applicant to access a health insurer customer service representative and to request additional information about the insurance policy.

(4) Any other information specified by the department in the template.

(e) Each health insurer shall provide the department with updates to the information required by subdivision (d) at least annually, or more often if necessary to maintain the accuracy of the information.

(f) The department and the Department of Managed Health Care shall make the comparative benefit matrices available on their respective Internet Web sites and to the health care service plans and health insurers for dissemination as required by Section 1373.6 of the Health and Safety Code and Section 12682.1, after confirming the accuracy of the

description of the matrices with the health insurers and health care service plans.

(g) As used in this section, ''benefit matrix'' shall have the same meaning as benefit summary.

(h) This section shall not apply to accident-only, specified disease, hospital indemnity, CHAMPUS supplement, long-term care, Medicare supplement, dental-only, or vision-only insurance policies.

SEC. 10. Section 10127.15 is added to the Insurance Code, to read:

10127.15. (a) (1) This section shall apply only to a health insurer offering hospital, medical, or surgical benefits in the individual market in California and shall not apply to accident-only, specified disease, long-term care, CHAMPUS supplement, hospital indemnity, Medicare supplement, dental-only, or vision-only insurance policies or a health insurance conversion policy issued pursuant to Part 6.1 (commencing with Section 12670) of the Insurance Code.

(2) A local initiative, as defined in subdivision (v) of Section 53810 of Title 22 of the California Code of Regulations, that is awarded a contract by the State Department of Health Services pursuant to subdivision (b) of Section 53800 of Title 22 of the California Code of Regulations shall not be subject to the requirements of this section.

(b) For the purposes of this section, ''program'' means the California Major Risk Medical Insurance Program (Part 6.5 (commencing with Section 12700)).

(c) (1) Each health insurer subject to this section shall offer a standard benefit plan. The calendar year limit on benefits under the plan shall be at least two hundred thousand dollars ($200,000), and the lifetime maximum benefit under the plan shall be at least seven hundred fifty thousand dollars ($750,000). No health insurer is required to provide calendar year benefits or a lifetime maximum benefit under the plan that exceed these limits. In calculating the calendar year and lifetime maximum benefits for any person receiving coverage through a standard benefit plan, the health insurer shall not include any health care benefits or services that person received while enrolled in the program.

(2) The standard benefit plan of a health insurer participating in the program shall be the same benefit design it offers through the program, except for the annual limit required under paragraph (1). If the health insurer offers more than one benefit design in the program, it shall offer only one of those benefit designs as its standard benefit plan.

(3) (A) The standard benefit plan of a health insurer that is not a participating health plan within the program shall be any one benefit design that is offered through the program by a health care service plan participating in the program except for the annual limit required under paragraph (1).

(B) A health insurer that is not a participating health plan within the program that is under common ownership with, is affiliated with, or files consolidated income tax returns with, a health care service plan that is in the individual market, may satisfy the requirements of this section and Section 1373.62 of the Health and Safety Code if either the plan or insurer offers a standard benefit plan.

(C) A health insurer that is not a participating health plan in the program that is under common ownership with, is affiliated with, or files consolidated income tax returns with a health care service plan that is in the individual market and that is a participating health plan in the program is exempt from the provisions of this section if the plan meets the requirements of Section 1373.62 of the Health and Safety Code in offering a standard benefit plan.

(d) (1) A health insurer may not reject an application for coverage under its standard benefit plan for an individual who meets any of the following criteria:

(A) Applies for coverage within 63 days of the termination date of his or her previous coverage under the program if the individual has had continuous coverage under the program for a period of 36 consecutive months.

(B) Has been enrolled in a standard benefit plan, moves to an area within the state that is not in the service area of the health care service plan or health insurer he or she has chosen, and applies for coverage within 63 days of the termination date of his or her previous coverage.

(C) Has been enrolled in standard benefit plan that is no longer available where he or she resides, and applies for coverage within 63 days of the termination date of his or her previous coverage.

(2) Notwithstanding any other provision of this section, a health insurer is not required by this section to accept an application for coverage under its standard benefit plan for any individual who is eligible for Part A and Part B of Medicare at the time of application and who is not on Medicare.

(e) The amount paid by an insured for the standard benefit plan shall be 110 percent of the contribution the insured would pay in the program for the benefit design providing the same coverage, using the same methodology in effect on July 1, 2002, for calculating the rates in the program. If a health insurer offers calendar year and lifetime maximum benefits in its standard benefit plan that exceed those in the benefit design offered through the program, it may not increase the amount paid by the insured for the standard benefit plan. The limitation on the amount paid by an individual pursuant to this section for a standard benefit plan shall not apply to any individual who is eligible for Part A and Part B of Medicare and who is not on Medicare solely because of end-stage renal disease.

(f) (1) Prior to offering a health insurance policy pursuant to this section, every insurer shall file a notice of any changes pursuant to Section 10290 and to Section 2202 of Title 10 of the California Code of Regulations. Prior to renewing a policy, the insurer shall file an amendment or notice of any changes, as appropriate, pursuant to Section 10290 and to Section 2202 of Title 10 of the California Code of Regulations.

(2) Prior to making any changes in the premium charged for its standard benefit policy, the insurer shall file an amendment in accordance with the provisions of Section 10290 and of Section 2202 of Title 10 of the California Code of Regulations.

(3) All other changes to an insurance policy that were previously filed with the commissioner shall be filed as amendments in accordance with the provisions of Section 10290 and of Section 2202 of Title 10 of the California Code of Regulations.

(g) (1) Each health insurer shall report to the Managed Risk Medical Insurance Board the amount it has expended for health care services for individuals covered under a standard benefit plan under this section and the total amount of insured payments it has charged individuals for the standard benefit plan. The board shall establish by regulation the format for these reports. The report shall be prepared for each of the following reporting periods and shall be submitted within 12 months of the final date of the reporting period:

(A) September 1, 2003, to December 31, 2003, inclusive.

(B) January 1, 2004, to December 31, 2004, inclusive.

(C) January 1, 2005, to December 31, 2005, inclusive.

(D) January 1, 2006, to December 31, 2006, inclusive.

(E) January 1, 2007, to August 30, 2007, inclusive.

(2) ''Health care services'' means the aggregate health care expenses paid by the health insurer during the reporting period plus the aggregate value of the standard monthly administrative fee. Health care expenses do not include costs that have been incurred but not reported by the health insurer. The calculation of health care expenses shall be consistent with the methodology used on July 1, 2002, to calculate such expenses for participating health insurers in the program. The ''standard monthly administrative fee'' is the average monthly, per person administrative fee paid by the program to participating health insurers during the reporting period.

(3) The ''total amount of insured payments'' is the aggregate of the monthly insured payments charged by the health insurer during the reporting period. The calculation of the total amount of insured payments charged shall be consistent with the methodology used on July 1, 2002, to calculate subscriber contributions in the program. The

Managed Risk Medical Insurance Board shall by regulation establish the format for submitting documentation of insured payments.

(4) The Managed Risk Medical Insurance Board may verify the health care expenses incurred by a health insurer and the insured payments received by the insurer. The verification shall include assurance that the insured was covered in the standard benefit plan during the reporting period in which the health insurer paid health care expenses on the insured's behalf, and that the expenses reported are consistent with the standard benefit plan.

(h) (1) The program shall pay each health insurer an amount that is equal to one-half of the difference between the total aggregate amount the health insurer expended for health care services for individuals covered under a standard benefit plan who have had 36 months of continuous coverage under the program and the total aggregate amount of insured payments charged to those individuals who have had continuous coverage under the program for a period of 36 consecutive months. For purposes of determining the amount the program shall pay each health insurer, the total aggregate amount the health insurer expended and the total aggregate amount of individual payments shall not include amounts paid by or on behalf of an individual who is eligible for Medicare Part A and Medicare Part B and who is not on Medicare solely because of end-stage renal disease. The program shall make this payment from the Major Risk Medical Insurance Fund or from any funds appropriated in the annual Budget Act or by another statute to the program for the purposes of this section. The state shall not be liable for any amount in excess of the Major Risk Medical Insurance Fund or other funds that were appropriated for the purposes of this section. If the state fails to expend, pursuant to this section, sufficient funds for the state's contribution amount to any health insurer, the health insurer may increase the monthly payments that its insureds are required to pay for any standard benefit plan to the amount that the Managed Risk Medical Insurance Board would charge without a state subsidy for the same plan issued to the same individual within the program.

(2) The Managed Risk Medical Insurance Board shall make a biannual interim payment to each health insurer providing coverage pursuant to this section. For the first two reporting periods described in this section, biannual interim payments shall be calculated for each insured as the product of the average premium in the program for that period of time the individual was covered during the reporting period and one-half of the difference between the program's prior calendar year loss ratio and 110 percent. For subsequent reporting periods, the Managed Risk Medical Insurance Board may, by regulation, adopt for each health insurer a specific method for calculating biannual interim payments based on the insurer's actual experience in providing the

benefits described in this section. Each health insurer shall submit a six-month interim report of monthly insured enrollment in its standard benefit plan. The Managed Risk Medical Insurance Board shall make an interim payment to each health insurer pursuant to this section no later than 45 days after receipt of the insurer's coverage reports. Final payment by the board or refund from the insurer shall be made upon the completion of verification activities conducted pursuant to this section.

(i) The provisions of this section constitute a pilot program that shall terminate on September 1, 2007.

(j) This section shall become operative on September 1, 2003, and shall become inoperative on September 1, 2007. As of January 1, 2008, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the date on which the section becomes inoperative and is repealed.

SEC. 11. Section 10127.16 is added to the Insurance Code, to read:

10127.16. (a) After the termination of the pilot program under Section 10127.15, a health insurer shall continue to provide coverage under the same terms and conditions specified in Section 10127.15 as it existed on January 1, 2006, including the terms of the standard benefit plan and the subscriber payment amount, to each individual who was terminated from the program, pursuant to subdivision (f) of Section 12725 of the Insurance Code during the term of the pilot program and who enrolled or applied to enroll in a standard benefit plan within 63 days of termination. The Managed Risk Medical Insurance Board shall continue to pay the amount described in Section 10127.15 for each of those individuals. A health insurer shall not be required to offer the coverage described in Section 10127.15 after the termination of the pilot program to individuals not already enrolled in the program.

(b) If the state fails to expend, pursuant to this section, sufficient funds for the state's contribution amount to any health insurer, the health insurer may increase the monthly payments that its subscribers are required to pay for any standard benefit plan to the amount that the Managed Risk Medical Insurance Board would charge without a state subsidy for the same insurance product issued to the same individual within the program.

SEC. 12. Section 10128.57 of the Insurance Code is amended to read:

10128.57. (a) The continuation coverage provided pursuant to this article shall terminate at the first to occur of the following:

(1) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 10128.51, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event.

(2) The end of the period for which premium payments were made, if the qualified beneficiary ceases to make payments or fails to make timely payments of a required premium, in accordance with the terms and conditions of the policy or contract. In the case of nonpayment of premiums, reinstatement shall be governed by the terms and conditions of the plan contract.

(3) In the case of a qualified beneficiary who is eligible to continuation coverage pursuant to paragraph (1), (3), (4), or (5) of subdivision (d) of Section 10116.51, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated by reason of a qualifying event.

(4) The requirements of this article no longer apply to the qualified beneficiary pursuant to the provisions of Section 10128.52.

(5) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 10128.51, and determined, under Title II or Title XVI of the Social Security Act, to be disabled any time during the first 60 days of continuation coverage, and the spouse or dependent who has elected coverage pursuant to this article, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event. The qualified beneficiary shall notify the insurer, or the employer or administrator that contracts to perform administrative services, of the social security determination within 60 days of the date of the determination letter and prior to the end of the original 36-month continuation coverage period in order to be eligible for coverage pursuant to this subdivision. If the qualified beneficiary is no longer disabled under Title II or Title XVI of the Social Security Act, the benefits provided in this paragraph shall terminate on the later of the date provided by paragraph (1), or the month that begins more than 31 days after the date of the final determination under Title II or Title XVI of the United States Social Security Act that the qualified beneficiary is no longer disabled. A qualified beneficiary eligible for 36 months of continuation coverage as a result of a disability shall notify the insurer, or the employer or administrator that contracts to perform the notice and administrative services, within 30 days of a determination that the qualified beneficiary is no longer disabled.

(6) In the case of a qualified beneficiary who is initially eligible for and elects continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 10128.51, but who has another qualifying event, as described in paragraph (1), (3), (4), or (5) of subdivision (d) of Section 10128.51, within 36 months of the date of the first qualifying event, and has notified the insurer, or employer or administrator under contract to provide administrative services, of the second qualifying

event within 60 days of the date of the second qualifying event, the date 36 months after the date of the first qualifying event.

(7) The employer, or any successor employer or purchaser of the employer, ceases to provide any group benefit plan to his or her employees.

(8) The qualified beneficiary moves out of the insurer's service area, or the qualified beneficiary commits fraud or deception in the use of benefits.

(b) If the group benefits contracts between the insurer and the employer is terminated prior to the date the qualified beneficiary's continuation coverage would terminate pursuant to this section, coverage under the prior plan shall terminate and the qualified beneficiary may elect continuation coverage under the subsequent group benefit plan, if any, pursuant to the requirements of subdivision (b) of Section 10128.53 and subdivision (c) of Section 10128.54.

(c) The amendments made to this section by Assembly Bill 1401 of the 2001–02 Regular Session shall apply to individuals who begin receiving continuation coverage under this article on or after January 1, 2003.

SEC. 13. Section 10128.59 is added to the Insurance Code, to read:

10128.59. (a) A health insurer that provides coverage under a group benefit plan to an employer shall offer an insured who has exhausted continuation coverage under COBRA the opportunity to continue coverage for up to 36 months from the date the insured's continuation coverage began if the insured is entitled to less than 36 months of continuation coverage under COBRA. The health insurer shall offer coverage pursuant to terms of this article, including the rate limitations contained in Section 10128.56.

(b) Notification of the coverage available under this section shall be included in the notice of the pending termination of COBRA coverage that is required to be provided to COBRA beneficiaries and that is required to be provided under Section 10128.54.

(c) For purposes of this section, ''COBRA'' means Section 4980B of Title 26 of the United States Code, Sections 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code.

(d) This section shall not apply to accident-only, specified disease, hospital indemnity, CHAMPUS supplement, long-term care, Medicare supplement, dental-only, or vision-only insurance policies.

(e) This section shall become operative on September 1, 2003, and shall apply to individuals who begin receiving COBRA coverage on or after January 1, 2003.

SEC. 14. Section 12682.1 is added to the Insurance Code, to read:

12682.1. This section does not apply to a policy that primarily or solely supplements Medicare. The commissioner may adopt rules consistent with federal law to govern the discontinuance and replacement of plan policies that primarily or solely supplement Medicare.

(a) (1) Every group policy entered into, amended, or renewed on or after September 1, 2003, that provides hospital, medical, or surgical expense benefits for employees or members shall provide that an employee or member whose coverage under the group policy has been terminated by the employer shall be entitled to convert to nongroup membership, without evidence of insurability, subject to the terms and conditions of this section.

(2) If the health insurer provides coverage under an individual health insurance policy, other than conversion coverage under this part, it shall offer one of the two health insurance policies that the insurer is required to offer to a federally eligible defined individual pursuant to Section 10785. The health insurer shall provide this coverage at the same rate established under Section 10901.3 for a federally eligible defined individual.

(3) If the health insurer does not provide coverage under an individual health insurance policy, it shall offer a health benefit plan contract that is the same as a health benefit contract offered to a federally eligible defined individual pursuant to Section 1366.35. The health insurer shall offer the most popular preferred provider organization plan that has the greatest number of enrolled individuals for its type of plan as of January 1 of the prior year, as reported by plans by January 31, 2003, and annually thereafter, that provide coverage under an individual health care service plan contract to the department or the Department of Managed Health Care. A health insurer subject to this paragraph plan shall provide this coverage with the same cost-sharing terms and at the same premium as a health care service plan providing coverage to that individual under an individual health care service plan contract pursuant to Section 1399.805. The health insurer shall file the health benefit plan contract it will offer, including the premium it will charge and the cost-sharing terms of the contract, with the Department of Insurance.

(b) A conversion policy shall not be required to be made available to an employee or insured if termination of his or her coverage under the group policy occurred for any of the following reasons:

(1) The group policy terminated or an employer's participation terminated and the insurance is replaced by similar coverage under another group policy within 15 days of the date of termination of the group coverage or the employer's participation.

(2) The employee or insured failed to pay amounts due the health insurer.

(3) The employee or insured was terminated by the health insurer from the policy for good cause.

(4) The employee or insured knowingly furnished incorrect information or otherwise improperly obtained the benefits of the policy.

(5) The employer's hospital, medical, or surgical expense benefit program is self-insured.

(c) A conversion policy is not required to be issued to any person if any of the following facts are present:

(1) The person is covered by or is eligible for benefits under Title XVIII of the United States Social Security Act.

(2) The person is covered by or is eligible for hospital, medical, or surgical benefits under any arrangement of coverage for individuals in a group, whether insured or self-insured.

(3) The person is covered for similar benefits by an individual policy or contract.

(4) The person has not been continuously covered during the three-month period immediately preceding that person's termination of coverage.

(d) Benefits of a conversion policy shall meet the requirements for benefits under this chapter.

(e) Unless waived in writing by the insurer, written application and first premium payment for the conversion policy shall be made not later than 63 days after termination from the group. A conversion policy shall be issued by the insurer which shall be effective on the day following the termination of coverage under the group contract if the written application and the first premium payment for the conversion contract are made to the insurer not later than 63 days after the termination of coverage, unless these requirements are waived in writing by the insurer.

(f) The conversion policy shall cover the employee or insured and his or her dependents who were covered under the group policy on the date of their termination from the group.

(g) A notification of the availability of the conversion coverage shall be included in each evidence of coverage or other legally required document explaining coverage. However, it shall be the sole responsibility of the employer to notify its employees of the availability, terms, and conditions of the conversion coverage which responsibility shall be satisfied by notification within 15 days of termination of group coverage. Group coverage shall not be deemed terminated until the expiration of any continuation of the group coverage. For purposes of this subdivision, the employer shall not be deemed the agent of the insurer for purposes of notification of the availability, terms, and conditions of conversion coverage.

(h) As used in this section, ''hospital, medical, or surgical benefits under state or federal law'' do not include benefits under Chapter 7

(commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Title XIX of the United States Social Security Act.

(i) This section shall become operative on September 1, 2003.

SEC. 15. Section 12711 of the Insurance Code is amended to read:

12711. The board shall have the authority:

(a) To determine the eligibility of applicants.

(b) To determine the major risk medical coverage to be provided program subscribers.

(c) To research and assess the needs of persons not adequately covered by existing private and public health care delivery systems and promote means of assuring the availability of adequate health care services.

(d) To approve subscriber contributions, and plan rates, and establish program contribution amounts.

(e) To provide major risk medical coverage for subscribers or to contract with a participating health plan or plans to provide or administer major risk medical coverage for subscribers.

(f) To authorize expenditures from the fund to pay program expenses which exceed subscriber contributions.

(g) To contract for administration of the program or any portion thereof with any public agency, including any agency of state government, or with any private entity.

(h) To issue rules and regulations to carry out the purposes of this part.

(i) To authorize expenditures from the fund or from other moneys appropriated in the annual Budget Act for purposes relating to Section 10127.15 of this code or Section 1373.62 of the Health and Safety Code.

(j) To exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it under this part.

SEC. 16. Section 12712.5 is added to the Insurance Code, to read:

12712.5. (a) For the period commencing on September 1, 2003, to September 1, 2007, inclusive, the board shall maintain the major risk medical coverage benefits offered by participating health plans in the program at a level that is not less than the actuarial equivalent of the minimum benefits available within the program on September 1, 2002.

(b) This section shall become operative on September 1, 2003, and shall become inoperative on September 1, 2007. As of January 1, 2008, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which the section becomes inoperative and is repealed.

SEC. 17. Section 12725 of the Insurance Code is amended to read:

12725. (a) Each resident of the state meeting the eligibility criteria of this section and who is unable to secure adequate private health

coverage is eligible to apply for major risk medical coverage through the program. For these purposes, ''resident'' includes a member of a federally recognized California Indian tribe.

(b) To be eligible for enrollment in the program, an applicant shall have been rejected for health care coverage by at least one private health plan. An applicant shall be deemed to have been rejected if the only private health coverage that the applicant could secure would do one of the following:

(1) Impose substantial waivers that the program determines would leave a subscriber without adequate coverage for medically necessary services.

(2) Afford limited coverage that the program determines would leave the subscriber without adequate coverage for medically necessary services.

(3) Afford coverage only at an excessive price, which the board determines is significantly above standard average individual coverage rates.

(c) Rejection for policies or certificates of specified disease or policies or certificates of hospital confinement indemnity, as described in Section 10198.61, shall not be deemed to be rejection for the purposes of eligibility for enrollment.

(d) The board may permit dependents of eligible subscribers to enroll in major risk medical coverage through the program if the board determines the enrollment can be carried out in an actuarially and administratively sound manner.

(e) Notwithstanding the provisions of this section, the board shall by regulation prescribe a period of time during which a resident is ineligible to apply for major risk medical coverage through the program if the resident either voluntarily disenrolls from, or was terminated for nonpayment of the premium from, a private health plan after enrolling in that private health plan pursuant to either Section 10127.15 or Section 1373.62 of the Health and Safety Code.

(f) For the period commencing September 1, 2003, to September 1, 2007, inclusive, subscribers and their dependents receiving major risk coverage through the program may receive that coverage for no more than 36 consecutive months. Ninety days before a subscriber or dependent's eligibility ceases pursuant to this subdivision, the board shall provide the subscriber and any dependents with written notice of the termination date and written information concerning the right to purchase a standard benefit plan from any health care service plan or health insurer participating in the individual insurance market pursuant to Section 10127.15 or Section 1373.62 of the Health and Safety Code. This subdivision shall become inoperative on September 1, 2007.

SEC. 18. Section 12739 of the Insurance Code is amended to read:

12739. (a) There is hereby created in the State Treasury a special fund known as the Major Risk Medical Insurance Fund that is, notwithstanding Section 13340 of the Government Code, continuously appropriated to the board for the purposes specified in Sections 10127.15 and 12739.1 and Section 1373.62 of the Health and Safety Code.

(b) After June 30, 1991, the following amounts shall be deposited annually in the Major Risk Medical Insurance Fund:

(1) Eighteen million dollars ($18,000,000) from the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund.

(2) Eleven million dollars ($11,000,000) from the Physician Services Account in the Cigarette and Tobacco Products Surtax Fund.

(3) One million dollars ($1,000,000) from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund.

SEC. 19. Section 12739.1 of the Insurance Code is amended to read:

12739.1. Except as provided in Section 12739.2, the board shall authorize the expenditure of money in the fund to cover program expenses, including program expenses that exceed subscriber contributions, and to cover expenses relating to Section 10127.15, or to Section 1373.62 of the Health and Safety Code. The board shall determine the amount of funds expended for each of these purposes, taking into consideration the requirements of this part, Section 10127.15, and Section 1373.62 of the Health and Safety Code.

SEC. 20. Section 12739.2 of the Insurance Code is amended to read:

12739.2. From money appropriated by the Legislature to the fund, the board may expend sufficient funds to carry out the purposes of this part and of Section 10127.15 and Section 1373.62 of the Health and Safety Code.

However, the state shall not be liable beyond the assets of the fund for any obligations incurred, or liabilities sustained, in the operation of the California Major Risk Medical Insurance Program or for the expenditures described in Section 10127.15 and Section 1373.62 of the Health and Safety Code.

SEC. 21. The Managed Risk Medical Insurance Board, the Department of Managed Health Care, and the Department of Insurance shall have the authority to issue rules and to adopt regulations to implement the provisions of this act and to exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it under this act. Until July 1, 2004, any rules and regulations issued by the board pertaining to the implementation of this act may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption and one readoption of these

regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare and shall be exempt from review by the Office of Administrative Law. Any 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. The regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 22. (a) The Legislative Analyst shall study and evaluate the provisions of this act, including the pilot program described in Section 1373.62 of the Health and Safety Code and Section 10127.15 of the Insurance Code, to determine their effectiveness in providing coverage to individuals who are otherwise unable to obtain health benefits and the act's impact on the accessibility and affordability of health benefits. The evaluation shall include, based on information provided by the Managed Risk Medical Insurance Board, health care service plans and health insurers, all of the following:

(1) The number, age, and gender of individuals receiving coverage under the California Major Risk Medical Insurance Program pursuant to the provisions of this act by calendar year compared with the enrollment in the program in the four calendar years prior to the enactment of this act.

(2) The number, age, and gender of individuals receiving coverage under the provisions of this act after leaving the California Major Risk Medical Insurance Program.

(3) The number, age, and gender of individuals receiving conversion coverage under the provisions of this act.

(4) The number, age, and gender of individuals receiving Cal-COBRA coverage under the provisions of this act.

(5) The number, age, and gender of individuals receiving coverage under the provisions of the Health Insurance Portability and Accountability Act of 1996 and the provisions of Article 4.6 (commencing with Section 1366.35) and Article 10.5 (commencing with Section 1399.801) of Chapter 2.2 of Division 2 of the Health and Safety Code, and the provisions of Chapter 8.5 (commencing with Section 10785) and Chapter 9.5 (commencing with Section 10900) of Part 2 of Division 2 of the Insurance Code, and Section 10844 of the Insurance Code.

(6) Whether the cost of coverage under the California Major Risk Medical Insurance Program and for individuals leaving the program for guaranteed issue coverage should be changed.

(7) Whether the level of benefits provided under the California Major Risk Medical Insurance Program and for individuals leaving the program for guaranteed issue coverage should be changed.

(8) The effect of this act on the affordability and accessibility of health insurance in the health insurance market for individuals receiving coverage under this act.

(b) The Legislative Analyst shall report the results of the study and evaluation to the appropriate policy and fiscal committees of the Legislature on or before October 30, 2005, and shall include in the report any recommendations for changes to the pilot program, including whether it should continue beyond its designated termination date.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 795

An act to add and repeal Chapter 7 (commencing with Section 127660) of Part 2 of Division 107 of the Health and Safety Code, relating to health care.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. The intent of the Legislature in enacting this act is:

(a) To promote the public interest to assure that all residents of this state have reasonable access to quality health care.

(b) To analyze the clinical efficacy and cost-effectiveness of legislative proposals for expanded health care benefits using clear criteria for evaluating each proposal.

(c) To facilitate the provision of quality, cost-effective health services by providing current, accurate data and information to the Governor and the Legislature for the purpose of determining health-related programs and policies in connection with proposed legislation.

(d) That the University of California publish a written analysis of the clinical efficacy and cost-effectiveness of each legislative proposal, including supporting expert data.

(e) The Legislature finds that there is an increasing number of proposals that mandate that certain health benefits be provided by health care service plans and health insurers as components of individual and group contracts. The Legislature further finds that many of these would potentially result in better health outcomes that would be in the public interest. However, the Legislature also recognizes that mandated benefits may contribute to the cost and affordability of health insurance premiums. Therefore, it is the intent of the Legislature that the University of California conduct a systematic review of proposed mandated or mandatorily offered health benefit mandates. This review will assist the Legislature in determining whether mandating a particular coverage is in the public interest.

SEC. 2. Chapter 7 (commencing with Section 127660) is added to Part 2 of Division 107 of the Health and Safety Code, to read:

CHAPTER 7. UNIVERSITY OF CALIFORNIA ASSESSMENT ON LEGISLATION PROPOSING MANDATED BENEFITS OR SERVICES

127660. (a) The Legislature hereby requests the University of California to assess legislation proposing a mandated benefit or service, as defined in subdivision (d), and to prepare a written analysis with relevant data on the following:

(1) Public health impacts, including, but not limited to, all of the following:

(A) The impact on the health of the community, including the reduction of communicable disease and the benefits of prevention such as those provided by childhood immunizations and prenatal care.

(B) The impact on the health of the community, including diseases and conditions where gender and racial disparities in outcomes are established in peer-reviewed scientific and medical literature.

(C) The extent to which the proposed service reduces premature death and the economic loss associated with disease.

(2) Medical impacts, including, but not limited to, all of the following:

(A) The extent to which the benefit or service is generally recognized by the medical community as being effective in the screening, diagnosis, or treatment of a condition or disease, as demonstrated by a review of scientific and peer reviewed medical literature.

(B) The extent to which the benefit or service is generally available and utilized by treating physicians.

(C) The contribution of the benefit or service to the health status of the population, including the results of any research demonstrating the efficacy of the benefit or service compared to alternatives, including not providing the benefit or service.

(D) The extent to which the proposed services do not diminish or eliminate access to currently available health care services.

(3) Financial impacts, including, but not limited to, all of the following:

(A) The extent to which the coverage will increase or decrease the benefit or cost of the service.

(B) The extent to which the coverage will increase the utilization of the benefit or service, or will be a substitute for, or affect the cost of, alternative services.

(C) The extent to which the coverage will increase or decrease the administrative expenses of health care service plans and health insurers and the premium and expenses of subscribers, enrollees, and policyholders.

(D) The impact of this coverage on the total cost of health care.

(E) The potential cost or savings to the private sector, including the impact on small employers as defined in paragraph (1) of subdivision (l) of Section 1357, the Public Employees' Retirement System, other retirement systems funded by the state or by a local government, individuals purchasing individual health insurance, and publicly funded state health insurance programs, including the Medi-Cal program and the Healthy Families Program.

(F) The extent to which costs resulting from lack of coverage are shifted to other payers, including both public and private entities.

(G) The extent to which the proposed benefit or service does not diminish or eliminate access to currently available health care services.

(H) The extent to which the benefit or service is generally utilized by a significant portion of the population.

(I) The extent to which health care coverage for the benefit or service is already generally available.

(J) The level of public demand for health care coverage for the benefit or service, including the level of interest of collective bargaining agents in negotiating privately for inclusion of this coverage in group contracts, and the extent to which the mandated benefit or service is covered by self-funded employer groups.

(K) In assessing and preparing a written analysis of the financial impact of a mandated benefit pursuant to this paragraph, the Legislature requests the University of California to use a certified actuary or other person with relevant knowledge and expertise to determine the financial impact.

(b) The Legislature requests that the University of California provide every analysis to the appropriate policy and fiscal committees of the Legislature not later than 60 days after receiving a request made pursuant to Section 127661. In addition, the Legislature requests that the university post every analysis on the Internet and make every analysis available to the public upon request.

(c) The Legislature requests that the University of California first analyze any of the following benefit mandates proposed in the 2001–02 Legislative Session, if introduced or proposed to be introduced at the start of the 2003–04 Legislative Session, and a request for an analysis is made by the author or the relevant policy committee chair:

(1) Bone marrow testing for prospective donors.

(2) Infertility treatment.

(3) Specified ovarian cancer screening and diagnostic tests.

(4) Medically necessary prescription drugs.

(5) Wigs for patients who have undergone chemotherapy.

(6) Bone mineral density testing for osteoporosis.

(7) Hearing aids.

(8) Hyperbaric oxygen therapy for an acute or chronic brain condition.

(9) Substance-related disorders.

(10) Genetic disease tests for certain populations.

(d) As used in this section, ''mandated benefit or service'' means a proposed statute that requires a health care service plan or a health insurer, or both, to do any of the following:

(1) Permit a person insured or covered under the policy or contract to obtain health care treatment or services from a particular type of health care provider.

(2) Offer or provide coverage for the screening, diagnosis, or treatment of a particular disease or condition.

(3) Offer or provide coverage of a particular type of health care treatment or service, or of medical equipment, medical supplies, or drugs used in connection with a health care treatment or service.

127661. A request pursuant to this chapter may be made by an appropriate policy or fiscal committee chairperson, the Speaker of the Assembly, or the President pro Tempore of the Senate, who shall forward the introduced bill to the University of California for assessment.

127662. (a) In order to effectively support the University of California and its work in implementing this chapter, there is hereby established in the State Treasury, the Health Care Benefits Fund. The university's work in providing the bill analyses shall be supported from the fund.

(b) For fiscal years 2002–03 to 2005–06, inclusive, each health care service plan, except a specialized health care service plan, and each

health insurer, as defined in Section 106 of the Insurance Code, shall be assessed an annual fee in an amount determined through regulation. The amount of the fee shall be determined by the Department of Managed Health Care and the Department of Insurance in consultation with the university and shall be limited to the amount necessary to fund the actual and necessary expenses of the university and its work in implementing this chapter. The total annual assessment on health care service plans and health insurers shall not exceed two million dollars ($2,000,000).

(c) The Department of Managed Health Care and the Department of Insurance, in coordination with the university, shall assess the health care service plans and health insurers, respectively, for the costs required to fund the university's activities pursuant to subdivision (b).

(1) Health care service plans shall be notified of the assessment on or before June 15 of each year with the annual assessment notice issued pursuant to Section 1356. The assessment pursuant to this section is separate and independent of the assessments in Section 1356.

(2) Health insurers shall be noticed of the assessment in accordance with the notice for the annual assessment or quarterly premium tax revenues.

(3) The assessed fees required pursuant to subdivision (b) shall be paid on an annual basis no later than August 1 of each year. The Department of Managed Health Care and the Department of Insurance shall forward the assessed fees to the Controller for deposit in the Health Care Benefits Fund immediately following their receipt.

(4) ''Health insurance,'' as used in this subdivision, does not include Medicare supplement, vision-only, dental-only, or CHAMPUS supplement insurance, or hospital indemnity, accident-only, or specified disease insurance that does not pay benefits on a fixed benefit, cash payment only basis.

127663. In order to avoid conflicts of interest, the Legislature requests the University of California to develop and implement conflict-of-interest provisions to prohibit a person from participating in any analysis in which the person knows or has reason to know he or she has a material financial interest, including, but not limited to, a person who has a consulting or other agreement with a person or organization that would be affected by the legislation.

127664. The Legislature requests the University of California to submit a report to the Governor and the Legislature no later than January 1, 2006, regarding the implementation of this chapter. Initial startup funding for the university shall be loaned to the Health Care Benefits Fund from the Managed Care Fund created pursuant to Section 1341.4 and the Insurance Fund created pursuant to Section 12975.8 of the Insurance Code. The Health Care Benefits Fund shall reimburse the Managed Care Fund and the Insurance Fund by September 30, 2003,

from the 2003–04 fiscal year assessments received under subdivision (b) of Section 127662. The annual fee for the 2002–03 fiscal year shall be collected at the time the 2003–04 fiscal year assessments are made.

127665. This chapter shall remain in effect until January 1, 2007, and shall be repealed as of that date, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends that date.

CHAPTER 796

An act to amend Sections 1368, 1368.01, and 1368.02 of, and to add Section 1368.015 to, the Health and Safety Code, relating to health care.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. 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) (A) Provide for a written acknowledgment within five calendar days of the receipt of a grievance, except as noted in subparagraph (B). The acknowledgment shall advise the complainant of the following:

(i) That the grievance has been received.

(ii) The date of receipt.

(iii) The name of the plan representative and the telephone number and address of the plan representative who may be contacted about the grievance.

(B) Grievances received by telephone, by facsimile, by e-mail, or online through the plan's Web site pursuant to Section 1368.015, that are not coverage disputes, disputed health care services involving medical necessity, or experimental or investigational treatment and that are resolved by the next business day following receipt are exempt from the requirements of subparagraph (A) and paragraph (5). The plan shall maintain a log of all these grievances. The log shall be periodically reviewed by the plan and shall include the following information for each complaint:

(i) The date of the call.

(ii) The name of the complainant.

(iii) The complainant's member identification number.

(iv) The nature of the grievance.

(v) The nature of the resolution.

(vi) The name of the plan representative who took the call and resolved the grievance.

(5) 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.

(6) 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 to 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 do either of the following:

(A) Order the plan to promptly offer and provide those health care services to the enrollee.

(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. 2. Section 1368.01 of the Health and Safety Code is amended to read:

1368.01. (a) The grievance system shall require the plan to resolve grievances within 30 days.

(b) The grievance system shall include a requirement for expedited plan review of grievances for cases involving an imminent and serious threat to the health of the patient, including, but not limited to, severe pain, potential loss of life, limb, or major bodily function. When the plan has notice of a case requiring expedited review, the grievance system shall require the plan to immediately inform enrollees and subscribers in writing of their right to notify the department of the grievance. The grievance system shall also require the plan to provide enrollees, subscribers, and the department with a written statement on the disposition or pending status of the grievance no later than three days from receipt of the grievance. Paragraph (4) of subdivision (a) of Section 1368 shall not apply to grievances handled pursuant to this section.

SEC. 3. Section 1368.015 is added to the Health and Safety Code, to read:

1368.015. (a) Effective July 1, 2003, every plan with a Web site shall provide an online form through its Web site that subscribers or enrollees can use to file with the plan a grievance, as described in Section 1368, online.

(b) The Web site shall have an easily accessible online grievance submission procedure that shall be accessible through a hyperlink on the Web site's home page or member services portal clearly identified as ''GRIEVANCE FORM.'' All information submitted through this process shall be processed through a secure server.

(c) The online grievance submission process shall be approved by the Department of Managed Health Care and shall meet the following requirements:

(1) It shall utilize an online grievance form in HTML format that allows the user to enter required information directly into the form.

(2) It shall allow the subscriber or enrollee to preview the grievance that will be submitted, including the opportunity to edit the form prior to submittal.

(3) It shall include a current hyperlink to the California Department of Managed Health Care Web site, and shall include a statement in a legible font that is clearly distinguishable from other content on the page and is in a legible size and type, containing the following language:

''The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a grievance against your health plan, you should first telephone your health plan at (insert health plan's telephone number) and use your health plan's grievance process before contacting the department. Utilizing this grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your health plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are experimental or investigational in nature and payment disputes for emergency or urgent medical services. The department also has a toll-free telephone number (1-888-HMO-2219) and a TDD line (1-877-688-9891) for the hearing and speech impaired. The department's Internet Web site http://www.hmohelp.ca.gov has complaint forms, IMR application forms and instructions online.''

The plan shall update the URL, hyperlink, and telephone numbers in this statement as necessary.

(d) A plan that utilizes a hardware system that does not have the minimum system requirements to support the software necessary to meet the requirements of this section shall be exempt from these requirements until January 1, 2006.

(e) For purposes of this section, the following terms shall have the following meanings:

(1) ''Homepage'' means the first page or welcome page of a Web site that serves as a starting point for navigation of the Web site.

(2) ''HTML'' means Hypertext Markup Language, the authoring language used to create documents on the World Wide Web, which defines the structure and layout of a Web document.

(3) ''Hyperlink'' means a special HTML code that allows text or graphics to serve as a link that, when clicked on, takes a user to another place in the same document, to another document, or to another Web site or Web page.

(4) ''Member services portal'' means the first page or welcome page of a Web site that can be reached directly by the Web site's homepage and

that serves as a starting point for a navigation of member services available on the Web site.

(5) ''Secure server'' means an Internet connection to a Web site that encrypts and decrypts transmissions, protecting them against third-party tampering and allowing for the secure transfer of data.

(6) ''URL'' or ''Uniform Resource Locator'' means the address of a Web site or the location of a resource on the World Wide Web that allows a browser to locate and retrieve the Web site or the resource.

(7) ''Web site'' means a site or location on the World Wide Web.

(f) Every health care service plan, except a plan that primarily serves Medi-Cal or Healthy Families enrollees, shall maintain a Web site.

SEC. 4. Section 1368.02 of the Health and Safety Code is amended to read:

1368.02. (a) The director shall establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the director.

(b) Every health care service plan shall publish the department's toll-free telephone number, the department's TDD line for the hearing and speech impaired, the plan's telephone number, and the department's Internet address, on every plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan, including any written communications to an enrollee that offer the enrollee the opportunity to participate in the grievance process of the plan and on all written responses to grievances. The department's telephone number, the department's TDD line, the plan's telephone number, and the department's Internet address shall be displayed by the plan in each of these documents in 12-point boldface type in the following regular type statement:

''The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a grievance against your health plan, you should first telephone your health plan at (insert health plan's telephone number) and use your health plan's grievance process before contacting the department. Utilizing this grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your health plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are

experimental or investigational in nature and payment disputes for emergency or urgent medical services. The department also has a toll-free telephone number (1-888-HMO-2219) and a TDD line (1-877-688-9891) for the hearing and speech impaired. The department's Internet Web site http://www.hmohelp.ca.gov has complaint forms, IMR application forms and instructions online.''

(c) (1) There is within the department an Office of Patient Advocate, which shall be known and may be cited as the Gallegos-Rosenthal Patient Advocate Program, to represent the interests of enrollees served by health care service plans regulated by the department. The goal of the office shall be to help enrollees secure health care services to which they are entitled under the laws administered by the department.

(2) The office shall be headed by a patient advocate recommended to the Governor by the Secretary of the Business, Transportation and Housing Agency. The patient advocate shall be appointed by and serve at the pleasure of the Governor.

(3) The duties of the office shall be determined by the secretary, in consultation with the director, and shall include, but not be limited to:

(A) Developing educational and informational guides for consumers describing enrollee rights and responsibilities, and informing enrollees on effective ways to exercise their rights to secure health care services. The guides shall be easy to read and understand, available in English and other languages, and shall be made available to the public by the department, including access on the department's Internet Web site and through public outreach and educational programs.

(B) Compiling an annual publication, to be made available on the department's Internet Web site, of a quality of care report card including but not limited to health care service plans.

(C) Rendering advice and assistance to enrollees regarding procedures, rights, and responsibilities related to the use of health care service plan grievance systems, the department's system for reviewing unresolved grievances, and the independent review process.

(D) Making referrals within the department regarding studies, investigations, audits, or enforcement that may be appropriate to protect the interests of enrollees.

(E) Coordinating and working with other government and nongovernment patient assistance programs and health care ombudsprograms.

(4) The director, in consultation with the patient advocate, shall provide for the assignment of personnel to the office. The department may employ or contract with experts when necessary to carry out functions of the office. The annual budget for the office shall be separately identified in the annual budget request of the department.

(5) The office shall have access to department records including, but not limited to, information related to health care service plan audits, surveys, and enrollee grievances. The department shall assist the office in compelling the production and disclosure of any information the office deems necessary to perform its duties, from entities regulated by the department, if the information is determined by the department's legal counsel to be subject, under existing law, to production or disclosure to the department.

(6) The patient advocate shall annually issue a public report on the activities of the office, and shall appear before the appropriate policy and fiscal committees of the Senate and Assembly, if requested, to report and make recommendations on the activities of the office.

SEC. 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 797

An act to amend Sections 1342 and 1367 of, and to add Section 1367.03 to, the Health and Safety Code, and to amend Section 10133.5 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. It is the intent of the Legislature to ensure that all enrollees of health care service plans and health insurers have timely access to health care. The Legislature finds and declares that timely access to health care is essential to safe and appropriate health care and that lack of timely access to health care may be an indicator of other systemic problems such as lack of adequate provider panels, fiscal distress of a health care service plan or a health care provider, or shifts in the health needs of a covered population. It is the further intent of the Legislature in enacting this section that the department shall incorporate the standards developed under this section in licensing, survey, enforcement, and other processes intended to protect the consumer.

SEC. 2. Section 1342 of the Health and Safety Code is amended to read:

1342. It is the intent and purpose of the Legislature to promote the delivery and the quality of health and medical care to the people of the State of California who enroll in, or subscribe for the services rendered by, a health care service plan or specialized health care service plan by accomplishing all of the following:

(a) Ensuring the continued role of the professional as the determiner of the patient's health needs which fosters the traditional relationship of trust and confidence between the patient and the professional.

(b) Ensuring that subscribers and enrollees are educated and informed of the benefits and services available in order to enable a rational consumer choice in the marketplace.

(c) Prosecuting malefactors who make fraudulent solicitations or who use deceptive methods, misrepresentations, or practices which are inimical to the general purpose of enabling a rational choice for the consumer public.

(d) Helping to ensure the best possible health care for the public at the lowest possible cost by transferring the financial risk of health care from patients to providers.

(e) Promoting effective representation of the interests of subscribers and enrollees.

(f) Ensuring the financial stability thereof by means of proper regulatory procedures.

(g) Ensuring that subscribers and enrollees receive available and accessible health and medical services rendered in a manner providing continuity of care.

(h) Ensuring that subscribers and enrollees have their grievances expeditiously and thoroughly reviewed by the department.

SEC. 3. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan and, if applicable, each specialized health care service plan shall meet the following requirements:

(a) All facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to each enrollee consistent with good professional practice. To the extent feasible, the plan shall make all services readily accessible to all enrollees consistent with Section 1367.03.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 28 of the California Code of Regulations.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) (1) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(2) Each health care service plan shall ensure that a dispute resolution mechanism is accessible to noncontracting providers for the purpose of resolving billing and claims disputes.

(3) On and after January 1, 2002, each health care service plan shall annually submit a report to the department regarding its dispute resolution mechanism. The report shall include information on the number of providers who utilized the dispute resolution mechanism and a summary of the disposition of those disputes.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision

(b) of Section 1345, except that the director may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The director shall by rule define the scope of each basic health care service which health care service plans shall be required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(j) No health care service plan shall require registration under the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.) as a condition for participation by an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 of the Business and Professions Code.

Nothing in this section shall be construed to permit the director to establish the rates charged subscribers and enrollees for contractual health care services.

The director's enforcement of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

The obligation of the plan to comply with this section shall not be waived when the plan delegates any services that it is required to perform to its medical groups, independent practice associations, or other contracting entities.

SEC. 4. Section 1367.03 is added to the Health and Safety Code, to read:

1367.03. (a) Not later than January 1, 2004, the department shall develop and adopt regulations to ensure that enrollees have access to needed health care services in a timely manner. In developing these regulations, the department shall develop indicators of timeliness of access to care and, in so doing, shall consider the following as indicators of timeliness of access to care:

(1) Waiting times for appointments with physicians, including primary care and specialty physicians.

(2) Timeliness of care in an episode of illness, including the timeliness of referrals and obtaining other services, if needed.

(3) Waiting time to speak to a physician, registered nurse, or other qualified health professional acting within his or her scope of practice who is trained to screen or triage an enrollee who may need care.

(b) In developing these standards for timeliness of access, the department shall consider the following:

(1) Clinical appropriateness.
(2) The nature of the specialty.
(3) The urgency of care.
(4) The requirements of other provisions of law, including Section 1367.01 governing utilization review, that may affect timeliness of access.

(c) The department may adopt standards other than the time elapsed between the time an enrollee seeks health care and obtains care. If the department chooses a standard other than the time elapsed between the time an enrollee first seeks health care and obtains it, the department shall demonstrate why that standard is more appropriate. In developing these standards, the department shall consider the nature of the plan network.

(d) The department shall review and adopt standards, as needed, concerning the availability of primary care physicians, specialty physicians, hospital care, and other health care, so that consumers have timely access to care. In so doing, the department shall consider the nature of physician practices, including individual and group practices as well as the nature of the plan network. The department shall also consider various circumstances affecting the delivery of care, including urgent care, care provided on the same day, and requests for specific providers. If the department finds that health care service plans and health care providers have difficulty meeting these standards, the department may make recommendations to the Assembly Committee on Health and the Senate Committee on Insurance of the Legislature pursuant to subdivision (i).

(e) In developing standards under subdivision (a), the department shall consider requirements under federal law, requirements under other state programs, standards adopted by other states, nationally recognized accrediting organizations, and professional associations. The department shall further consider the needs of rural areas, specifically those in which health facilities are more than 30 miles apart and any requirements imposed by the State Department of Health Services on health care service plans that contract with the State Department of Health Services to provide Medi-Cal managed care.

(f) The department shall consult with the Clinical Advisory Panel and shall seek public input from a wide range of interested parties through the Advisory Committee on Managed Health Care.

(g) (1) Contracts between health care service plans and health care providers shall assure compliance with the standards developed under this section. These contracts shall require reporting by health care providers to health care service plans and by health care service plans to the department to ensure compliance with the standards.

(2) Health care service plans shall report annually to the department on compliance with the standards in a manner specified by the department. The reported information shall allow consumers to compare the performance of plans and their contracting providers in complying with the standards, as well as changes in the compliance of plans with these standards.

(h) (1) When evaluating compliance with the standards, the department shall focus more upon patterns of noncompliance rather than isolated episodes of noncompliance.

(2) The director may investigate and take enforcement action against plans regarding noncompliance with the requirements of this section. Where substantial harm to an enrollee has occurred as a result of plan noncompliance, the director may, by order, assess administrative penalties subject to appropriate notice of, and the opportunity for, a hearing in accordance with Section 1397. The plan may provide to the director, and the director may consider, information regarding the plan's overall compliance with the requirements of this section. 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.

(3) 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:

(A) Repeated failure to act promptly and reasonably to assure timely access to care consistent with this chapter.

(B) Repeated failure to act promptly and reasonably to require contracting providers to assure timely access that the plan is required to perform under this chapter and that have been delegated by the plan to the contracting provider 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.

(4) The administrative penalties authorized pursuant to this section shall be paid to the State Managed Care Fund.

(i) The department shall work with the patient advocate to assure that the quality of care report card incorporates information provided pursuant to subdivision (g) regarding the degree to which health care

service plans and health care providers comply with the requirements for timely access to care.

(j) The department shall report to the Assembly Committee on Health and the Senate Committee on Insurance of the Legislature on March 1, 2003, and on March 1, 2004, regarding the progress toward the implementation of this section.

(k) Every three years, the department shall review information regarding compliance with the standards developed under this section and shall make recommendations for changes that further protect enrollees.

SEC. 5. Section 10133.5 of the Insurance Code is amended to read:

10133.5. (a) The commissioner shall, on or before January 1, 2004, promulgate regulations applicable to health insurers which contract with providers for alternative rates pursuant to Section 10133 to ensure that insureds have the opportunity to access needed health care services in a timely manner.

(b) These regulations shall be designed to assure accessibility of provider services in a timely manner to individuals comprising the insured or contracted group, pursuant to benefits covered under the policy or contract. The regulations shall insure:

1. Adequacy of number and locations of institutional facilities and professional providers, and consultants in relationship to the size and location of the insured group and that the services offered are available at reasonable times.

2. Adequacy of number of professional providers, and license classifications of such providers, in relationship to the projected demands for services covered under the group policy or plan. The department shall consider the nature of the specialty in determining the adequacy of professional providers.

3. The policy or contract is not inconsistent with standards of good health care and clinically appropriate care.

4. All contracts including contracts with providers, and other persons furnishing services, or facilities shall be fair and reasonable.

(c) In developing standards under subdivision (a), the department shall also consider requirements under federal law; requirements under other state programs and law, including utilization review; and standards adopted by other states, national accrediting organizations and professional associations. The department shall further consider the accessability to provider services in rural areas.

(d) In designing the regulations the commissioner shall consider the regulations in Title 28, of the California Administrative Code of Regulations, commencing with Section 1300.67.2, which are applicable to Knox-Keene plans, and all other relevant guidelines in an effort to accomplish maximum accessibility within a cost efficient system of

indemnification. The department shall consult with the Department of Managed Health Care concerning regulations developed by that department pursuant to Section 1367.03 of the Health and Safety Code and shall seek public input from a wide range of interested parties.

(e) Health insurers that contract for alternative rates of payment with providers shall report annually on complaints received by the insurer regarding timely access to care. The department shall review these complaints and any complaints received by the department regarding timeliness of care and shall make public this information.

(f) The department shall report to the Assembly Committee on Health and the Senate Committee on Insurance of the Legislature on March 1, 2003, and on March 1, 2004, regarding the progress towards the implementation of this section.

(g) Every three years, the commissioner shall review the latest version of the regulations adopted pursuant to subdivision (a) and shall determine if the regulations should be updated to further the intent of this section.

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 798

An act to amend Section 1375.5 of, and to add Section 1375.8 to, the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 1375.5 of the Health and Safety Code is amended to read:

1375.5. No contract between a risk-bearing organization and a health care service plan that is issued, amended, delivered, or renewed in this state on or after July 1, 2000, shall include any provision that requires the risk-bearing organization to be at financial risk for the provision of health care services, unless the provision has first been

negotiated and agreed to between the health care service plan and the risk-bearing organization.

This section shall not prevent a risk-bearing organization from accepting the financial risk pursuant to a contract that meets the requirements of Section 1375.4.

SEC. 2. Section 1375.8 is added to the Health and Safety Code, to read:

1375.8. (a) The Legislature finds the following:

(1) Because of the nature and cost of certain medical items, the financial risk of these items is better retained by the health care service plan than by a health care service provider.

(2) Allowing a health care service provider to take the financial risk for the items described in this section only if the provider specifically requests in writing to assume that risk, will assist in maintaining patient access to health care service providers.

(b) (1) Notwithstanding Section 1375.5, no health care service plan contract that is issued, amended, delivered, or renewed in this state on or after July 1, 2003, shall require or allow a health care service provider to assume or be at any financial risk for any item described in subparagraphs (A) to (F), inclusive, of paragraph (2) when covered under the applicable plan contract and administered in the office of a physician and surgeon or prescribed by a physician and surgeon for self-administration by the patient. ''Self-administration,'' for the purposes of this section, means an injectable medication that can be safely given intramuscularly, or in the muscle, or subcutaneously, or under the skin, by the patient or his or her family member.

(2) The items described in subparagraphs (A) to (F), inclusive, shall, instead, be reimbursed on a fee-for-service basis at the negotiated contract rate or through an alternate funding mechanism mutually agreed to by the health care service plan and the health care service provider, subject to any applicable copayment or deductible, by the health care service plan.

(A) Injectable chemotherapeutic medications and injectable adjunct pharmaceutical therapies for side effects.

(B) Injectable medications or blood products used for hemophilia.

(C) Injectable medications related to transplant services.

(D) Adult vaccines.

(E) Self-injectable medications.

(F) Other injectable medication or medication in an implantable dosage form costing more than two hundred fifty dollars ($250) per dose.

(3) Notwithstanding the provisions of paragraphs (1) and (2), a health care service provider may assume financial risk for the items described in subparagraphs (A) to (F), inclusive, of paragraph (2) after making the

request in writing at the time of negotiating an initial contract or renewing a contract with a health care service plan. No health care service plan may request or require that as a condition of the contract agreement a health care service provider shall request to assume the financial risk for any of those items.

(c) The following definitions apply for the purposes of this section:

(1) ''Financial risk'' means any contractual financial agreement between a health care service provider and a health care service plan for services rendered to a patient or enrollee if the reimbursement from a health care service plan is other than a fee for service rate structure. ''Financial risk'' includes, but is not limited to, capitation payments, case rates, and risk pools.

(2) ''Health care service provider'' means an individual, partnership, group, or corporation lawfully licensed or organized under Division 2 (commencing with Section 500) of the Business and Professions Code, unless specifically exempt from those provisions, or licensed under Section 1204 or exempt from licensure under Section 1206 that delivers, furnishes, or otherwise arranges for or provides health care services. ''Health care service provider'' does not include a health facility as defined in Section 1250, a hospice, a surgical center, or a home infusion provider.

(d) This section shall not preclude any payment by a health care service plan to a health care service provider for the performance of any services related to quality measures and programs.

(e) This section shall not apply to a contract that is between a health care service plan and a health care service provider or a provider organization that meets either of the requirements set forth in paragraph (2) of subdivision (g) of Section 1375.4 or to a contract between licensed health care service plans or to a contract between a health care service plan and a health care service plan with waivers.

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 799

An act to amend Sections 12670, 12671, and 12678 of, and to add Section 12692.5 to, the Insurance Code, relating to health insurance.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

SECTION 1. Section 12670 of the Insurance Code is amended to read:

12670. It is the intent of the Legislature to ensure that persons covered by a group policy, who become ineligible for that coverage have access to benefits pursuant to this part by requiring employers, employee organizations, and other entities that provide that coverage to their employees or members to also make available conversion policies for those persons and to ensure that insurers as herein defined offer conversion policies. The conversion policy shall be the most popular preferred provider organization product offered to residents of this state under the provisions of the federal Health Insurance Portability and Accountability Act of 1996. In addition, it is the intent of the Legislature to encourage the continuation of group health coverage by requiring the entities herein defined to make available continuation benefits for widows, widowers, divorced spouses, and dependents who were covered by the group policy on the date of termination of coverage.

SEC. 2. Section 12671 of the Insurance Code is amended to read:

12671. As used in this part:

(a) ''Group policy'' means a group health insurance policy providing medical, hospital, surgical, major medical, or comprehensive medical coverage issued by an insurer, a group contract issued by a hospital service corporation or medical, hospital, surgical, major medical, or comprehensive medical coverage otherwise provided by a policyholder to its employees or members, except for self-insurance programs provided by employers that are not exempt from ERISA, as specified in subdivision (i). For the purposes of this part, a group policy not having an established annual renewal date shall be considered renewed on each anniversary of its effective date.

(b) ''Conversion coverage'' means health insurance benefits providing hospital, surgical, major medical, or comprehensive medical coverage issued to an individual under a converted policy.

(c) ''Converted policy'' means a policy or contract providing conversion coverage issued by an insurance company or by a hospital service corporation, or individual hospital, surgical, major medical, or

comprehensive medical coverage otherwise provided by a policyholder to its employees or members.

(d) ''Insurer'' means the entity issuing a group policy, an individual or converted policy, a hospital service contract or an employer or employee organization otherwise providing medical, hospital, surgical, major medical, or comprehensive medical coverage to its employees or members.

(e) ''Insurance'' refers to health insurance, major medical, or comprehensive coverage paid by premium or contribution under a group policy, a hospital service contract, or as otherwise provided by a policyholder to its employees or members other than by self-insuring except in the case of a plan that is exempt from ERISA, but does include an employer plan that is exempt from ERISA as specified in subdivision (i). ''Insurance'' does not include any of the following:

(1) Coverage provided solely as an accrued liability or by reason of a disability extension.

(2) Medicare supplement insurance.

(3) Vision-only insurance.

(4) Dental-only insurance.

(5) CHAMPUS supplement insurance.

(6) Hospital indemnity insurance.

(7) Accident-only insurance.

(8) Short-term limited duration health insurance. ''Short-term limited duration health insurance'' means individual health insurance coverage that is offered by a licensed insurance company, intended to be used as transitional or interim coverage to remain in effect for not more than 185 days, that cannot be renewed or otherwise continued for more than one additional period of not more than 185 days, and that is not intended or marketed as health insurance coverage, a health care service plan, or a health maintenance organization subject to guaranteed issuance or guaranteed renewal pursuant to relevant state or federal law.

(9) Specified disease insurance that does not pay benefits on a fixed benefit, cash payment only basis.

(f) ''Policyholder'' means the holder of a group policy issued by an insurer, a holder of a group contract issued by a hospital service corporation or an employer, employee association or other entity otherwise providing medical, hospital, surgical, major medical, or comprehensive medical coverage on a group basis to its employees or members.

(g) ''Premium'' means contribution or other consideration paid or payable for coverage under a group policy or converted policy.

(h) ''Medicare'' means Title XVIII of the United States Social Security Act as added by the Social Security Amendments of 1965 or as later amended or superseded.

(i) ''Employer plan that is exempt from ERISA'' means any employer plan that, pursuant to the provisions of Section 1003 of Title 29 of the United States Code, is not covered by or that is exempt from the provisions of Subchapter I (commencing with Section 1001) of Chapter 18 of Title 29 of the United States Code, except that, in the case of a governmental plan, it only includes a self-insured governmental plan as defined in subdivision (h).

(j) ''Self-insured governmental plan'' means a self-insured plan established or maintained for its employees by any public entity, as defined in Section 811.2 of the Government Code, which is a governmental plan as defined in subdivision (32) of Section 1002 of Title 29 of the United States Code.

SEC. 3. Section 12678 of the Insurance Code is amended to read:

12678. The insurer shall not be required to issue a converted policy covering any person if any of the following exists:

(a) The person is covered for similar benefits by another individual policy.

(b) The person is covered or is eligible to be covered for similar benefits by another group policy.

(c) The person is covered or is eligible to be covered for similar benefits under any arrangement of coverage for persons in a group whether insured or uninsured.

SEC. 4. Section 12692.5 is added to the Insurance Code, to read:

12692.5. Notwithstanding any other provision of this part, Sections 12672, 12673, 12674, 12675, 12676, 12677, 12678, 12679, 12680, 12681, 12682, 12683, 12684, 12685, 12686, 12687, 12688, 12689, 12690, 12691, and 12692 shall not apply to a group policy that is issued, amended, or renewed on or after September 1, 2003.

SEC. 5. This act shall become operative on September 1, 2003, only if this act and Assembly Bill 1401 of the 2001–02 Regular Session are both enacted on or before January 1, 2003.

CHAPTER 800

An act to add Section 12693.925 to the Insurance Code, relating to healthy families.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 22, 2002.]

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

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

(a) According to the Kaiser Family Foundation, when comparing the medical care provided to a child who is covered by health insurance to that provided to a child who is not covered by health insurance, it is at least 70 percent more likely that an uninsured child will not receive medical care for childhood conditions such as sore throats, recurring ear infections, and asthma, and 30 percent more likely that an uninsured child will not receive care for injuries. Children who do not receive proper medical care can face serious adverse consequences.

(b) Although all children from low-income families face a host of barriers in obtaining health care, children from immigrant and homeless families are especially vulnerable and must overcome even greater challenges.

(c) These children are less likely to be enrolled in Medi-Cal and the Healthy Families Program than other children from low-income families for a variety of reasons, including linguistic and cultural barriers. According to the University of California San Francisco Institute for Health Policy Studies, a quarter of all Spanish-speaking Latinos have difficulty understanding the Medi-Cal and Healthy Families applications as compared to 14.2 percent of non-Latinos.

(d) According to the California Policy Research Center and the University of California Los Angeles Center for Health Policy Research, immigrant children are three times more likely to be uninsured and four to five times more likely to lack a regular source of medical care compared to children in nonimmigrant families. Although 90 percent of them have at least one working parent, they are less likely to receive employment-based insurance as compared to children with United States-born parents, according to the National Conference of State Legislatures.

(e) Although homeless individuals have long been perceived to be primarily single adult males, families with children, especially young children, are the fastest growing group of the homeless population. According to the National Coalition for the Homeless, between 1997 and 1998, the number of requests nationwide from families with children for emergency shelters increased by 15 percent and it is estimated that almost half of all children in shelters are under five years of age. In California, approximately 360,000 people are homeless during any given year, and 35 percent of them are families with children, according to the Corporation for Supportive Housing and Housing California.

(f) In a letter dated July 31, 2000, the Health Care Financing Administration, recently renamed the Centers for Medicare and Medicaid Services, outlined the opportunity for states to establish public health initiatives for addressing health needs of specifically targeted vulnerable children through the federal program known as the State Children's Health Insurance Program.

(g) The Centers for Medicare and Medicaid Services views these public health initiatives as allowing states to develop innovative methods for addressing health needs of specifically targeted vulnerable children. These public health initiates could target barriers faced by children in immigrant and homeless families, as well as other groups of children that experience health disparities, and improve access to health care.

(h) A principal goal of the public health initiatives under the State Children's Health Insurance Program is to reach vulnerable children and facilitate their access to health care, with the objective of better health outcomes.

SEC. 2. Section 12693.925 is added to the Insurance Code, to read:

12693.925. (a) The Managed Risk Medical Insurance Board shall report to the Legislature on or before January 30, 2004, the following information with respect to the State Children's Health Insurance Program:

(1) A list of the categories of vulnerable children who should be the targets of public health initiatives, including, but not limited to, immigrant children, homeless children, and other children that face health disparities.

(2) Recommendations on innovative methods available under the federal program for addressing health needs and barriers to care for the identified groups of vulnerable children. The board shall report as many recommendations as possible that are available under the federal program and the expected impact of each recommendation.

(3) Recommendations on innovative methods available under the federal program for developing in urban areas initiatives similar to the rural demonstration projects. The board shall report as many recommendations as possible that are available under the federal program and the expected impact of each recommendation.

(b) The board shall seek input, at regularly scheduled meetings of the board, from the Healthy Families Advisory Panel and stakeholder organizations, including, but not limited to, organizations that represent immigrant and homeless populations, other communities that experience health disparities, and traditional providers of care to low-income populations.

(c) This section shall be implemented only to the extent that federal financial participation is obtained.

CHAPTER 801

An act to add and repeal Section 46300.8 of the Education Code, relating to public schools.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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 shortage of teachers.

(b) Many schools are unable to provide advanced placement courses to their pupils.

(c) Many schools have difficulty providing courses in hard-to-staff subject areas.

(d) California has a diverse pupil population of varying learning styles.

SEC. 2. Section 46300.8 is added to the Education Code, to read:

46300.8. (a) (1) Notwithstanding any other provision of law, for the purposes of an online classroom program conducted over the Internet in a secondary school, ''immediate supervision'' includes pupil participation in an online asynchronous interactive curriculum provided by a certificated teacher. The certificated teacher responsible for the program shall be online and accessible to the pupil on a daily basis to respond to pupil queries, assign tasks, and dispense information. The course shall be approved by the governing board of the school district.

(2) For purposes of this section, an ''asynchronous interactivity curriculum'' means a curriculum whereby the pupils and teacher interact using online resources, including, but not limited to, discussion boards, Web sites, and e-mail. However, the pupil and teacher need not necessarily be online at the same time.

(3) For purposes of this section, ''Internet'' means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions, and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this paragraph.

(b) A pupil participating in an online program pursuant to this section shall not be credited with more than a total of one day of attendance per calendar day or for more than a total of five days of attendance per calendar week.

(c) The total number of pupils participating in any given online classroom program pursuant to this section shall not exceed the average class size for similar courses in high schools of the school district offering the online classroom program.

(d) A teacher may teach pupils in one or more online courses pursuant to this section only if the teacher concurrently teaches the same course to pupils in a traditional in-classroom setting in the providing high school district or has done so previously within the immediately preceding two-year period. The curriculum and activities shall be the same for the online course as for the traditional in-classroom course.

(e) Any teacher teaching in an online classroom program shall hold the appropriate credential.

(f) Schoolsites eligible to generate an online course pursuant to this section shall apply to the State Department of Education, and shall be approved based on a first-come, first-serve basis. No more than 40 schoolsites may operate an online course pursuant to this section. No school district may have more than 5 schoolsites that operate an online course pursuant to his section.

(g) A school district offering an online course may contract with another school district to provide the online course to pupils of the offering school district. Contract terms shall be determined by mutual agreement of the school districts. School districts that provide online courses pursuant to the contract, shall contract directly with the offering school district and shall not enter into direct contracts with the pupils of the offering school district.

(h) Statewide testing results for online pupils shall be reported to the home school district of the pupil.

(i) Only high school courses shall be eligible for online classroom programs. School districts may, however, apply for a waiver from the State Board of Education to teach online courses to pupils in additional grade levels, and the state board may grant the waiver.

(j) A pupil shall not be assigned to an online course unless the pupil voluntarily elects to participate in the online course. The parent or guardian of the pupil shall provide written consent before the pupil may participate in an online course.

(k) A pupil may take up to two online courses per semester provided that the pupil is concurrently enrolled in traditional in-classroom courses. The governing board of a school district may waive this requirement for pupils who are unable to attend regular courses at a schoolsite.

(*l*) A school district that chooses to offer an online course, or to contract pursuant to subdivision (f) to provide an online course, shall develop and implement policies addressing all of the following factors: test integrity, evaluation of the online courses including a comparison

with traditional in-classroom courses, a procedure for attaining informed consent from both the parent and pupil regarding course enrollment, the teacher selection process, criteria regarding pupil priority for online courses, equity and access in terms of hardware or computer laboratories, teacher training for online teaching, teacher evaluation procedures, criteria for asynchronous learning including the type and frequency of the contact between pupil and teacher, pupil computer skills necessary to take an online course, and the provision of onsite support for online pupils.

(m) School districts that provide online classroom programs shall verify that online pupils take examinations by proctor or that other reliable methods are used to ensure test integrity and that there is a clear record of pupil work, using the same method of documentation and assessment as in a traditional in-classroom course.

(n) A school district that provides online classroom programs shall maintain records to verify the time that a pupil spends online and related activities in which a pupil is involved. The school district shall also maintain records verifying the time the instructor was online.

(o) Minutes of pupil participation in online courses complying with subdivisions (a) to (n), inclusive, shall qualify for average daily attendance purposes within the structure of the 240 minute schoolday as set forth in Sections 46113 and 46141. Regional occupational programs may offer or contract with school districts to provide online courses.

(p) The purposes of online classroom programs conducted pursuant to this section include all of the following:

(1) Providing expanded educational opportunities for pupils attending schools with limited educational offerings.

(2) Reaching out to pupils in schools where advanced placement courses are not available.

(3) Providing quality educational services in courses for hard-to-staff subject areas in schools where a shortage of teachers make these classes unavailable.

(4) Ensuring that courses provided over the Internet are at least as challenging as courses provided in a traditional educational setting.

(5) Ensuring high teacher quality for online classroom purposes.

(6) Ensuring pupil testing integrity for online classroom purposes.

(7) Ensuring accountability for the purposes of verifying the active involvement of all pupils participating in courses provided over the Internet.

(q) For each online class provided pursuant to this section, the governing board of a school district shall make findings of compliance with this section, including, but not limited to, the immediate supervision requirement, and shall report those findings to the department.

(r) Notwithstanding any other provision of law, this section does not apply to online courses offered through a program administered by or coordinated through a California public postsecondary educational institution.

(s) The Controller shall provide for a financial audit of online programs operated pursuant to this section. It is the intent of the Legislature that the Controller give these audits the highest priority.

(t) This section shall remain in effect only until January 1, 2006, and, as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

CHAPTER 802

An act to amend Sections 60240, 60242, 60242.5, and 60248 of, to amend and repeal Sections 60246, 60247, and 60252 of, to add Sections 60246.5 and 60247.5 to, to add and repeal Chapter 3.25 (commencing with Section 60420) of Part 33 of, and to repeal Sections 18200 and 18201 of, the Education Code, relating to instructional materials.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 18200 of the Education Code is repealed.

SEC. 2. Section 18201 of the Education Code is repealed.

SEC. 3. Section 60240 of the Education Code is amended to read:

60240. (a) The State Instructional Materials Fund is hereby continued in existence in the State Treasury. The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this part. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials, including classroom library materials.

(b) The State Department of Education shall administer the fund under policies established by the state board.

(c) (1) The state board shall encumber part of the fund to pay for accessible instructional materials pursuant to Sections 60312 and 60313 to accommodate pupils who are visually impaired or have other disabilities and are unable to access the general curriculum.

(2) The state board may encumber funds, in an amount not to exceed two hundred thousand dollars ($200,000), for replacement of instructional materials, obtained by a school district with its allowance that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

(3) The state board may encumber funds for the costs of warehousing and transporting instructional materials it has acquired.

SEC. 4. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district, which may reflect increases or decreases in enrollment, that the district may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, shall, as a condition of receiving funding under this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan. A charter

school may apply for funding on its own behalf or through its chartering entity. Notwithstanding Section 47610, a charter school applying on its own behalf is required to develop and certify approval of a classroom library plan.

(3) To the extent that a school district, county office of education, or charter school already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.

SEC. 5. Section 60242.5 of the Education Code is amended to read:

60242.5. Allowances received by districts pursuant to subdivisions (a) and (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, classroom library materials, or in-service training pursuant to subdivisions (a) and (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of conformance to the Superintendent of Public Instruction. The Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

The Controller, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.

SEC. 6. Section 60246 of the Education Code is amended to read:

60246. (a) The Controller shall, during each fiscal year, commencing with the 1983–84 fiscal year, transfer from the General Fund of the state to the State Instructional Materials Fund, an amount of twenty-one dollars and eighteen cents ($21.18) per pupil in the average daily attendance in the public elementary schools during the preceding fiscal year, as certified by the Superintendent of Public Instruction, except that this amount shall be adjusted annually, through and including fiscal year 1987–88, in conformance with the Consumer Price Index, all items, of the Bureau of Labor Statistics of the United States Department of Labor, measured for the calendar year next preceding the fiscal year to which it applies. Commencing with the 1990–91 fiscal year, the amount shall be adjusted annually by an amount equal to the percentage change determined pursuant to subdivision (b) of Section 42238.1.

(b) The amount transferred pursuant to subdivision (a) includes the designated percentage of the cash entitlements to be used to pay for unadopted state materials, tests, and in-service training.

(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 60246.5 is added to the Education Code, to read:

60246.5. (a) The Controller shall, during each fiscal year, commencing with the 2002–03 fiscal year, transfer from the General Fund to the State Instructional Materials Fund for instructional materials for kindergarten and grades 1 to 8, inclusive, the amount to be allocated pursuant to Section 60421.

(b) The amount transferred pursuant to subdivision (a) includes the designated percentage of the cash entitlements to be used to pay for unadopted state materials, tests, classroom library materials, and in-service training.

SEC. 8. Section 60247 of the Education Code is amended to read:

60247. (a) The Superintendent of Public Instruction shall annually apportion to each school district the sum of fourteen dollars and forty-one cents ($14.41) per pupil enrolled in grades 9 to 12, inclusive, in the school district in the prior fiscal year for the purpose of purchasing instructional materials for the pupils enrolled in those grades.

(b) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 60247.5 is added to the Education Code, to read:

60247.5. The Controller shall, during each fiscal year, commencing with the 2002–03 fiscal year, transfer from the General Fund to the State Instructional Materials Fund for instructional materials for grades 9 to 12, inclusive, the amount to be allocated pursuant to Section 60421.

SEC. 10. Section 60248 of the Education Code is amended to read:

60248. The governing board of a school district shall use the funds apportioned pursuant to Sections 60247 and 60247.5 solely for the purchase of instructional materials for pupils in grades 9 to 12, inclusive. Textbooks purchased with these funds shall be adopted in accordance with Section 60400.

SEC. 11. Section 60252 of the Education Code is amended to read:

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the

Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section.

(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Chapter 3.25 (commencing with Section 60420) is added to Part 33 of the Education Code, to read:

CHAPTER 3.25. INSTRUCTIONAL MATERIALS FUNDING REALIGNMENT PROGRAM

60420. The Instructional Materials Funding Realignment Program is hereby established and shall be administered by the Superintendent of Public Instruction.

60421. (a) The State Department of Education shall apportion funds appropriated for purposes of this chapter to school districts on the basis of an equal amount per pupil enrolled in kindergarten and grades 1 to 12, inclusive, in the prior year, excluding summer school, adult, and regional occupational center and regional occupational programs enrollment. Enrollment shall be certified by the Superintendent of Public Instruction and based on data as reported by the California Basic Education Data System count. A school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall be eligible to receive funding pursuant to this chapter based on enrollment estimates provided to the State Department of Education by the school district or charter school. As a condition of receipt of funding,

a school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall provide enrollment estimates, as approved by the school district governing board or charter school's charter-granting local educational agency and the county office of education in which the school district or charter school's charter-granting agency is located. These estimates and associated funding shall be adjusted for actual enrollment as reported by the subsequent California Basic Education Data System.

(b) For the purposes of this chapter, the term ''school district'' means a school district, county office of education, or charter school, and the term ''local governing board'' means the governing board of a school district, county board of education, or governing body of a charter school.

(c) Allowances established pursuant to this chapter shall be apportioned to school districts in September of each fiscal year.

(d) Notwithstanding any other provision of law, pursuant to subdivision (g) of Section 60200, the State Board of Education may authorize a school district to use any state basic instructional materials allowance to purchase standards-aligned materials as specified within this part.

60422. (a) A local governing board shall use funding received pursuant to this chapter to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or as adopted by the local governing board pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive. Pupils shall be provided with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the State Board of Education.

(b) Once a governing board certifies compliance with subdivision (a) with regard to standards-aligned instructional materials in the core curriculum areas of reading/language arts, mathematics, science, and history/social sciences, and if the governing board of a school district has met the eligibility requirements of Section 60119, the remaining funds may only be used consistent with subdivision (a) of Section 60242 and pursuant to Section 60242.5.

(c) The State Board of Education may grant the school district additional time to meet the purchasing requirements of subdivision (a) if the governing board of the school district demonstrates, to the satisfaction of the state board, that all of the following criteria apply to the district:

(1) The school district has implemented a well-designed, standards-aligned basic instructional materials program.

(2) The school district, at the time of its request for additional time pursuant to this subdivision, has sufficient textbooks or basic instructional materials for use by each pupil.

(3) The school district has adopted a plan for the purchase of standards-aligned instructional materials in accordance with subdivision (a) but that plan indicated an alternative date for compliance that is declared in the request for additional time.

(d) The funds provided for the purchase of instructional materials in Schedules 1 and 2 of Item 6110-189-0001 and paragraph 6 of Item 6110-485 of Section 2.00 of the Budget Act of 2002 shall be used for the purposes of, and allocated consistent with, this chapter.

60424. This chapter shall be administered for purposes of funding as if it had been in effect at the beginning of the 2002–03 fiscal year. This chapter shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes operative and is repealed.

SEC. 13. It is the intent of the Legislature to appropriate in the annual Budget Act or other measure, in each of the fiscal years from 2003–04 to 2006–07, inclusive, subject to the availability of funds, the following amounts from the General Fund to the Superintendent of Public Instruction for allocation to school districts for use pursuant to Chapter 3.25 (commencing with Section 60420) of Part 33 of the Education Code:

(a) Three hundred fifty million dollars ($350,000,000) for the 2003–04 fiscal year.

(b) Four hundred fifty million dollars ($450,000,000) for the 2004–05 fiscal year.

(c) Five hundred fifty million dollars ($550,000,000) for the 2005–06 fiscal year.

(d) Six hundred million dollars ($600,000,000) for the 2006–07 fiscal year.

CHAPTER 803

An act to amend Section 12956.1 of the Government Code, relating to discrimination.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, ''association,'' ''governing documents,'' and ''declaration'' have the same meanings as set forth in Section 1351 of the Civil Code.

(b) (1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

''If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.''

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c) (1) Any person who holds an ownership interest of record in property that he or she believes is the subject of a restrictive covenant referred to in subdivision (b), may file an application with the Department of Fair Employment and Housing requesting a determination of whether the restrictive covenant violates the fair housing laws and is void. Any application pursuant to this subdivision shall be in writing, contain a copy of the document, and identify the location within the document where the restrictive covenant is located.

(2) If the department determines that the document contains a restrictive covenant that violates the law, it shall provide the applicant with a written statement entitled ''RACIALLY OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION'' that sets forth this determination, including the page and line numbers of any void restrictive covenant, which statement may be recorded with the document pursuant to paragraph (3). The department shall process all applications within 90 days. The department shall include the following language at the end of the written statement which the applicant may complete and sign for purposes of recording pursuant to paragraph (3):

I (We) _____ have an ownership interest of record in the property located at _____ (Address) that is the subject of this

document. The Department of Fair Employment and Housing has determined that this document contains a restrictive covenant that violates the law and is void. Pursuant to Section 12956.1 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive covenant as shown on page(s) __ of the document recorded on __ (Date) in book __ and page __, or instrument number __ of the official records of the County of _____. No other changes have been made.

If executed at any place, within or without this state:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Date and Place) (Owner(s) Signature(s))

(3) The applicant may strike out a void restrictive covenant identified by the department, complete and attach a copy of the written statement from the department to the front of the document, and cause the modified document to be recorded, if provided that all other requirements of recordation are met, including the payment of any recordation fee.

(d) Subdivision (c) of this section shall not apply to persons holding an ownership interest in property that is part of a common interest development as defined in subdivision (c) of Section 1351 of the Civil Code, and where the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section 1352.5 of the Civil Code.

(e) The provisions of this section shall have no bearing or effect upon Section 12955.9.

(f) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

(g) (1) Any person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (*l*) of Section 12955 may submit for recordation to the county recorder of the county in which the property is located a modified document striking out the unlawfully restrictive covenant.

(2) The county recorder may record the document, if all other requirements of recordation are met, including the payment of any recording fee, or may direct the person to obtain a determination, pursuant to subdivision (c), that the covenant is unlawful. If the recorder records the document, the recorder shall provide a form entitled ''RACIAL OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION,'' which shall be recorded attached to the front of the document that strikes the unlawfully restrictive covenant.

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 804

An act to add Section 67382 to the Education Code, relating to postsecondary education.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 67382 is added to the Education Code, to read:

67382. (a) (1) On or before January 1, 2004, and every three years thereafter, the State Auditor shall report the results of an audit of a sample of not less than six institutions of postsecondary education in California that receive federal student aid, to evaluate the accuracy of their statistics and the procedures used by the institutions to identify, gather, and track data for publishing, disseminating, and reporting accurate crime statistics in compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Sec. 1092 (f)(1) and (5)).

(2) The results of the annual audits described in paragraph (1) shall be submitted to the respective chairs of the Assembly Higher Education Committee and the Senate Education Committee.

(b) The California Postsecondary Education Commission shall provide on its Internet Web site a link to the Internet Web site of each California institution of higher education that includes on that Web site the institution's criminal statistics information.

(c) The Legislature finds and declares that institutions of higher education that are subject to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Sec. 1092(f)(1) and (5)), should establish and publicize a policy that allows victims or witnesses to report crimes to the campus police department or to a specified campus security authority, on a voluntary, confidential, or anonymous basis.

CHAPTER 805

An act to amend Section 64000 of the Government Code, to amend Section 7236 of the Revenue and Taxation Code, to amend Sections 188.10, 2401, and 31071 of, and to repeal and add Article 4.8 (commencing with Section 179) of Chapter 1 of Division 1 of, the Streets and Highways Code, and to amend Sections 1656, 1661, 1810, 1810.7, 4604.5, 9552, 9553, 9554, 9554.5, 13106, 14900, 14900.1, 14905, 34602, and 34605 of, and to add Section 14907 to, the Vehicle Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 64000 of the Government Code is amended to read:

64000. (a) The California Transportation Commission may allocate available federal and state transportation funds to the Department of Transportation, consistent with all applicable state and federal laws governing the use of those funds, to implement the purposes of, and to operate and manage, the Transportation Finance Bank as provided in accordance with the provisions of Section 350 of Public Law 104-59 and Section 1511 of Public Law 105-178 using only funds made available to the department through the annual budget act.

(b) The department shall act as a lender in administering the Transportation Finance Bank and in entering into enforceable commitments to implement, operate, and manage the program created by this section to achieve the purposes of the Transportation Finance Bank.

(c) The department shall develop, and may amend as necessary, the guidelines and loan documents for the program, which shall be presented to the commission for adoption.

(d) An allocation of funds by the commission to meet capital and interest obligations created by the Transportation Finance Bank as those obligations become due shall be construed as an expenditure of those funds in the county or counties where the project is located. In the event of default on the loan, an amount equivalent to the remaining loan balance plus all accrued interest and penalties shall be deducted from the STIP county share of the affected county or counties pursuant to Sections 14524 and 14525 and an amount equivalent to the remaining loan balance plus all accrued interest and penalties shall be transferred from the State Highway Account to the Transportation Finance Bank. Interest shall continue to accrue up to the date that the fund transfer is actually made.

(e) An eligible entity requesting loan funds under this section shall first receive approval of the project from the applicable regional transportation planning agency or county transportation commission where the project is located prior to the execution of a loan agreement with the department and the receipt of any funding.

(f) Only projects that have a dedicated revenue source and are eligible for assistance under Section 1511 of Public Law 105-178 are entitled to funding under this section.

(g) The Local Transportation Loan Account is hereby created in the State Highway Account in the State Transportation Fund for the management of funds for loans to local entities pursuant to this section. All funds for transportation loans in the Federal Trust Fund are hereby transferred to the Local Transportation Loan Account. The department shall deposit in the Local Transportation Loan Account all money received by the department from repayments of and interest and penalties on existing and future transportation loans from the Transportation Finance Bank. Interest on money in the Local Transportation Loan Account shall be credited to that account as it accrues.

(h) Notwithstanding Section 13340, the money in the Local Transportation Loan Account is continuously appropriated to the department without regard to fiscal years for purposes of loans to eligible projects as defined by Section 1511 of Public Law 105-178.

(i) On or before March 1 of each year in which the loan program authorized by this section is effective, the department shall report, to the fiscal committees and the policy committees of the Legislature that consider transportation issues, on its activities in administering that program. The report shall include, but not be limited to, the total amount of loans issued by the department pursuant to this section, a description of the projects funded by those loans, the identification of all recipients of those loans, and any loans that the department intends to make in the subsequent fiscal year pursuant to this section.

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 Vehicle Account in the State Transportation Fund. 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 Vehicle Account in the State Transportation 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 Vehicle Account in the State Transportation 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. Article 4.8 (commencing with Section 179) of Chapter 1 of Division 1 of the Streets and Highways Code is repealed.

SEC. 4. Article 4.8 (commencing with Section 179) is added to Chapter 1 of Division 1 of the Streets and Highways Code, to read:

Article 4.8. Local Bridge Seismic Safety Retrofit

179. Effective June 30, 2002, all funds in the Seismic Safety Retrofit Account in the State Transportation Fund are transferred to the State Highway Account in the State Transportation Fund. Any outstanding encumbrances as of June 30, 2002, in the Seismic Safety Retrofit Account shall be paid from the State Highway Account.

179.1. The department may administer projects for local bridge seismic safety retrofits consistent with the requirements of Chapter 9 (commencing with Section 2400) of Division 3.

179.2. The department may allocate State Highway Account funds in lieu of the local matching requirements of subdivision (b) of Section 2413 to the extent funding for this purpose is included in the annual Budget Act.

179.3. For purposes of this article:

(a) ''Bridge'' includes a publicly owned pedestrian bridge and a publicly owned rail transit bridge.

(b) ''Retrofit'' includes both the structural modification of an existing bridge and the replacement of an existing bridge by a newly constructed bridge meeting seismic safety requirements.

SEC. 5. Section 188.10 of the Streets and Highways Code, as added by Section 4 of Chapter 327 of the Statutes of 1997, is amended to read:

188.10. (a) The Toll Bridge Seismic Retrofit Account is hereby created in the State Transportation Fund. The money in the account is hereby appropriated, without regard to fiscal years, to the department for the purpose of funding seismic retrofit or replacement of the bridges listed in Section 188.5. Notwithstanding Section 11012 of the Government Code, the department, in consultation with the Department of Finance and the Office of the State Treasurer, may authorize the investment of bond proceeds or commercial paper proceeds deposited into the account in obligations permitted by the Treasurer. Those invested amounts may be held by a trustee who is either the Treasurer or who is selected by the Treasurer. Authorized investments made pursuant to this section shall be included as cash balance for purposes of reporting the condition of the account in the Governor's proposed budget or pursuant to the reporting requirement contained in subdivision (b) of Section 14556.9 of the Government Code.

(b) The Department of Finance shall provide notification to the Joint Legislative Budget Committee and to the transportation policy committee in each house in the form of a financing plan or pro forma at least 60 days prior to the initial issuance of any commercial paper or the issuance of any bonds for purposes of the toll bridge seismic retrofit program. The financing plan or pro forma shall include all of the following components:

(1) The amount and form of the debt issuance or issuances, the term of the issuance or issuances, repayment and security provisions, the amount and structure of any reserve funds, and all other details of the proposed financing.

(2) All necessary information with respect to the sources and uses of funds to construct the projects identified in the toll bridge seismic retrofit program and the timing of expenditures by each fund source by fiscal year.

(3) An assessment of funding available for the Bay Area Toll Authority for authorized projects as a result of the financing.

(c) No interest income earned as a result of investments made pursuant to subdivision (a), or from reserve funds created to support the financing, shall be used to pay project costs that are in excess of four billion six hundred thirty-seven million dollars ($4,637,000,000). No reserve funds, other than a required debt service reserve fund, shall be in place subsequent to the completion of the seismic retrofit projects.

(d) Notwithstanding any other provision of law, the Department of Finance may establish the accounting and reporting system used to determine the expenditures, cash needs, and balance of the account.

SEC. 6. Section 2401 of the Streets and Highways Code is amended to read:

2401. By the Federal-Aid Highway Act of 1970, Congress has enacted Section 144 of Title 23 of the United States Code, and has authorized appropriations thereby for expenditures under the Special Bridge Replacement Program to replace or reconstruct bridges when the state and the federal government determine that the bridge is of significant importance and is unsafe because of structural deficiencies, including seismic deficiencies, or physical deterioration, or functional obsolescence. The purpose of this chapter is to implement this program in this state. The boards of supervisors, city councils, the department, and the commission may do all things necessary and proper in their respective jurisdictions to secure the federal funds under the program for county highways, city streets, and state highways in accordance with the intent of the federal act and this chapter.

SEC. 7. Section 31071 of the Streets and Highways Code is amended to read:

31071. (a) The department may enter into financing agreements with the bank for the purpose of borrowing funds to finance or refinance the seismic retrofit project costs identified in paragraph (4) of subdivision (a) of Section 188.5. The bank may issue bonds for this purpose, pursuant to the authority granted to it under Chapter 5 (commencing with Section 63070) of Chapter 2 of Division 1 of Title 6.7 of the Government Code, and deposit the proceeds from the bonds into the account. The amount of borrowing may be increased to fund necessary reserves, capitalized interest, interim bonds, including, but not limited to, commercial paper, costs of issuance, and administrative, financial legal and incidental services related to the bonds. The department shall pursue the most cost-effective and efficient financing plan for the bridge work identified in paragraph (4) of subdivision (a) of Section 188.5.

(b) To the extent provided in the governing documents, each of the bonds issued under this section shall be payable from, and secured by, all or a portion of the toll surcharge revenue in the account and the assets in that account.

(c) Prior to the issuance of bonds payable from the toll surcharge, the bank shall confirm that bonds issued under Chapter 4.3 (commencing with Section 30950) shall not be impaired solely by action taken under this section, as evidenced by confirmation of the then existing ratings on these bonds, by the rating agencies then rating the bonds.

(d) The department shall transmit the final finance plan to the fiscal and policy committees of the Legislature that consider transportation issues.

SEC. 8. Section 1656 of the Vehicle Code is amended to read:

1656. (a) The department shall publish the complete text of the California Vehicle Code together with other laws relating to the use of highways or the operation of motor vehicles once every two years. The department, upon written request of any state or local governmental officer or agency, any federal agency, any public secondary school in this state, or any other person, shall distribute the California Vehicle Code at a charge sufficient to pay the entire cost of publishing and distributing the code. With regard to public secondary schools, the quantities shall be sufficient to provide one copy for each driver training and education instructor and one copy for each public secondary school library. In determining the amount of the charge, a fraction of a dollar shall be disregarded, unless it exceeds fifty cents ($0.50), in which case it shall be treated as one full dollar ($1). The receipts from the sale of such publications shall be deposited in the Motor Vehicle Account, with the intent to reimburse the department for the entire cost to print and distribute the Vehicle Code.

(b) The department shall publish a synopsis or summary of the laws regulating the operation of vehicles and the use of the highways and may deliver a copy thereof without charge with each original vehicle registration and with each original driver's license. The department shall publish such number of copies of the synopsis or summary in the Spanish language as the director determines are needed to meet the demand for such copies. The department shall furnish both English and Spanish copies to its field offices and to law enforcement agencies for general distribution and, when it does so, shall furnish the copies without charge.

SEC. 9. Section 1661 of the Vehicle Code is amended to read:

1661. (a) Except for vehicles registered pursuant to Article 5 (commencing with Section 9700) of Chapter 6 of Division 3, the department shall notify the registered owner of each vehicle of the date that the registration renewal fees of the vehicle are due, at least 60 days prior to that due date. The fact that the required notice was mailed shall be indicated by a notation in the department's records.

(b) The department shall include in any final notice of delinquent registration provided to the registered owner of a vehicle whose registration has not been properly renewed as required under this code, information relating to the potential removal and impoundment of that vehicle under subdivision (o) of Section 22651.

SEC. 10. Section 1810 of the Vehicle Code is amended to read:

1810. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.7, 1808.8, and paragraph (2) of subdivision (a) of Section 12800.5, the department may permit inspection of, or sell, or both, information from its records concerning the registration of any vehicle or information from the files of drivers' licenses at a charge sufficient to

pay at least the actual cost to the department for providing the inspection or sale of the information, including, but not limited to, costs incurred by the department in carrying out subdivision (b), with the charge for the information to be determined by the director. This section does not apply to statistical information of the type previously compiled and distributed by the department.

(b) (1) With respect to the inspection or sale of information concerning the registration of any vehicle or of information from the files of drivers' licenses, the department shall, by regulation, establish administrative procedures under which any person making a request for that information shall be required to identify himself or herself and state the reason for making the request. The procedures shall provide for the verification of the name and address of the person making a request for the information, and the department may require the person to produce that information as it determines is necessary to ensure that the name and address of the person is the true name and address. The procedures may provide for a 10-day delay in the release of the requested information. The procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

(2) The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.

(c) With respect to the inspection or sale of information from the files of drivers' licenses, the department may require both the full name of the driver and either the driver's license number or date of birth as identifying points of the record, except that the department may disclose a record without two identifying points if the department determines that the public interest in disclosure outweighs the public interest in personal privacy.

(d) With respect to the inspection or sale of information from the files of drivers' licenses, certificates of ownership, and registration cards, the department shall not, for a fee or otherwise, allow copying by the public.

SEC. 11. Section 1810.7 of the Vehicle Code is amended to read:

1810.7. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.7, and 1808.21, the department may, by special permit, authorize any person to access the department's electronic database, as provided for in this section, for the purpose of obtaining information for commercial use.

(b) The department may limit the number of permits issued under this section, and may restrict, or establish priority for, access to its files as the

department deems necessary to avoid disruption of its normal operations, or as the department deems is in the best interest of the public.

(c) The department may establish minimum volume levels, audit and security standards, and technological requirements, or any terms and conditions it deems necessary for the permits.

(d) As a condition of issuing a permit pursuant to this section, the department shall require each direct-access permittee to file a performance bond or other financial security acceptable to the department, in an amount the department deems appropriate.

(e) The department shall charge fees for direct-access service permits, and shall charge fees pursuant to Section 1810 for any information copied from the files.

(f) The department shall ensure that information provided pursuant to this section includes only the public portions of records.

(g) The director shall, on and after January 1, 1992, report every three years to the Legislature on the implementation of this section. The report shall include the number and location of direct-access permittees, the volume and nature of direct-access inquiries, procedures the department has taken to ensure the security of its files, and the costs and revenues associated with the project.

(h) The department shall establish procedures to ensure confidentiality of any records of residence addresses and mailing addresses as required by Sections 1808.21, 1808.22, 1808.45, 1808.46, and 1810.2.

SEC. 12. Section 4604.5 of the Vehicle Code is amended to read:

4604.5. (a) (1) If the vehicle has not been operated, moved, or left standing upon any highway subsequent to the expiration of the vehicle's registration, the certification specified in Section 4604 or 4604.2 may be filed after the expiration of the registration of a vehicle, but not later than 90 days after the expiration date, subject to the payment of the filing fee specified in Section 4604 and the penalty specified in paragraph (2).

(2) A penalty shall be collected on any certification specified in Section 4604 or 4604.2 filed later than midnight of the date of expiration of registration. The penalty shall be computed as provided in Sections 9406 and 9559 and after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period of more than 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including 90 days, the penalty is 60 percent of the fee.

(3) This subdivision applies to the renewal of registration for vehicles with expiration dates on or before December 31, 2002.

(b) The certification specified in Sections 4604 and 4604.2 may be filed no more than 90 days after the expiration of the registration of a vehicle if the vehicle has not been operated, moved, or left standing upon any highway subsequent to the expiration of the vehicle's registration. A penalty shall be collected on any certification specified in Section 4604 or 4604.2 filed later than midnight of the date of expiration of registration. After 90 days, the vehicle must be registered pursuant to Section 4601. A certification filed pursuant to this subdivision is subject to the payment of the filing fee specified in Section 4604 and the payment of the penalties specified in paragraphs (1), (2), and (3) of this subdivision.

(1) The penalty for late payment of the registration fee provided in Section 9250 is as follows:

(A) For a delinquency period of 10 days or less, the penalty is ten dollars ($10).

(B) For a delinquency period of more than 10 days, to and including 30 days, the penalty is fifteen dollars ($15).

(C) For a delinquency period of more than 30 days, to and including 90 days, the penalty is thirty dollars ($30).

(2) The penalty on the weight fee and the vehicle license fee shall be computed after the weight fee as provided in Section 9400 or 9400.1 plus the vehicle license fee specified in Section 10751 of the Revenue and Taxation Code have been added together as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including 90 days, the penalty is 60 percent of the fee.

(3) Weight fees not reported and not paid within 20 days, as required by Section 9406, shall be assessed a penalty on the difference in the weight fee, as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including 90 days, the penalty is 60 percent of the fee.

(c) This section shall apply to registration renewals that expire on or after January 1, 2003.

SEC. 13. Section 9552 of the Vehicle Code is amended to read:

9552. (a) Whenever any vehicle is operated upon any highway of this state without the fees first having been paid as required by this code, and those fees have not been paid within 20 days of its first operation, those fees are delinquent, except as provided in subdivision (b).

(b) Fees are delinquent whenever application for renewal of registration, or any application for renewal of special license plates, is made after midnight of the expiration date of the registration or special plates, or 60 days after the date the registered owner is notified by the department pursuant to Section 1661, whichever is later.

(c) Whenever any person has received as transferee a properly endorsed certificate of ownership and the transfer fee has not been paid as required by this code within 10 days, the fee is delinquent.

(d) Whenever any person becomes an automobile dismantler, dealer, manufacturer, manufacturer branch, distributor, distributor branch, or transporter without first having paid the license and special plate fees as required by this code, the fees are delinquent.

SEC. 14. Section 9553 of the Vehicle Code is amended to read:

9553. (a) A penalty shall be added upon any delinquent application as provided in Section 9552, except as provided in Section 4604 or 9706, or in subdivision (b).

(b) When renewal fee penalties have not accrued with respect to a vehicle and the vehicle is transferred, the transferee has 20 days from the date of the transfer to pay the registration fees which become due without payment of penalties or to file a certification pursuant to subdivision (a) of Section 4604 if the vehicle will not be operated, moved, or left standing upon any highway during the subsequent registration year, except as provided in subdivision (c).

(c) (1) A dealer or lessor-retailer submitting an application for registration or transfer of a used vehicle shall have 30 days from the date of sale to submit the fees, without the penalty that otherwise would be required under subdivision (a).

(2) This subdivision does not apply to penalties due or accrued prior to the date of sale by the dealer or lessor-retailer.

(d) A penalty shall be added if the fees specified in Section 9255 are not paid within 20 days after they become delinquent.

(e) In addition to the imposition of monetary fines or fees as specified in this section, delinquent registration may result in impoundment of the vehicle pursuant to Section 22651.

SEC. 15. Section 9554 of the Vehicle Code is amended to read:

9554. (a) (1) The penalty shall be computed as provided in Sections 9406 and 9559 and shall be collected with the fee, except that the penalty for delinquency with respect to any transfer is ten dollars ($10) and applies only to the last transfer.

(2) A penalty shall be added on any application for renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period of more than 10 days to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(3) This subdivision applies to the renewal of registration for vehicles with expiration dates on or before December 31, 2002.

(b) Penalties specified in paragraphs (1), (2), and (3) of this subdivision shall be computed as provided in Section 9559 and shall be collected with the fee, except that the penalty for delinquency with respect to any transfer is ten dollars ($10) and applies only to the last transfer. A penalty shall be added on any application for a renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due.

(1) (A) For a delinquency period of 10 days or less, the penalty is ten dollars ($10).

(B) For a delinquency period of more than 10 days, to and including 30 days, the penalty is fifteen dollars ($15).

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is thirty dollars ($30).

(D) For a delinquency period of more than one year, to and including two years, the penalty is fifty dollars ($50).

(E) For a delinquency period of more than two years, the penalty is one hundred dollars ($100).

(2) The penalty on the weight fee and the vehicle license fee shall be computed after the weight fee as provided in Section 9400 or 9400.1 plus the vehicle license fee specified in Section 10751 of the Revenue and Taxation Code have been added together as follows:

(A) For a delinquency period or 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year, to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(3) Weight fees not reported and not paid within 20 days, as required by Section 9406, shall be assessed a penalty on the difference in the weight fee, as follows:

(A) For a delinquency period or 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year, to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(4) This subdivision applies to the renewal of registration for vehicles with expiration dates on or after January 1, 2003.

SEC. 16. Section 9554.5 of the Vehicle Code is amended to read:

9554.5. (a) A penalty shall be added on any application for original registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(1) For a delinquency period of one year or less, the penalty is 40 percent of the fee.

(2) For a delinquency period of more than one year to and including two years, the penalty is 80 percent of the fee.

(3) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(4) This subdivision applies to applications for an original registration where the date for which fees are due is on or before December 31, 2002.

(b) The penalties specified in paragraphs (1) and (2) shall be added to any delinquent application for original registration made on or after the date penalties become due.

(1) The penalty for the registration fee provided in Section 9250 is as follows:

(A) For a delinquency period of one year or less, the penalty is thirty dollars ($30).

(B) For a delinquency period of more than one year, to and including two years, the penalty is fifty dollars ($50).

(C) For a delinquency period of more than two years, the penalty is one hundred dollars ($100).

(2) The penalty on the weight fee and vehicle license fee shall be computed after the weight fee as provided in Section 9400 or 9400.1 plus the vehicle license fee specified in Section 10751 of the Revenue and Taxation Code have been added together, as follows:

(A) For a delinquency period of one year or less, the penalty is 40 percent of the fee.

(B) For a delinquency period of more than one year, to and including two years, the penalty is 80 percent of the fee.

(C) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(3) This subdivision shall apply to original registrations where the date the fee is due is on or after January 1, 2003.

SEC. 17. Section 13106 of the Vehicle Code is amended to read:

13106. (a) When the privilege of a person to operate a motor vehicle is suspended or revoked, the department shall notify the person by first-class mail, of the action taken and of the effective date thereof, except for those persons personally given notice by the department or a court, by a peace officer pursuant to Section 13388 or 13382, or otherwise pursuant to this code. It shall be a rebuttable presumption, affecting the burden of proof, that a person has knowledge of the suspension or revocation if notice has been sent by first-class mail by the department pursuant to this section to the most recent address reported to the department pursuant to Section 12800 or 14600, or any more recent address on file if reported by the person, a court, or a law enforcement agency, and the notice has not been returned to the department as undeliverable or unclaimed. It is the responsibility of every holder of a driver's license to report changes of address to the department pursuant to Section 14600.

(b) The department may utilize alternative methods for determining the whereabouts of a driver, whose driving privilege has been suspended or revoked under this code, for the purpose of providing the driver with notice of suspension or revocation. Alternative methods may include, but are not limited to, cooperating with other state agencies that maintain more current address information than the department's driver's license files.

SEC. 18. Section 14900 of the Vehicle Code is amended to read:

14900. (a) Upon application for an original class C or M driver's license, there shall be paid to the department a fee of twelve dollars ($12) for a license that will expire on the fourth birthday of the applicant following the date of the application. The payment of the fee entitles the

person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

(b) In addition to the application fee specified in subdivision (a), a person who fails to successfully complete the driving skill test on the first attempt shall be required to pay an additional fee of five dollars ($5) for each additional driving skill test administered under that application.

(c) The fee specified in subdivision (b) shall be collected in conjunction with any application submitted on or after July 1, 2003.

SEC. 19. Section 14900.1 of the Vehicle Code is amended to read:

14900.1. (a) Except as provided in Sections 15250.6 and 15255.1, upon application for the renewal of a driver's license or for a license to operate a different class of vehicle, there shall be paid to the department a fee of fifteen dollars ($15) for a license that will expire on the fifth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

(b) In addition to the application fee specified in subdivision (a), a person who fails to successfully complete the driving skill test on the first attempt shall be required to pay an additional fee of five dollars ($5) for each additional driving skill test administered under that application.

(c) The fee specified in subdivision (b) shall be collected in conjunction with any application submitted on or after July 1, 2003.

SEC. 20. Section 14905 of the Vehicle Code is amended to read:

14905. (a) Notwithstanding any other provision of this code, in lieu of the fees in Section 14904, before a driver's license may be issued, reissued, or returned to a person after suspension or revocation of the person's privilege to operate a motor vehicle pursuant to Section 13353 or 13353.2, there shall be paid to the department a fee in an amount of one hundred twenty-five dollars ($125) to pay the costs of the administration of the administrative suspension and revocation programs for persons who refuse or fail to complete chemical testing, as provided in Section 13353, or who drive with an excessive amount of alcohol in their blood, as provided in Section 13353.2, any costs of the Department of the California Highway Patrol related to the payment of compensation for overtime for attending any administrative hearings pursuant to Article 3 (commencing with Section 14100) of Chapter 3 and Section 13382, and any reimbursement for costs mandated by the state pursuant to subdivisions (f) and (g) of Section 23612.

(b) This section does not apply to a suspension or revocation that is set aside by the department or a court.

SEC. 21. Section 14907 is added to the Vehicle Code, to read:

14907. In addition to the fees required pursuant to Section 14904, there shall be paid to the department a fee of one hundred twenty dollars ($120) to pay the costs of a departmental review when requested pursuant to Section 14105.5, following a hearing conducted pursuant to Section 13353 or 13353.2. The fee authorized under this section shall be collected in conjunction with any request for a departmental review received on or after January 1, 2003.

SEC. 22. Section 34602 of the Vehicle Code is amended to read:

34602. As used in this division, ''fund'' means the Motor Vehicle Account in the State Transportation Fund.

SEC. 23. Section 34605 of the Vehicle Code is amended to read:

34605. (a) The department may contract with the Office of Administrative Hearings to administer proceedings and impose fines for failure to comply with Division 14.8 (commencing with Section 34500), or this division, or regulations adopted pursuant to this code.

(b) The department and the California Highway Patrol may also contract with the Public Utilities Commission to administer this division in a manner described by the contract, or if permitted by the Department of Motor Vehicles, in a manner as existed on January 1, 1996. This temporary authority shall be terminated on December 31, 1997.

(c) All fees collected under this contract shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

SEC. 24. The unencumbered balance remaining in the Motor Carriers Permit Fund on June 30, 2003, shall be transferred and deposited into the Motor Vehicle Account in the State Transportation Fund by the end of June 30, 2003. Any other amounts collected or received as revenues or transfers directed to the Motor Carriers Permit Fund after June 30, 2003, shall also be transferred and deposited into the Motor Vehicle Account in the State Transportation Fund.

SEC. 25. The sum of three million six hundred ninety-three thousand dollars ($3,693,000) is hereby appropriated from the Motor Vehicle Account to the Department of Motor Vehicles for purposes of implementing Sections 2 and 8 to 23, inclusive, of this act.

SEC. 26. Sections 2, 22, and 23 shall become operative on July 1, 2003.

SEC. 27. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enact various changes to transportation laws that are necessary to fully implement the Budget Act of 2002 in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 806

An act to amend Sections 1812.10 and 2984.4 of the Civil Code, to amend Sections 116.340, 116.370, 116.570, 116.940, 392, 395, 396, 396a, 575.2, 631, 1005, and 2094 of, to repeal Section 402.5 of, and to repeal and add Section 402 of, the Code of Civil Procedure, to amend Sections 1030, 1031, 1032, 1033, and 1034 of, and to amend the heading of Article 8 (commencing with Section 1030) of Chapter 4 of Division 8 of, the Evidence Code, and to amend Section 818.9 of the Government Code, relating to courts.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 1812.10 of the Civil Code is amended to read:

1812.10. (a) An action on a contract or installment account under this chapter shall be tried in the superior court in the county where the contract was in fact signed by the buyer, where the buyer resided at the time the contract was entered into, where the buyer resides at the commencement of the action, or where the goods purchased pursuant to the contract have been so affixed to real property as to become a part of that real property.

(b) In the superior court designated as the proper court in subdivision (a), the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract was in fact signed by the buyer, where the buyer resided at the time the contract was entered into, where the buyer resides at the commencement of the action, or where the goods purchased pursuant to the contract have been so affixed to real property as to become a part of that real property. Otherwise, any location of the superior court designated as the proper court in subdivision (a) is the proper court location for the trial of the action. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) In any action subject to this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a superior court and court location

described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings may occur, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice. The court may, on terms that are just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

SEC. 2. Section 2984.4 of the Civil Code is amended to read:

2984.4. (a) An action on a contract or purchase order under this chapter shall be tried in the superior court in the county where the contract or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged.

In any action involving multiple claims, or causes of action, venue shall lie in those courts if there is at least one claim or cause of action arising from a contract subject to this chapter.

(b) In the superior court designated as the proper court in subdivision (a), the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract, conditional sale contract, or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract is permanently garaged. Otherwise, any location of the superior court designated as the proper superior court in subdivision (a) is the proper court location for the trial of the action. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) In any action subject to this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a superior court and court location described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings may occur, but the court shall, upon its own motion

or upon motion of any party, dismiss the action without prejudice. The court may, on terms that are just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

SEC. 3. Section 116.340 of the Code of Civil Procedure is amended to read:

116.340. (a) Service of the claim and order on the defendant may be made by any one of the following methods:

(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

(2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

(3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

(4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 15 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 20 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(d) Service shall be made within this state, except as provided in subdivisions (e) and (f).

(e) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

(f) A nonresident owner or operator of a motor vehicle involved in an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the

Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

(g) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed on the principal, the action shall be transferred to the court of appropriate jurisdiction.

SEC. 4. Section 116.370 of the Code of Civil Procedure is amended to read:

116.370. (a) Venue and court location requirements in small claims actions shall be the same as in other civil actions. The court may prescribe by local rule the proper court locations for small claims actions.

(b) A defendant may challenge venue or court location by writing to the court and mailing a copy of the challenge to each of the other parties to the action, without personally appearing at the hearing.

(c) In all cases, including those in which the defendant does not either challenge venue or court location or appear at the hearing, the court shall inquire into the facts sufficiently to determine whether venue and court location are proper, and shall make its determination accordingly.

(1) If the court determines that the action was not commenced in the proper venue, the court, on its own motion, shall dismiss the action without prejudice, unless all defendants are present and agree that the action may be heard. If the court determines that the action was not commenced in the proper court location, the court may transfer the action to a proper location pursuant to local rule.

(2) If the court determines that the action was commenced in the proper venue and court location, the court may hear the case if all parties are present. If the defendant challenged venue or court location and all parties are not present, the court shall postpone the hearing for at least 15 days and shall notify all parties by mail of the court's decision and the new hearing date, time, and place.

SEC. 5. Section 116.570 of the Code of Civil Procedure is amended to read:

116.570. (a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

(3) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(4) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

(5) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) This section does not limit the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars ($10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

SEC. 6. Section 116.940 of the Code of Civil Procedure is amended to read:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors may not appear in court as an advocate for any party.

(f) Advisors, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

SEC. 7. Section 392 of the Code of Civil Procedure is amended to read:

392. (a) Subject to the power of the court to transfer actions and proceedings as provided in this title, the superior court in the county where the real property that is the subject of the action, or some part thereof, is situated, is the proper court for the trial of the following actions:

(1) For the recovery of real property, or of an estate or interest therein, or for the determination in any form, of that right or interest, and for injuries to real property.

(2) For the foreclosure of all liens and mortgages on real property.

(b) In the court designated as the proper court in subdivision (a), the proper court location for trial of a proceeding for an unlawful detainer, as defined in Section 1161, is the location where the court tries that type

of proceeding that is nearest or most accessible to where the real property that is the subject of the action, or some part thereof, is situated. Otherwise any location of the superior court designated as the proper court in subdivision (a) is a proper court location for the trial. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

SEC. 8. Section 395 of the Code of Civil Procedure is amended to read:

395. (a) Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, the superior court in either the county where the injury occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is a proper court for the trial of the action. In a proceeding for dissolution of marriage, the superior court in the county where either the petitioner or respondent has been a resident for three months next preceding the commencement of the proceeding is the proper court for the trial of the proceeding. In a proceeding for nullity of marriage or legal separation of the parties, the superior court in the county where either the petitioner or the respondent resides at the commencement of the proceeding is the proper court for the trial of the proceeding. In a proceeding to enforce an obligation of support under Section 3900 of the Family Code, the superior court in the county where the child resides is the proper court for the trial of the action. In a proceeding to establish and enforce a foreign judgment or court order for the support of a minor child, the superior court in the county where the child resides is the proper court for the trial of the action. Subject to subdivision (b), if a defendant has contracted to perform an obligation in a particular county, the superior court in the county where the obligation is to be performed, where the contract in fact was entered into, or where the defendant or any defendant resides at the commencement of the action is a proper court for the trial of an action founded on that obligation, and the county where the obligation is incurred is the county where it is to be performed, unless there is a special contract in writing to the contrary. If none of the defendants reside in the state or if they reside in the state and the county where they reside is unknown to the plaintiff, the action may be tried in the superior court in any county that the plaintiff may designate in his or her complaint, and, if the defendant is about to depart from the state, the action may be tried in the superior court in any county where either of the parties reside or service is made. If any person is improperly joined as a defendant or has been made a

defendant solely for the purpose of having the action tried in the superior court in the county where he or she resides, his or her residence shall not be considered in determining the proper place for the trial of the action.

(b) Subject to the power of the court to transfer actions or proceedings as provided in this title, in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, or an action arising from a transaction consummated as a proximate result of either an unsolicited telephone call made by a seller engaged in the business of consummating transactions of that kind or a telephone call or electronic transmission made by the buyer or lessee in response to a solicitation by the seller, the superior court in the county where the buyer or lessee in fact signed the contract, where the buyer or lessee resided at the time the contract was entered into, or where the buyer or lessee resides at the commencement of the action is the proper court for the trial of the action. In the superior court designated in this subdivision as the proper court, the proper court location for trial of a case is the location where the court tries that type of case that is nearest or most accessible to where the buyer or lessee resides, where the buyer or lessee in fact signed the contract, where the buyer or lessee resided at the time the contract was entered into, or where the buyer or lessee resides at the commencement of the action. Otherwise, any location of the superior court designated as the proper court in this subdivision is a proper court location for the trial. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) Any provision of an obligation described in subdivision (b) waiving that subdivision is void and unenforceable.

SEC. 9. Section 396 of the Code of Civil Procedure is amended to read:

396. (a) If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and paragraph (1) of subdivision (b) of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In that case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so

served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.

(b) If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.

(c) An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.

(d) This section may not be construed to preclude or affect the right to amend the pleadings as provided in this code.

(e) Upon the making of an order for transfer, proceedings shall be had as provided in Section 399, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.

SEC. 10. Section 396a of the Code of Civil Procedure is amended to read:

396a. In a case that is subject to Sections 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure, or in an action or proceeding for an unlawful detainer as defined in Section 1161 of the Code of Civil Procedure:

(a) The plaintiff shall state facts in the complaint, verified by the plaintiff's oath, or the oath of the plaintiff's attorney, or in an affidavit of the plaintiff or of the plaintiff's attorney filed with the complaint, showing that the action has been commenced in the proper superior court and the proper court location for the trial of the action or proceeding, and showing that the action is subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for an unlawful detainer. When the affidavit is filed with the complaint, a copy thereof shall be served

with the summons. Except as provided in this section, if the complaint or affidavit is not filed pursuant to this subdivision, no further proceedings may occur in the action or proceeding, except to dismiss the action or proceeding without prejudice. However, the court may, on terms that are just, permit the affidavit to be filed after the filing of the complaint, and a copy of the affidavit shall be served on the defendant and the time to answer or otherwise plead shall date from that service.

(b) If it appears from the complaint or affidavit, or otherwise, that the superior court or court location where the action or proceeding is commenced is not the proper court or court location for the trial, the court where the action or proceeding is commenced, or a judge thereof, shall, whenever that fact appears, transfer it to the proper court or court location, on its own motion, or on motion of the defendant, unless the defendant consents in writing, or in open court (consent in open court being entered in the minutes or docket of the court), to the keeping of the action or proceeding in the court or court location where commenced. If that consent is given, the action or proceeding may continue in the court or court location where commenced. Notwithstanding the provisions of Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code, that consent may be given by a defendant who is represented by counsel at the time the consent is given, and if an action or proceeding is subject to subdivision (b) of Section 395 or is for an unlawful detainer, that consent may only be given by a defendant who is represented by counsel at the time the consent is given.

(c) In any case where the transfer of the action or proceeding is ordered under the provisions of subdivision (a) or (b), if summons is served prior to the filing of the action or proceeding in the superior court or court location to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of the filing.

(d) If it appears from the complaint or affidavit of the plaintiff that the superior court and court location where the action or proceeding is commenced are a proper court and court location for the trial thereof, all proper proceedings may be had, and the action or proceeding may be tried in that court at that location.

(e) A motion for a transfer of the action or proceeding to a different superior court may be made as in other cases, within the time, upon the grounds, and in the manner provided in this title, and if upon that motion it appears that the action or proceeding is not pending in the proper court, or should for other cause be transferred, the action or proceeding shall be ordered transferred as provided in this title.

If any action or proceeding is ordered transferred to another court as provided in this section, proceedings shall be had, and the costs and fees shall be paid, as provided in Sections 398 and 399.

(f) If a motion is made for transfer of an action or proceeding to a different court location within the same superior court as provided in this section, proceedings shall be had as provided by local rules of the superior court.

SEC. 11. Section 402 of the Code of Civil Procedure is repealed.

SEC. 12. Section 402 is added to the Code of Civil Procedure, to read:

402. (a) Except as otherwise provided by law:

(1) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be filed.

(2) A superior court may specify by local rule the locations where certain types of actions or proceedings are to be heard or tried.

(3) A superior court may not dismiss a case, and the clerk may not reject a case for filing, because it is filed, or a person seeks to file it, in a court location other than the location specified by local rule. However, the court may transfer the case on its own motion to the proper court location.

(b) A superior court may transfer an action or proceeding filed in one location to another location of the superior court. This section does not affect the authority of the presiding judge to apportion the business of the court as provided by the California Rules of Court.

SEC. 13. Section 402.5 of the Code of Civil Procedure is repealed.

SEC. 14. Section 575.2 of the Code of Civil Procedure is amended to read:

575.2. (a) Local rules promulgated pursuant to Section 575.1 may provide that if any counsel, a party represented by counsel, or a party if in pro se, fails to comply with any of the requirements thereof, the court on motion of a party or on its own motion may strike out all or any part of any pleading of that party, or, dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose other penalties of a lesser nature as otherwise provided by law, and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees. No penalty may be imposed under this section without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed.

(b) It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of the party, any penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto.

SEC. 15. Section 631 of the Code of Civil Procedure is amended to read:

631. (a) The right to a trial by jury as declared by Section 16 of Article I of the California Constitution shall be preserved to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (d).

(b) Each party demanding a jury trial shall deposit advance jury fees with the clerk or judge. The total amount of the advance jury fees may not exceed one hundred fifty dollars ($150) for each party. The deposit shall be made at least 25 calendar days before the date initially set for trial, except that in unlawful detainer actions the fees shall be deposited at least five days before the date set for trial.

(c) The parties demanding a jury trial shall deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, a sum equal to that day's fees and mileage of the jury, including the fees and mileage for the trial jury panel if the trial jury has not yet been selected and sworn. If more than one party has demanded a jury, the respective amount to be paid daily by each party demanding a jury shall be determined by stipulation of the parties or by order of the court.

(d) A party waives trial by jury in any of the following ways:

(1) By failing to appear at the trial.

(2) By written consent filed with the clerk or judge.

(3) By oral consent, in open court, entered in the minutes.

(4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation.

(5) By failing to deposit with the clerk, or judge, advance jury fees as provided in subdivision (b).

(6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, the sum provided in subdivision (c).

(e) The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.

SEC. 16. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 21 calendar days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 21-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 21-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least 10 calendar days, and all reply papers at least five calendar days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal

delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

SEC. 17. Section 2094 of the Code of Civil Procedure is amended to read:

2094. (a) An oath, affirmation, or declaration in an action or a proceeding, may be administered by obtaining an affirmative response to one of the following questions:

(1) ''Do you solemnly state that the evidence you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth, so help you God?''

(2) ''Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth?''

(b) In the alternative to the forms prescribed in subdivision (a), the court may administer an oath, affirmation, or declaration in an action or a proceeding in a manner that is calculated to awaken the person's conscience and impress the person's mind with the duty to tell the truth. The court shall satisfy itself that the person testifying understands that his or her testimony is being given under penalty of perjury.

SEC. 18. The heading of Article 8 (commencing with Section 1030) of Chapter 4 of Division 8 of the Evidence Code is amended to read:

Article 8. Clergy Penitent Privileges

SEC. 19. Section 1030 of the Evidence Code is amended to read:

1030. As used in this article, a ''member of the clergy'' means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.

SEC. 20. Section 1031 of the Evidence Code is amended to read:

1031. As used in this article, ''penitent'' means a person who has made a penitential communication to a member of the clergy.

SEC. 21. Section 1032 of the Evidence Code is amended to read:

1032. As used in this article, ''penitential communication'' means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those

communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

SEC. 22. Section 1033 of the Evidence Code is amended to read:

1033. Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege.

SEC. 23. Section 1034 of the Evidence Code is amended to read:

1034. Subject to Section 912, a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege.

SEC. 24. Section 818.9 of the Government Code is amended to read:

818.9. A court or county, its employees, independent contractors, and volunteers shall not be liable because of any advice provided to small claims court litigants or potential litigants as a public service on behalf of the court or county pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).

CHAPTER 807

An act to amend Sections 17131, 17501, 17551, 17560, 17731, 18535, 19109, 19311, 23801, 24601, and 24667 of, to amend and renumber Section 17132.6 of, to add Sections 17131.8, 17137, 19316, and 19559 to, and to repeal and add Section 18572 of, the Revenue and Taxation Code, and to amend Section 76 of Chapter 35 of the Statutes of 2002, relating to taxation, and declaring the urgency thereof.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 17131 of the Revenue and Taxation Code is amended to read:

17131. Part III of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, as amended by Sections 111 and 113 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134), relating to items that are specifically excluded from gross income, shall apply, except as otherwise provided.

SEC. 2. Section 17131.8 is added to the Revenue and Taxation Code, to read:

17131.8. Section 117 of the Internal Revenue Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, relating to qualified scholarships, shall apply, except as otherwise provided.

SEC. 3. Section 17132.6 of the Revenue and Taxation Code, as amended by Section 20 of Chapter 322 of the Statutes of 1998, is amended and renumbered to read:

17132.5. Section 101 of the Internal Revenue Code, relating to certain death benefits, is modified as follows:

(a) Section 101(h) of the Internal Revenue Code, relating to survivor benefits attributable to service by a public safety officer who is killed in the line of duty, is modified to apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after December 31, 1996.

(b) (1) The amendments made to Section 101 of the Internal Revenue Code by Section 102 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to taxable years ending before, on, or after September 11, 2001.

(2) If a refund or a credit of any overpayment of tax resulting from the amendments made by the act amending and renumbering this section is precluded at any time before the close of the one-year period beginning on the operative date of that act by the operation of any law or rule of law, including res judicata, that refund or credit may nevertheless be made or allowed if a claim therefor is filed on or before the close of that one-year period.

SEC. 4. Section 17132.6 of the Revenue and Taxation Code, as added by Section 9 of Chapter 35 of the Statutes of 2002, is amended, and renumbered to read:

17132.7. A payment under Section 103(c)(10) of the Ricky Ray Hemophilia Relief Fund Act of 1998 (Public Law 105-369) to an individual shall be treated for purposes of this part, Part 10.2 (commencing with Section 18401) and Part 11 (commencing with Section 23001) as damages described in Section 104(a)(2) of the Internal Revenue Code.

SEC. 5. Section 17137 is added to the Revenue and Taxation Code, to read:

17137. Section 137 of the Internal Revenue Code, relating to adoption assistance programs, is modified to include the amendments made by Section 202 of the Economic Growth and Tax Relief Act of 2001 (Public Law 107-16).

SEC. 6. Section 17501 of the Revenue and Taxation Code is amended to read:

17501. (a) Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to deferred compensation, shall apply, except as otherwise provided.

(b) Notwithstanding Section 17024.5, Part I of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to pension, profitsharing, stock bonus plans, etc., shall apply, except as otherwise provided, without regard to taxable year to the same extent as applicable for federal purposes.

(c) The maximum amount of elective deferrals (as defined in Section 402(g)(3)) for the taxable year that may be excluded from gross income under Section 402(g) of the Internal Revenue Code, as applicable for state purposes, shall not exceed the amount of elective deferrals that may be excluded from gross income under Section 402(g) of the Internal Revenue Code, as amended by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147), including additional elective deferrals under Section 414(v) of the Internal Revenue Code, as added by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and as amended by Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147).

(d) (1) For taxable years beginning on or after January 1, 2002, the basis of any person in the plan, account, or annuity shall be increased by the amount of elective deferrals not excluded as a result of the application of subdivision (c).

(2) Any basis described in paragraph (1) shall be recovered in the manner specified in Section 17085.

(e) Notwithstanding the limitations provided in subdivision (c), any income attributable to elective deferrals in taxable years beginning on or after January 1, 2002, in conformance with Part I of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, as applicable for federal and state purposes, shall not be includable in the gross income of the individual for whose benefit the plan or account was established until distributed pursuant to the plan or by operation of law.

SEC. 7. Section 17551 of the Revenue and Taxation Code is amended to read:

17551. (a) Subchapter E of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to accounting periods and methods of accounting, shall apply, except as otherwise provided.

(b) Section 444(c)(1) of the Internal Revenue Code, relating to effect of election, shall not apply.

(c) (1) Notwithstanding Section 17024.5, Section 457 of the Internal Revenue Code, relating to deferred compensation plans of state and local governments and tax-exempt organizations, shall apply, except as

otherwise provided, without regard to taxable year to the same extent as applicable for federal purposes.

(2) The maximum deferred compensation for the taxable year that may be excluded from gross income under Section 457 of the Internal Revenue Code, as applicable for state purposes, shall not exceed the amount of deferred compensation that may be excluded from gross income under Section 457 of the Internal Revenue Code, as amended by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and as amended by Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147), including additional elective deferrals under Section 414(v) of the Internal Revenue Code, as added by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147).

(d) (1) For taxable years beginning on or after January 1, 2002, the basis of any person in the plan shall be increased by the amount of compensation not allowed to be excluded under subdivision (a).

(2) Any basis described in paragraph (1) shall be recovered in the manner specified in Section 17085.

(e) Notwithstanding the limitations provided in subdivision (a), any income attributable to compensation deferred in a plan in taxable years beginning on or after January 1, 2002, in conformance with Section 457 of the Internal Revenue Code, as applicable for federal and state purposes, shall not be includable in the gross income of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

SEC. 8. Section 17560 of the Revenue and Taxation Code is amended to read:

17560. (a) The provisions of Sections 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply.

(b) The provisions of Section 812 of Public Law 99-514, relating to the disallowance of use of installment method for certain obligations as modified by Section 1008(g) of Public Law 100-647, shall apply to taxable years beginning on or after January 1, 1987.

(c) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to dispositions in taxable years beginning on or after January 1, 1990.

(d) (1) In the case of any installment obligation to which Section 453(*l*)(2)(B) of the Internal Revenue Code applies, in lieu of the provisions of Section 453(*l*)(3)(A) of the Internal Revenue Code, the tax imposed under Section 17041 or 17048 for any taxable year for which

payment is received on that obligation shall be increased by the amount of interest determined in the manner provided under Section 453(*l*)(3)(B) of the Internal Revenue Code.

(2) The provisions of Sections 10202 and 10204 of Public Law 100-203 are modified to provide for each of the following:

(A) The provisions of Section 10202 shall apply to dispositions in taxable years beginning on or after January 1, 1990.

(B) The provisions of Section 10204 shall apply to costs incurred in taxable years beginning on or after January 1, 1990.

(C) Any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(i) Fifty percent in the first taxable year beginning on or after January 1, 1990.

(ii) Fifty percent in the second taxable year beginning on or after January 1, 1990.

(e) (1) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the taxable year, in lieu of the provisions of Section 453A(c)(1) of the Internal Revenue Code, the tax imposed by Section 17041 or 17048 for the taxable year shall be increased by the amount of interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(2) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 17041 in lieu of the maximum rate of tax imposed under Section 1 or 11 of the Internal Revenue Code.

SEC. 9. Section 17731 of the Revenue and Taxation Code is amended to read:

17731. (a) Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to estates, trusts, beneficiaries, and decedents, shall apply, except as otherwise provided.

(b) (1) (A) The amendments made to Section 692 of the Internal Revenue Code by Section 101 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to taxable years ending before, on, or after September 11, 2001, except as otherwise provided.

(B) Section 692(d)(2) of the Internal Revenue Code, relating to the ten thousand dollar ($10,000) minimum benefit, does not apply.

(2) The amendments made to Sections 642 and 692 of the Internal Revenue Code by Sections 113 and 116 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to taxable years ending on or after September 11, 2001.

(c) If a refund or a credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the

close of the one-year period beginning on the date of enactment of this act by the operation of any law or rule of law (including res judicata), that refund or credit may nevertheless be made or allowed if a claim therefor is filed on or before the close of that one-year period.

SEC. 10. Section 18535 of the Revenue and Taxation Code is amended to read:

18535. (a) In lieu of electing nonresident partners filing a return pursuant to Section 18501 or 18507, the Franchise Tax Board may, pursuant to requirements and conditions set forth in forms and instructions, provide for the filing of a group return for electing nonresident partners by a partnership doing business in, or deriving income from, sources in California. The tax rate or rates applicable to each electing partner's distributive share shall be the highest marginal rate or rates provided by Part 10 (commencing with Section 17001). Except as provided in subdivision (b), no deductions shall be allowed except those necessary to determine each partner's distributive share, and no credits shall be allowed except those directly attributable to the partnership. As required by the Franchise Tax Board, the partnership as agent for the electing partners shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners.

(b) Deductions provided by Chapter 5 (commencing with Section 17501) of Part 10, attributable to earned income of a partner derived from a partnership filing a group return on behalf of electing nonresident partners under subdivision (a), shall be allowed if the partner certifies, in the form and manner as the Franchise Tax Board may prescribe, that he or she has no earned income from any other source.

(c) This section shall also be applicable to a nonresident shareholder of a corporation which is treated as an ''S corporation'' under Chapter 4.5 (commencing with Section 23800) of Part 11. In that case, the provisions of subdivisions (a) and (b) are modified to refer to''shareholder or shareholders'' in lieu of ''partners'' and to ''S corporation'' in lieu of ''partnership.''

(d) This section shall also be applicable to a nonresident person with a membership or economic interest in a limited liability company, registered limited liability partnership, or foreign limited liability partnership, which is classified as a partnership for California tax purposes. In that case, the provisions of subdivisions (a) and (b) are modified to refer to ''holders of a membership or economic interest'' in lieu of ''partners'' and to ''limited liability companies'' in lieu of ''partnerships,'' and ''partnerships'' shall include registered limited liability partnerships and foreign limited liability partnerships.

(e) The Franchise Tax Board may adjust the income of an electing nonresident taxpayer included in a group return filed under this section

to properly reflect income under Part 10 (commencing with Section 17001), including Chapter 11 thereof (commencing with Section 17951), this part (commencing with Section 18401), and Part 11 (commencing with Section 23001), including Chapter 17 thereof (commencing with Section 25101).

SEC. 11. Section 18572 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 18572 is added to the Revenue and Taxation Code, to read:

18572. (a) Section 7508A of the Internal Revenue Code, relating to postponement of certain tax related deadlines, shall apply, except as otherwise provided.

(b) The amendments made to Section 7508A of the Internal Revenue Code by Section 112 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to disasters and terroristic or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after January 23, 2002.

SEC. 13. Section 19109 of the Revenue and Taxation Code is amended to read:

19109. (a) If the Franchise Tax Board extends for any period the time for filing a return under Section 18572 or subdivision (a) of Section 18567 and the time for paying the tax under Section 18572 or subdivision (c) of Section 18567 (and waives any penalties relating to the failure to so file or so pay) for any taxpayer located in a presidentially declared disaster area or any county or city in this state which is proclaimed by the Governor to be in a state of disaster that incurred a loss, the Franchise Tax Board shall, notwithstanding subdivision (b) of Section 18572, abate for that period the assessment of any interest prescribed under this article on that tax.

(b) For purposes of subdivision (a), the term ''presidentially declared disaster area'' means, with respect to any taxpayer, any area which the President has determined warrants assistance by the federal government under the Disaster Relief and Emergency Assistance Act.

SEC. 14. Section 19311 of the Revenue and Taxation Code is amended to read:

19311. (a) (1) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination (as defined in Section 18622), or within the period provided in Section 19306, 19307, 19308, or 19316, whichever period expires later.

(2) Within two years of the date of the final determination (as defined in Section 18622) or within the period provided in Section 19306, 19307, or 19308, whichever period expires later, the Franchise Tax Board may allow a credit, make a refund, or mail to the taxpayer a notice of proposed overpayment resulting from the final federal determination.

(b) The amendments made by the act adding this paragraph shall apply, without regard to taxable year, to federal determinations that become final on or after the effective date of the act adding this paragraph.

SEC. 15. Section 19316 is added to the Revenue and Taxation Code, to read:

19316. (a) In the case of an individual taxpayer under the Personal Income Tax Law (Part 10 (commencing with Section 17001)), the running of any period specified in Section 19306, 19308, 19311, 19312, or 19313 shall be suspended during any period during which that individual taxpayer is ''financially disabled'' as defined in subdivision (b). The financial disability of an individual taxpayer shall be established in accordance with those procedures and requirements specified by the Franchise Tax Board.

(b) (1) For purposes of this section, except as otherwise provided in paragraph (2), an individual taxpayer is ''financially disabled'' if that individual taxpayer is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months.

(2) An individual taxpayer shall not be considered to be ''financially disabled'' for any period during which that individual's spouse or any other person is legally authorized to act on that individual's behalf 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 or 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. 16. Section 19559 is added to the Revenue and Taxation Code, to read:

19559. (a) (1) The Franchise Tax Board may disclose returns and return information to federal agencies on the same terms and to the same extent as returns and return information may be disclosed by the Secretary of the Treasury under paragraph (3)(C) or paragraph (7) of Section 6103 (i) of the Internal Revenue Code, as amended by Section 201 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134).

(2) Notwithstanding paragraph (1), the Franchise Tax Board may not disclose any return or return information under this section if the Franchise Tax Board determines, in the manner specified by the board, that this disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(b) This section shall apply to disclosures made on or after January 23, 2002, except that no disclosures may be made under this section after December 31, 2003.

SEC. 17. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) Except as otherwise provided, a corporation that has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code shall be an ''S'' corporation for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part.

(b) A corporation that is an ''S corporation'' for federal income tax purposes, shall be an ''S corporation'' for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, and its shareholders shall be shareholders of an ''S corporation'' without regard to whether the corporation is qualified to do business or is incorporated in this state.

(c) Notwithstanding subdivision (a), a corporation that elects ''S corporation'' status under Section 1362 of the Internal Revenue Code for federal income tax purposes but which is not qualified to be an ''S corporation'' under subdivision (a) of Section 23800.5, shall not be an ''S corporation'' for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401, and this part.

(d) Except as provided in subdivision (e), a corporation that is an ''S corporation'' for purposes of this part shall not be included in a combined report pursuant to Chapter 17 (commencing with Section 25101).

(e) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations treated as an ''S corporation'' under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of that group or represents an evasion of tax by one or more members of that group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the treatment of any corporation as an ''S corporation.''

(f) The tax for a ''C corporation'' for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e)(5) of the Internal Revenue Code.

(g) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the ''S corporation'' election for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal Revenue Code.

(h) (1) The provisions of Section 1362(b)(5) of the Internal Revenue Code, relating to authority to treat late elections, etc., as timely, shall apply only for taxable years beginning on or after January 1, 1997, with respect to elections under Section 1362(a) of the Internal Revenue Code for taxable years beginning on or after January 1, 1997.

(2) Notwithstanding the provisions of paragraph (1), if for any taxable year beginning on or after January 1, 1987, a corporation fails to qualify as an ''S corporation'' for federal income tax purposes solely because the federal Form 2553 (Election by a Small Business Corporation) was not filed timely, the corporation shall be treated for purposes of this part as an ''S corporation'' for the taxable year the ''S corporation'' election should have been made, and for each subsequent year until terminated, if both of the following conditions are met:

(A) The corporation and all of its shareholders reported their income for California tax purposes on original returns consistent with ''S corporation'' status for the year the ''S corporation'' election should have been made, and for each subsequent taxable year (if any) until terminated.

(B) The corporation and its shareholders have filed with the Internal Revenue Service a federal Form 2553 requesting automatic relief with respect to the late ''S corporation'' election, in full compliance with the federal Revenue Procedure 1997-48, I.R.B. 1997-43, and have received notification of the acceptance of the untimely filed ''S corporation'' election from the Internal Revenue Service. A copy of the notification shall be provided to the Franchise Tax Board upon request.

(i) The provisions of Section 1362(f) of the Internal Revenue Code, relating to inadvertent invalid elections or terminations, shall apply only for taxable years beginning on or after January 1, 1997, with respect to

elections under Section 1362(a) of the Internal Revenue Code for taxable years beginning on or after January 1, 1997.

SEC. 18. Section 24601 of the Revenue and Taxation Code is amended to read:

24601. (a) Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to deferred compensation, etc., shall apply, except as otherwise provided.

(b) Notwithstanding Section 23051.5, Part I of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to pension, profitsharing, stock bonus plans, etc., shall apply, except as otherwise provided, without regard to taxable year to the same extent as applicable for federal purposes.

SEC. 19. Section 24667 of the Revenue and Taxation Code is amended to read:

24667. (a) (1) Sections 453, 453A, and 453B of the Internal Revenue Code, relating to installment method, special rules for nondealers, and gain or loss on disposition of installment obligations, respectively, shall apply, except as otherwise provided.

(2) Sections 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply to each taxable year beginning on or after January 1, 1988.

(3) Section 812 of Public Law 99-514, relating to the disallowance of use of the installment method for certain obligations, as modified by Section 1008(g) of Public Law 100-647, shall apply to each taxable year beginning on or after January 1, 1988.

(b) For purposes of subdivision (a), any references in the Internal Revenue Code to sections that have not been incorporated into this part by reference shall be deemed to refer to the corresponding section, if any, of this part.

(c) In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under former Section 24667 or 24668 for the taxpayer's last taxable year beginning before January 1, 1988, the provisions of this section shall be treated as a change in method of accounting for the first taxable year beginning after December 31, 1987, and all of the following shall apply:

(1) That change shall be treated as initiated by taxpayer.

(2) That change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The period for taking into account adjustments under Article 6 (commencing with Section 24721) by reason of that change shall not exceed four years.

(d) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to

dispositions on or after January 1, 1990, in taxable years beginning on or after January 1, 1990.

(e) (1) In the case of any installment obligations to which Section 453(*l*)(2)(B) of the Internal Revenue Code applies, in lieu of the provisions of Section 453(*l*)(3)(A) of the Internal Revenue Code, the ''tax'' (as defined by subdivision (a) of Section 23036) for any taxable year for which payment is received on that obligation shall be increased by the amount of interest determined in the manner provided under Section 453(*l*)(3)(B) of the Internal Revenue Code.

(2) Sections 10202 and 10204 of Public Law 100-203, are modified to provide for each of the following:

(A) Section 10202 shall apply to dispositions in taxable years beginning on or after January 1, 1990.

(B) Section 10204 shall apply to costs incurred in taxable years beginning on or after January 1, 1990.

(C) Any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(i) Fifty percent in the first taxable year beginning on or after January 1, 1990.

(ii) Fifty percent in the second taxable year beginning on or after January 1, 1990.

(f) (1) The amendments to Section 453A of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to special rules for nondealers, shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the taxable year, in lieu of the provisions of Section 453A(c)(1) of the Internal Revenue Code, the ''tax'' (as defined by subdivision (a) of Section 23036) for the taxable year shall be increased by the amount of interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(3) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 23151, 23186, or 23802, whichever applies, in lieu of the maximum rate of tax imposed under Section 1 or 11 of the Internal Revenue Code.

SEC. 20. Section 76 of Chapter 35 of the Statutes of 2002 is amended to read:

Sec. 76. If a corporation that had in effect a valid federal election to be treated as an ''S'' corporation for federal purposes and a valid state election to be a ''C'' corporation for state purposes for taxable years beginning before January 1, 2002, is an ''S'' corporation pursuant to

Section 23801 as amended by this act, the effective date of the election to be treated as an ''S'' corporation for state purposes shall be the first day of the taxable year beginning on or after January 1, 2002.

SEC. 21. (a) (1) For purposes of the Internal Revenue Code of 1986, as applicable for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code, payments made by an organization described in Section 501(c)(3) of the Internal Revenue Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for that organization's exemption under Section 501 of the Internal Revenue Code, if the payments are made in good faith using a reasonable and objective formula that is consistently applied.

(2) This subdivision shall apply to payments made on or after September 11, 2001.

(b) For purposes of the Internal Revenue Code of 1986, as applicable for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code, both of the following shall apply:

(1) Gross income does not include any amount that, but for this section, would be includible in gross income by reason of the discharge, in whole or in part, of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

(2) Return requirements under Section 6050P of the Internal Revenue Code, shall not apply to any discharge described in paragraph (1).

(3) This subdivision shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.

SEC. 22. The amendments made by this act to Sections 18572 and 19109 of the Revenue and Taxation Code apply to any disaster that occurs on or after September 11, 2001.

SEC. 23. 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 necessary tax relief for adoption assistance and the financially disabled to provide further conformity with federal tax laws

at the earliest possible time it is necessary that this act go into immediate effect.

CHAPTER 808

An act to amend Sections 60850 and 60851 of the Education Code, relating to the high school exit examination.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 60850 of the Education Code is amended to read:

60850. (a) The Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop a high school exit examination in English language arts and mathematics in accordance with the statewide academically rigorous content standards adopted by the State Board of Education pursuant to Section 60605. To facilitate the development of the examination, the superintendent shall review any existing high school subject matter examinations that are linked to, or can be aligned with, the statewide academically rigorous content standards for English language arts and mathematics adopted by the State Board of Education. By October 1, 2000, the State Board of Education shall adopt a high school exit examination that is aligned with statewide academically rigorous content standards.

(b) The Superintendent of Public Instruction, with the approval of the State Board of Education, shall establish a High School Exit Examination Standards Panel to assist in the design and composition of the exit examination and to ensure that the examination is aligned with statewide academically rigorous content standards. Members of the panel shall include, but are not limited to, teachers, administrators, school board members, parents, and the general public. Members of the panel shall serve without compensation for a term of two years and shall be representative of the state's ethnic and cultural diversity and gender balance. The superintendent shall also make the best effort to ensure representation of the state's diversity relative to urban, suburban, and rural areas. The State Department of Education shall provide staff to the panel.

(c) The Superintendent of Public Instruction shall require that the examination be field tested before actual implementation to ensure that the examination is free from bias and that its content is valid and reliable.

(d) Before the State Board of Education adopts the exit examination, the Superintendent of Public Instruction shall submit the examination to the Statewide Pupil Assessment Review Panel established pursuant to Section 60606. The panel shall review all items or questions to ensure that the content of the examination complies with the requirements of Section 60614.

(e) The exit examination prescribed in subdivision (a) shall conform to the following standards or it shall not be required as a condition of graduation:

(1) The examination may not be administered to a pupil who did not receive adequate notice as provided for in paragraph (1) of subdivision (f) regarding the test.

(2) The examination, regardless of federal financial participation, shall comply with Title VI of the Civil Rights Act (42 U.S.C. Sec. 2000d et seq.), its implementing regulations (34 C.F.R. Part 100), and the Equal Educational Opportunities Act of 1974 (20 U.S.C. Sec. 1701).

(3) The examination shall have instructional and curricular validity.

(4) The examination shall be scored as a criterion referenced examination.

(f) For purposes of this section, the following terms have the following meanings:

(1) ''Accommodations'' means any variation in the assessment environment or process that does not fundamentally alter what the test measures or affect the comparability of scores. ''Accommodations'' may include variations in scheduling, setting, aids, equipment, and presentation format.

(2) ''Adequate notice'' means that the pupil and his or her parent or guardian have received written notice, at the commencement of the pupil's 9th grade, and each year thereafter through the annual notification process established pursuant to Section 48980, or if a transfer pupil, at the time the pupil transfers. A pupil who has taken the exit examination in the 10th grade is deemed to have had ''adequate notice'' as defined in this paragraph.

(3) ''Curricular validity'' means that the examination tests for content found in the instructional textbooks. For the purposes of this section, any textbook or other instructional material adopted pursuant to this code and consistent with the state's adopted curriculum frameworks shall be deemed to satisfy this definition.

(4) ''Instructional validity'' means that the examination is consistent with what is expected to be taught. For the purposes of this section, instruction that is consistent with the state's adopted curriculum frameworks for the subjects tested shall be deemed to satisfy this definition.

(5) ''Modification'' means any variation in the assessment environment or process that fundamentally alters what the test measures or affects the comparability of scores.

(g) The examination shall be offered to individuals with exceptional needs, as defined in Section 56026, in accordance with paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 794 and following of Title 29 of the United States Code. Individuals with exceptional needs shall be administered the examination with appropriate accommodations, where necessary.

(h) Nothing in this chapter shall prohibit a school district from requiring pupils to pass additional exit examinations approved by the governing board of the school district as a condition for graduation.

SEC. 2. Section 60851 of the Education Code is amended to read:

60851. (a) Commencing with the 2003–04 school year and each school year thereafter, each pupil completing grade 12 shall successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. Funding for the administration of the exit examination shall be provided for in the annual Budget Act. The Superintendent of Public Instruction shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of subdivisions (a), (b), (c), and (d). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.

(b) A pupil may take the high school exit examination in grade 9 in the 2000–01 school year only. Each pupil shall take the high school exit examination in grade 10 beginning in the 2001–02 school year and may take the examination during each subsequent administration, until each section of the examination has been passed.

(c) At the parent or guardian's request, a school principal shall submit a request for a waiver of the requirement to successfully pass the high school exit examination to the governing board of the school district for a pupil with a disability who has taken the high school exit examination with modifications that alter what the test measures and has received the equivalent of a passing score on one or both subject matter parts of the high school exit examination. A governing board of a school district may waive the requirement to successfully pass one or both subject matter parts of the high school exit examination for a pupil with a disability if the principal certifies to the governing board of the school district that the pupil has all of the following:

(1) An individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) in place that requires

the accommodations or modifications to be provided to the pupil when taking the high school exit examination.

(2) Sufficient high school level coursework either satisfactorily completed or in progress in a high school level curriculum sufficient to have attained the skills and knowledge otherwise needed to pass the high school exit examination.

(3) An individual score report for the pupil showing that the pupil has received the equivalent of a passing score on the high school exit examination while using a modification that fundamentally alters what the high school exit examination measures as determined by the State Board of Education.

(d) The high school exit examination shall be offered in each public school and state special school that provides instruction in grades 10, 11, or 12, on the dates designated by the Superintendent of Public Instruction. An exit examination may not be administered on any date other than those designated by the Superintendent of Public Instruction as examination days or makeup days.

(e) The results of the high school exit examination shall be provided to each pupil taking the examination within eight weeks of the examination administration and in time for the pupil to take any section of the examination not passed at the next administration. A pupil shall take again only those parts of the examination he or she has not previously passed and may not retake any portion of the exam that he or she has previously passed.

(f) Supplemental instruction shall be provided to any pupil who does not demonstrate sufficient progress toward passing the high school exit examination. To the extent that school districts have aligned their curriculum with the state academic content standards adopted by the State Board of Education, the curriculum for supplemental instruction shall reflect those standards and shall be designed to assist the pupils to succeed on the high school exit examination. Nothing in this chapter shall be construed to require the provision of supplemental services using resources that are not regularly available to a school or school district, including summer school instruction provided pursuant to Section 37252. In no event shall any action taken as a result of this subdivision cause or require reimbursement by the Commission on State Mandates. Sufficient progress shall be determined on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupils' grades and other indicators of academic achievement designated by the district.

SEC. 2.5. Section 60851 of the Education Code is amended to read:

60851. (a) Commencing with the 2003–04 school year and each school year thereafter, each pupil completing grade 12 shall successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. Funding for the administration of the exit examination shall be provided for in the annual Budget Act. A pupil who successfully passes the exit examination within 6 months of completing grade 12 is eligible to receive a regular diploma of high school graduation. The Superintendent of Public Instruction shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of subdivisions (a), (b), (c), and (d). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.

(b) A pupil may take the high school exit examination in grade 9 in the 2000–01 school year only. Each pupil shall take the high school exit examination in grade 10 beginning in the 2001–02 school year and may take the examination during each subsequent administration, until each section of the examination has been passed.

(c) At the parent or guardian's request, a school principal shall submit a request for a waiver of the requirement to successfully pass the high school exit examination to the governing board of the school district for a pupil with a disability who has taken the high school exit examination with modifications that alter what the test measures and has received the equivalent of a passing score on one or both subject matter parts of the high school exit examination. A governing board of a school district may waive the requirement to successfully pass one or both subject matter parts of the high school exit examination for a pupil with a disability if the school certifies to the governing board of the school district that the pupil has all of the following:

(1) An individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) in place that requires the accommodations or modifications to be provided to the pupil when taking the high school exit examination.

(2) Sufficient high school level coursework either satisfactorily completed or in progress in a high school level curriculum sufficient to have attained the skills and knowledge otherwise needed to pass the high school exit examination.

(3) An individual score report for the pupil showing that the pupil has received the equivalent of a passing score on the high school exit examination while using a modification that fundamentally alters what

the high school exit examination measures as determined by the State Board of Education.

(d) The high school exit examination shall be offered in each public school and state special school that provides instruction in grades 10, 11, or 12, on the dates designated by the Superintendent of Public Instruction. An exit examination may not be administered on any date other than those designated by the Superintendent of Public Instruction as examination days or makeup days.

(e) The results of the high school exit examination shall be provided to each pupil taking the examination within eight weeks of the examination administration and in time for the pupil to take any section of the examination not passed at the next administration. A pupil shall take again only those parts of the examination he or she has not previously passed and may not retake any portion of the exam that he or she has previously passed.

(f) Supplemental instruction shall be provided to any pupil who does not demonstrate sufficient progress toward passing the high school exit examination. To the extent that school districts have aligned their curriculum with the state academic content standards adopted by the State Board of Education, the curriculum for supplemental instruction shall reflect those standards and shall be designed to assist the pupils to succeed on the high school exit examination. Nothing in this chapter shall be construed to require the provision of supplemental services using resources that are not regularly available to a school or school district, including summer school instruction provided pursuant to Section 37252. In no event shall any action taken as a result of this subdivision cause or require reimbursement by the Commission on State Mandates. Sufficient progress shall be determined on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupils' grades and other indicators of academic achievement designated by the district.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 60851 of the Education Code proposed by both this bill and AB 1794. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 60851 of the Education Code, and (3) this bill is enacted after AB 1794, in which case Section 2 of this bill shall not become operative.

CHAPTER 809

An act to amend Sections 2924b and 2941 of the Civil Code, and to amend Section 5501 of the Probate Code, relating to instruments.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, 19__, in Book _____ page ____ records of ____ County, (or filed for record with recorder's serial number ____, _____ County) California, executed by ____ as trustor (or mortgagor) in which _____ is named as beneficiary (or mortgagee) and _____ as trustee be mailed to _____ at _____.

Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____"

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the ''last known address'' of each trustor or mortgagor means the last business or residence address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(c) The mortgagee, trustee, or other person authorized to record the notice of default shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired

by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The Office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a ''Notice of Lien for Postponed Property Taxes'' has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, which has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date

of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a ''Notice of Federal Tax Lien under Internal Revenue Laws'' has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee's sale and invalidate the trustee's deed, at the option of either the successful bidder at the trustee's sale or the trustee, and in either case with the consent of the beneficiary. Any option to rescind the trustee's sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A recision of the trustee's sale pursuant to this paragraph may be recorded in a notice of recision pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a request of the trustor or mortgagor for special notice at the address of the person given therein or does contain that request but no address of the person is given therein and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time

before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(g) ''Business day,'' as used in this section, has the meaning specified in Section 9.

SEC. 2. 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 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) Within 30 calendar days after 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 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. The reconveyance instrument shall specify one of the following options for delivery of the instrument, the addresses of which the recorder has no duty to validate:

(i) The trustor or successor in interest, and that person's last known address, as the person to whom the recorder will deliver the recorded instrument pursuant to Section 27321 of the Government Code.

(ii) That the recorder shall deliver the recorded instrument to the trustee's address. If the trustee's address is specified for delivery, the trustee shall mail the recorded instrument to the trustor or the successor in interest to the last known address for that party.

(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, or caused to be delivered, the original note and deed of trust to the person making that request.

(D) If the note or deed of trust, or any copy of the note or deed of trust, is electronic, upon satisfaction of an obligation secured by a deed of trust, any electronic original, or electronic copy which has not been previously marked solely for use as a copy, of the note and deed of trust, shall be altered to indicate that the obligation is paid in full.

(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).

(7) A beneficiary may, at its discretion, in accordance with the requirements and procedures of Section 2934a, substitute the title company conducting the escrow through which the obligation is satisfied for the trustee of record, in which case the title company assumes the obligation of a trustee under this subdivision, and may collect the fee authorized by subdivision (e).

(8) In lieu of delivering the original note and deed of trust to the trustee within 30 days of loan satisfaction, as required by paragraph (1) of subdivision (b), a beneficiary who executes and delivers to the trustee a request for a full reconveyance within 30 days of loan satisfaction may, within 120 days of loan satisfaction, deliver the original note and deed of trust to either the trustee or trustor. If the note and deed of trust are delivered as provided in this paragraph, upon satisfaction of the note and deed of trust, the note and deed of trust shall be altered to indicate that the obligation is paid in full. Nothing in this paragraph alters the requirements and obligations set forth in paragraphs (2) and (3).

(c) 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 serviceusing 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.

(d) 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 five hundred dollars ($500).

(e) (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 forty-five dollars ($45), the fee is conclusively presumed to be reasonable.

(3) The fee described in paragraph (1) may not be charged unless demand for the fee was included in the payoff demand statement described in Section 2943.

(f) 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.

(g) No fee or charge may be imposed on the trustor in connection with, or relating to, any act described in this section except as expressly authorized by this section.

(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.

(i) (1) In any action filed before January 1, 2002, that is dismissed as a result of the amendments to this section enacted at the 2001–02 Regular Session, the plaintiff shall not be required to pay the defendant's costs.

(2) Any claimant, including a claimant in a class action lawsuit, whose claim is dismissed or barred as a result of the amendments to this section enacted at the 2001–02 Regular Session, may, within 6 months of the dismissal or barring of the action or claim, file or refile a claim for actual damages occurring before January 1, 2002, that were proximately caused by a time lapse between loan satisfaction and the completion of the beneficiary's obligations as required under paragraph (1) of subdivision (b). In any action brought under this section, the defendant may be found liable for actual damages, but may not be found liable for any civil penalty authorized by Section 2941.

(j) Notwithstanding any other penalties, if a beneficiary collects a fee for reconveyance and thereafter has knowledge, or should have knowledge, that no reconveyance has been recorded, the beneficiary shall cause to be recorded the reconveyance, or in the event a release of obligation is earlier and timely recorded, the beneficiary shall refund to the trustor the fee charged to perform the reconveyance. Evidence of knowledge includes, but is not limited to, notice of a release of obligation pursuant to paragraph (3) of subdivision (b).

SEC. 3. Section 5501 of the Probate Code is amended to read:

5501. For purposes of this part:

(a) ''Beneficiary form'' means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(b) ''Register,'' including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(c) ''Registering entity'' means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(d) ''Security'' means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(e) (1) ''Security account'' means any of the following:

(A) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death.

(B) An investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, the cash balance in the account, and cash equivalents, and interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death.

(C) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(2) For the purposes of this subdivision, ''cash equivalent'' means an investment that is easily converted into cash, including, treasury bills, treasury notes, money market funds, savings bonds, short-term instruments, and short-term obligations.

(f) This section may not be construed to govern cash equivalents in multiple-party accounts that are governed by the California Multiple-Party Accounts Law, Part 2 (commencing with Section 5100).

CHAPTER 810

An act to amend Sections 1741, 1760, 2709.5, and 2851 of, to amend and renumber Sections 1758, 1766, 1768, and 1770 of, to amend, renumber, and add Sections 1761, 1762, 1763, 1764, and 1765 of, to add Section 1760.5 to, to repeal Section 1759 of, and to repeal and add Section 1767 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 1741 of the Business and Professions Code is amended to read:

1741. As used in this article:

(a) ''Board'' means the Dental Board of California.

(b) ''Committee'' means the Committee on Dental Auxiliaries.

(c) ''Direct supervision'' means supervision of dental procedures based on instructions given by a licensed dentist, who must be physically

present in the treatment facility during the performance of those procedures.

(d) ''General supervision'' means supervision of dental procedures based on instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist during the performance of those procedures.

(e) ''Dental auxiliary'' means a person who may perform dental assisting or dental hygiene procedures authorized by this article. Dental auxiliary also means a registered dental hygienist in alternative practice, who may provide authorized services by prescription provided by a dentist or physician and surgeon licensed to practice in this state. ''Dental auxiliary'' includes all of the following:

(1) A dental assistant pursuant to Section 1750.

(2) A registered dental assistant pursuant to Section 1753.

(3) A registered dental assistant in extended functions pursuant to Section 1756.

(4) A registered dental hygienist pursuant to Section 1766.

(5) A registered dental hygienist in extended functions pursuant to Section 1768.

(6) A registered dental hygienist in alternative practice pursuant to Section 1774.

SEC. 2. Section 1758 of the Business and Professions Code is amended and renumbered to read:

1766. The board shall license as a registered dental hygienist a person who satisfies all of the following requirements:

(a) Completion of an educational program for registered dental hygienists, approved by the board, and accredited by the Commission on Dental Accreditation, and conducted by a degree-granting, postsecondary institution.

(b) Satisfactory performance on an examination required by the board.

(c) Satisfactory completion of a national written dental hygiene examination approved by the board.

SEC. 3. Section 1758 of the Business and Professions Code is amended and renumbered to read:

1766. (a) The board shall license as a registered dental hygienist a person who satisfies all of the following requirements:

(1) Completion of an educational program for registered dental hygienists, approved by the board, and accredited by the Commission on Dental Accreditation, and conducted by a degree-granting, postsecondary institution.

(2) Satisfactory performance on an examination required by the board.

(3) Satisfactory completion of a national written dental hygiene examination approved by the board.

(b) The board may grant a license as a registered dental hygienist to an applicant who has not taken an examination before the board, if the applicant submits all of the following to the board:

(1) A completed application form and all fees required by the board.

(2) Proof of a current license as a registered dental hygienist issued by another state that is not revoked, suspended, or otherwise restricted.

(3) Proof that the applicant has been in clinical practice as a registered dental hygienist or has been a full-time faculty member in an accredited dental hygiene education program for a minimum of 750 hours per year for at least five years preceding the date of his or her application under this section. The clinical practice requirement shall be deemed met if the applicant provides proof of at least three years of clinical practice and commits to completing the remaining two years of clinical practice by filing with the board a copy of a pending contract to practice dental hygiene in any of the following facilities:

(A) A primary care clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code.

(B) A primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code.

(C) A clinic owned or operated by a public hospital or health system.

(D) A clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(4) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed as a registered dental hygienist or dentist. If the applicant has been subject to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant.

(5) Proof of graduation from a school of dental hygiene accredited by the Commission on Dental Accreditation.

(6) Proof of satisfactory completion of the Dental Hygiene National Board Examination and of a state or regional clinical licensure examination.

(7) Proof that the applicant has not failed the examination for licensure to practice dental hygiene under this chapter more than once or once within five years prior to the date of his or her application for a license under this section.

(8) Documentation of completion of a minimum of 25 units of continuing education earned in the two years preceding application, including completion of any continuing education requirements imposed by the board on registered dental hygienists licensed in this state at the time of application.

(9) Any other information as specified by the board to the extent that it is required of applicants for licensure by examination under this article.

(c) The board may periodically request verification of compliance with the requirements of paragraph (3) of subdivision (b), and may revoke the license upon a finding that the employment requirement or any other requirement of paragraph (3) has not been met.

(d) The board shall provide in the application packet to each out-of-state dental hygienist pursuant to this section the following information:

(1) The location of dental manpower shortage areas in the state.

(2) Any not-for-profit clinics, public hospitals, and accredited dental hygiene education programs seeking to contract with licensees for dental hygiene service delivery or training purposes.

(e) The board shall review the impact of this section on the availability of actively practicing dental hygienists in California and report to the appropriate policy and fiscal committees of the Legislature by January 1, 2006. The report shall include a separate section providing data specific to dental hygienists who intend to fulfill the alternative clinical practice requirements of subdivision (b). The report shall include, but not be limited to, the following:

(1) The number of applicants from other states who have sought licensure.

(2) The number of dental hygienists from other states licensed pursuant to this section, the number of licenses not granted under this section, and the reason why the license was not granted.

(3) The practice location of dental hygienists licensed pursuant to this section.

(4) The number of dental hygienists licensed pursuant to this section who establish a practice in a rural area or in an area designated as having a shortage of practicing dental hygienists or no dental hygienists or in a safety net facility identified in paragraph (3) of subdivision (b).

(5) The length of time dental hygienists licensed pursuant to this section practiced in the reported location.

(f) In identifying a dental hygienist's location of practice, the board shall use medical service study areas or other appropriate geographic descriptions for regions of the state.

SEC. 4. Section 1759 of the Business and Professions Code is repealed.

SEC. 5. Section 1760 of the Business and Professions Code is amended to read:

1760. The following functions may be performed by a registered dental hygienist in addition to those authorized pursuant to Sections 1760.5, 1761, 1762, 1763, and 1764:

(a) All functions that may be performed by a dental assistant or a registered dental assistant.

(b) All persons holding a license as a registered dental hygienist on January 1, 2003, or issued a license on or before December 31, 2005, are authorized to perform the duties of a registered dental assistant specified in Section 1754. All persons issued a license as a registered dental hygienist on and after January 1, 2006, shall qualify for and receive a registered dental assistant license prior to performance of the duties specified in Section 1754.

SEC. 6. Section 1760.5 is added to the Business and Professions Code, to read:

1760.5. (a) The practice of dental hygiene includes dental hygiene assessment, development, planning, and implementation of a dental hygiene care plan. It also includes oral health education, counseling, and health screenings.

(b) The practice of dental hygiene does not include any of the following procedures:

(1) Diagnosis and comprehensive treatment planning.

(2) Placing, condensing, carving, or removal of permanent restorations.

(3) Surgery or cutting on hard and soft tissue including, but not limited to, the removal of teeth and the cutting and suturing of soft tissue.

(4) Prescribing medication.

(5) Administering local or general anesthesia or oral or parenteral conscious sedation, except for the administration of nitrous oxide and oxygen, whether administered alone or in combination with each other, or local anesthesia pursuant to Section 1761.

SEC. 7. Section 1761 of the Business and Professions Code is amended and renumbered to read:

1768. The board shall license as a registered dental hygienist in extended functions a person who meets all of the following requirements:

(a) Holds a valid license issued pursuant to Section 1766 as a registered dental hygienist.

(b) Completes clinical training approved by the board in a facility affiliated with a dental school under the direct supervision of the dental school faculty.

(c) Performs satisfactorily on an examination required by the board.

SEC. 8. Section 1761 is added to the Business and Professions Code, to read:

1761. A dental hygienist is authorized to perform the following procedures under direct supervision, after submitting to the board evidence of satisfactory completion of a board-approved course of instruction in the procedures:

(a) Soft-tissue curettage.

(b) Administration of local anesthesia.

(c) Administration of nitrous oxide and oxygen, whether administered alone or in combination with each other.

SEC. 9. Section 1762 of the Business and Professions Code is amended and renumbered to read:

1769. The board, in consultation with the committee, shall adopt regulations necessary to define the functions that may be performed by registered dental hygienists in extended functions, whether the functions require direct or general supervision, and the settings within which registered dental hygienists in extended functions may work.

SEC. 10. Section 1762 is added to the Business and Professions Code, to read:

1762. A dental hygienist is authorized to perform the following procedures under general supervision:

(a) Preventive and therapeutic interventions, including oral prophylaxis, scaling, and root planing.

(b) Application of topical, therapeutic, and subgingival agents used for the control of caries and periodontal disease.

(c) The taking of impressions for bleaching trays and application and activation of agents with nonlaser, light-curing devices.

(d) The taking of impressions for bleaching trays and placements of in-office, tooth-whitening devices.

SEC. 11. Section 1763 of the Business and Professions Code is amended and renumbered to read:

1770. A licensed dentist may utilize in his or her practice no more than two dental auxiliaries in extended functions licensed pursuant to Sections 1756 and 1768.

SEC. 12. Section 1763 is added to the Business and Professions Code, to read:

1763. (a) A dental hygienist may provide, without supervision, educational services, oral health training programs, and oral health screenings.

(b) A dental hygienist shall refer any screened patients with possible oral abnormalities to a dentist for a comprehensive examination, diagnosis, and treatment plan.

(c) In any public health program created by federal, state, or local law or administered by a federal, state, county, or local governmental entity, a dental hygienist may provide, without supervision, dental hygiene preventive services in addition to oral screenings, including, but not limited to, the application of fluorides and pit and fissure sealants.

SEC. 13. Section 1764 of the Business and Professions Code is amended and renumbered to read:

1771. Any person, other than a person who has been issued a license by the board, who holds himself or herself out as a registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, registered dental hygienist in extended functions, or registered dental hygienist in alternative practice, or uses any other term indicating or implying he or she is licensed by the board in the aforementioned categories, is guilty of a misdemeanor.

SEC. 14. Section 1764 is added to the Business and Professions Code, to read:

1764. (a) Any procedure performed or service provided by a dental hygienist that does not specifically require direct supervision shall require general supervision, so long as it does not give rise to a situation in the dentist's office requiring immediate services for alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable dental conditions, which, if not immediately diagnosed and treated, would lead to serious disability or death.

(b) Unless otherwise specified in this chapter, a dental hygienist may perform any procedure or provide any service within the scope of his or her practice in any setting, so long as the procedure is performed or the service is provided under the appropriate level of supervision required by this article.

(c) A dental hygienist may use any material or device approved for use in the performance of a service or procedure within his or her scope of practice under the appropriate level of supervision, if the dental hygienist has the appropriate education and training required to use the material or device.

SEC. 15. Section 1765 of the Business and Professions Code is amended and renumbered to read:

1772. The board shall seek to obtain an injunction against any dental hygienist who provides services in alternative practice pursuant to Sections 1774 and 1775 if the board has reasonable cause to believe that the services are being provided to a patient who has not received a prescription for those services from a dentist or physician and surgeon licensed to practice in this state.

SEC. 16. Section 1765 is added to the Business and Professions Code, to read:

1765. No person other than a licensed dental hygienist or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients, including, but not limited to, supragingival and subgingival scaling, dental hygiene assessment, and treatment planning, except for the following persons:

(a) A student enrolled in a dental or a dental hygiene school who is performing procedures as part of the regular curriculum of that program under the supervision of the faculty of that program.

(b) A registered dental assistant acting in accordance with the rules of the board in applying topical agents used for the control of caries or polishing the coronal surfaces of teeth.

(c) A registered dental hygienist licensed in another jurisdiction performing a clinical demonstration for educational purposes.

SEC. 17. Section 1766 of the Business and Professions Code is amended and renumbered to read:

1773. The provisions of Sections 1715, 1718, 1718.1, 1718.2, and 1718.3 shall govern the renewal, restoration, reinstatement, and reissuance of licenses issued under this article.

The license shall continue in effect through the date provided in Section 1715 that next occurs after its issuance, when it shall expire if not renewed.

SEC. 18. Section 1767 of the Business and Professions Code is repealed.

SEC. 19. Section 1767 is added to the Business and Professions Code, to read:

1767. The board, upon recommendation of the committee, shall adopt regulations necessary to implement the provisions of this article.

SEC. 20. Section 1768 of the Business and Professions Code is amended and renumbered to read:

1774. (a) The board shall license as a registered dental hygienist in alternative practice a person who demonstrates satisfactory performance on an examination required by the board and, subject to Sections 1760 and 1766, who meets either of the following requirements:

(1) Holds a current California license as a dental hygienist and meets the following requirements:

(A) Has been engaged in clinical practice as a dental hygienist for a minimum of 2,000 hours during the immediately preceding 36 months.

(B) Has successfully completed a bachelor's degree or its equivalent from a college or institution of higher education that is accredited by a national agency recognized by the Council on Postsecondary Accreditation or the United States Department of Education, and a minimum of 150 hours of additional educational requirements, as prescribed by the board by regulation, that are consistent with good dental and dental hygiene practice, including, but not necessarily limited to, dental hygiene technique and theory including gerontology and medical emergencies, and business administration and practice management.

(2) Has received a letter of acceptance into the employment utilization phase of the Health Manpower Pilot Project No. 155 established by the Office of Statewide Health Planning and Development pursuant to Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 of the Health and Safety Code.

(b) Subject to the provisions of subdivisions (b) and (h) of Section 1775, the board, in consultation with the committee, shall adopt regulations in accordance with Section 1748 necessary to implement this section.

(c) The Director of Consumer Affairs shall review the regulations adopted by the board in accordance with Section 313.1.

(d) A person licensed as a registered dental hygienist who has completed the prescribed classes through the Health Manpower Pilot Project (HMPP) and who has established an independent practice under the HMPP by June 30, 1997, shall be deemed to have satisfied the licensing requirements under Section 1774, and shall be authorized to continue to operate the practice he or she presently operates, so long as he or she follows the requirements for prescription and functions as specified in this section and Section 1775, with the exception of subdivision (e) of Section 1775, and as long as he or she continues to personally practice and operate the practice or until he or she sells the practice to a licensed dentist.

SEC. 21. Section 1770 of the Business and Professions Code is amended and renumbered to read:

1775. (a) A registered dental hygienist in alternative practice may practice, pursuant to Section 1774, as an employee of a dentist or of another registered dental hygienist in alternative practice, or as an independent contractor, or as a sole proprietor of an alternative dental hygiene practice.

(b) A registered dental hygienist in alternative practice may perform the duties authorized pursuant to Section 1774 in the following settings:

(1) Residences of the homebound.

(2) Schools.

(3) Residential facilities and other institutions.

(4) Dental health professional shortage areas, as certified by the Office of Statewide Health Planning and Development in accordance with existing office guidelines.

(c) A registered dental hygienist in alternative practice shall not do any of the following:

(1) Infer, purport, advertise, or imply that he or she is in any way able to provide dental services or make any type of dental health diagnosis beyond evaluating a patient's dental hygiene status, providing a dental hygiene treatment plan, and providing the associated dental hygiene services.

(2) Hire a registered dental hygienist to provide direct patient services other than a registered dental hygienist in alternative practice.

(d) A registered dental hygienist in alternative practice may submit or allow to be submitted any insurance or third-party claims for patient services performed as authorized pursuant to this article.

(e) A registered dental hygienist in alternative practice may hire other registered dental hygienists in alternative practice to assist in his or her practice.

(f) A registered dental hygienist in alternative practice may hire and supervise dental assistants performing functions specified in subdivision (b) of Section 1751.

(g) A registered dental hygienist in alternative practice shall provide to the board documentation of an existing relationship with at least one dentist for referral, consultation, and emergency services.

(h) A registered dental hygienist in alternative practice may perform dental hygiene services for a patient who presents to the registered hygienist in alternative practice a written prescription for dental hygiene services issued by a dentist or physician and surgeon licensed to practice in this state who has performed a physical examination and a diagnosis of the patient prior to a prescription being provided. The prescription shall be valid for a time period based on the dentist's or physician and surgeon's professional judgment, but not to exceed 15 months from the date that it was issued.

SEC. 22. Section 1770 of the Business and Professions Code is amended and renumbered to read:

1775. (a) A registered dental hygienist in alternative practice may practice, pursuant to Section 1774, as an employee of a dentist or of another registered dental hygienist in alternative practice, or as an independent contractor, or as a sole proprietor of an alternative dental hygiene practice, or as an employee of a primary care clinic or specialty clinic that is licensed pursuant to Section 1204 of the Health and Safety Code, or as an employee of a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, or as an employee of a clinic owned or operated by a public hospital or health system, or as an employee of a clinic owned and operated by a hospital that maintains the primary contracts with a county government to fill the county's role under Section 1700 of the Welfare and Institutions Code.

(b) A registered dental hygienist in alternative practice may perform the duties authorized pursuant to Section 1774 in the following settings:

(1) Residences of the homebound.

(2) Schools.

(3) Residential facilities and other institutions.

(4) Dental health professional shortage areas, as certified by the Office of Statewide Health Planning and Development in accordance with existing office guidelines.

(c) A registered dental hygienist in alternative practice shall not do any of the following:

(1) Infer, purport, advertise, or imply that he or she is in any way able to provide dental services or make any type of dental health diagnosis beyond evaluating a patient's dental hygiene status, providing a dental hygiene treatment plan, and providing the associated dental hygiene services.

(2) Hire a registered dental hygienist to provide direct patient services other than a registered dental hygienist in alternative practice.

(d) A registered dental hygienist in alternative practice may submit or allow to be submitted any insurance or third-party claims for patient services performed as authorized pursuant to this article.

(e) A registered dental hygienist in alternative practice may hire other registered dental hygienists in alternative practice to assist in his or her practice.

(f) A registered dental hygienist in alternative practice may hire and supervise dental assistants performing functions specified in subdivision (b) of Section 1751.

(g) A registered dental hygienist in alternative practice shall provide to the board documentation of an existing relationship with at least one dentist for referral, consultation, and emergency services.

(h) A registered dental hygienist in alternative practice may perform dental hygiene services for a patient who presents to the registered dental hygienist in alternative practice a written prescription for dental hygiene services issued by a dentist or physician and surgeon licensed to practice in this state who has performed a physical examination and a diagnosis of the patient prior to a prescription being provided. The prescription shall be valid for a time period based on the dentist's or physician and surgeon's professional judgment, but not to exceed 15 months from the date that it was issued.

SEC. 23. Section 2709.5 of the Business and Professions Code is amended to read:

2709.5. The board shall accept in payment of any fee required by this chapter cash or any customary or generally accepted medium of exchange, including check, cashier's check, certified check or money order. For the purposes of this section, customary or generally accepted medium of exchange does not include postage stamps.

SEC. 24. Section 2851 of the Business and Professions Code is amended to read:

2851. Six members of the board constitute a quorum for transaction of business at any meeting.

SEC. 25. Section 3 of this bill incorporates amendments to Section 1758 of the Business and Professions Code proposed by both this bill and AB 2818. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1758 of the Business and Professions Code, and (3) this bill is

enacted after AB 2818, in which case Section 2 of this bill shall not become operative.

SEC. 26. Section 22 of this bill incorporates amendments to Section 1770 of the Business and Professions Code proposed by both this bill and SB 1589. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1770 of the Business and Professions Code, and (3) this bill is enacted after SB 1859, in which case Section 21 of this bill shall not become operative.

CHAPTER 811

An act to amend Section 1770 of the Business and Professions Code, relating to dentistry.

[Approved by Governor September 22, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 1770 of the Business and Professions Code is amended to read:

1770. (a) A registered dental hygienist in alternative practice may practice, pursuant to Section 1768, as an employee of a dentist or of another registered dental hygienist in alternative practice, or as an independent contractor, or as a sole proprietor of an alternative dental hygiene practice, or as an employee of a primary care clinic or specialty clinic that is licensed pursuant to Section 1204 of the Health and Safety Code or as an employee of a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, or as an employee of a clinic owned or operated by a public hospital or health system, or as an employee of a clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(b) A registered dental hygienist in alternative practice may perform the duties authorized pursuant to Section 1768 in the following settings:

(1) Residences of the homebound.

(2) Schools.

(3) Residential facilities and other institutions.

(4) Dental health professional shortage areas, as certified by the Office of Statewide Health Planning and Development in accordance with existing office guidelines.

(c) A registered dental hygienist in alternative practice shall not do any of the following:

(1) Infer, purport, advertise, or imply that he or she is in any way able to provide dental services or make any type of dental health diagnosis beyond evaluating a patient's dental hygiene status, providing a dental hygiene treatment plan, and providing the associated dental hygiene services.

(2) Hire a registered dental hygienist to provide direct patient services other than a registered dental hygienist in alternative practice.

(d) A registered dental hygienist in alternative practice may submit or allow to be submitted any insurance or third-party claims for patient services performed as authorized pursuant to this article.

(e) A registered dental hygienist in alternative practice may hire other registered dental hygienists in alternative practice to assist in his or her practice.

(f) A registered dental hygienist in alternative practice may hire and supervise dental assistants performing functions specified in subdivision (b) of Section 1751.

(g) A registered dental hygienist in alternative practice shall provide to the board documentation of an existing relationship with at least one dentist for referral, consultation, and emergency services.

(h) A registered dental hygienist in alternative practice may perform dental hygiene services for a patient who presents to the registered hygienist in alternative practice a written prescription for dental hygiene services issued by a dentist or physician and surgeon licensed to practice in this state who has performed a physical examination and a diagnosis of the patient prior to the prescription being provided. The prescription shall be valid for a time period based on the dentist's or physician and surgeon's professional judgment, but not to exceed 15 months from the date that it was issued.

SEC. 1.5. Section 1770 of the Business and Professions Code is amended and renumbered to read:

1775. (a) A registered dental hygienist in alternative practice may practice, pursuant to Section 1774, as an employee of a dentist or of another registered dental hygienist in alternative practice, or as an independent contractor, or as a sole proprietor of an alternative dental hygiene practice, or as an employee of a primary care clinic or specialty clinic that is licensed pursuant to Section 1204 of the Health and Safety Code or as an employee of a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, or as an employee of a clinic owned or operated by a public hospital or health system, or as an employee of a clinic owned and operated by a hospital that maintains the primary contract with a county

government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(b) A registered dental hygienist in alternative practice may perform the duties authorized pursuant to Section 1774 in the following settings:

(1) Residences of the homebound.

(2) Schools.

(3) Residential facilities and other institutions.

(4) Dental health professional shortage areas, as certified by the Office of Statewide Health Planning and Development in accordance with existing office guidelines.

(c) A registered dental hygienist in alternative practice shall not do any of the following:

(1) Infer, purport, advertise, or imply that he or she is in any way able to provide dental services or make any type of dental health diagnosis beyond evaluating a patient's dental hygiene status, providing a dental hygiene treatment plan, and providing the associated dental hygiene services.

(2) Hire a registered dental hygienist to provide direct patient services other than a registered dental hygienist in alternative practice.

(d) A registered dental hygienist in alternative practice may submit or allow to be submitted any insurance or third-party claims for patient services performed as authorized pursuant to this article.

(e) A registered dental hygienist in alternative practice may hire other registered dental hygienists in alternative practice to assist in his or her practice.

(f) A registered dental hygienist in alternative practice may hire and supervise dental assistants performing functions specified in subdivision (b) of Section 1751.

(g) A registered dental hygienist in alternative practice shall provide to the board documentation of an existing relationship with at least one dentist for referral, consultation, and emergency services.

(h) A registered dental hygienist in alternative practice may perform dental hygiene services for a patient who presents to the registered hygienist in alternative practice a written prescription for dental hygiene services issued by a dentist or physician and surgeon licensed to practice in this state who has performed a physical examination and a diagnosis of the patient prior to the prescription being provided. The prescription shall be valid for a time period based on the dentist's or physician and surgeon's professional judgment, but not to exceed 15 months from the date that it was issued.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1770 of the Business and Professions Code proposed by both this bill and SB 2022. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) this bill amends

and SB 2022 amends and renumbers Section 1770 of the Business and Professions Code, and (3) this bill is enacted after SB 2022, in which case Section 1 of this bill shall not become operative.

CHAPTER 812

An act to amend Section 11552 of the Government Code, and to add and repeal Division 26.4 (commencing with Section 79400) of the Water Code, relating to water.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 11552 of the Government Code is amended to read:

11552. Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(a) Commissioner of Financial Institutions.
(b) Commissioner of Corporations.
(c) Insurance Commissioner.
(d) Director of Transportation.
(e) Real Estate Commissioner.
(f) Director of Social Services.
(g) Director of Water Resources.
(h) Director of Corrections.
(i) Director of General Services.
(j) Director of Motor Vehicles.
(k) Director of the Youth Authority.
(*l*) Executive Officer of the Franchise Tax Board.
(m) Director of Employment Development.
(n) Director of Alcoholic Beverage Control.
(o) Director of Housing and Community Development.
(p) Director of Alcohol and Drug Abuse.
(q) Director of the Office of Statewide Health Planning and Development.
(r) Director of the Department of Personnel Administration.
(s) Chairperson and Member of the Board of Equalization.
(t) Secretary of the Trade and Commerce Agency.
(u) State Director of Health Services.
(v) Director of Mental Health.

(w) Director of Developmental Services.
(x) State Public Defender.
(y) Director of the California State Lottery.
(z) Director of Fish and Game.
(aa) Director of Parks and Recreation.
(ab) Director of Rehabilitation.
(ac) Director of Veterans Affairs.
(ad) Director of Consumer Affairs.
(ae) Director of Forestry and Fire Protection.
(af) The Inspector General pursuant to Section 6125 of the Penal Code.
(ag) Director of Child Support Services.
(ah) Director of the California Bay-Delta Authority.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 2. Division 26.4 (commencing with Section 79400) is added to the Water Code, to read:

DIVISION 26.4. CALIFORNIA BAY-DELTA AUTHORITY ACT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Legislative Findings

79400. This division shall be known and may be cited as the California Bay-Delta Authority Act.

79401. The Legislature finds and declares all of the following:

(a) The San Francisco Bay/Sacramento-San Joaquin Delta Estuary is the largest estuary on the West Coast of the United States. It includes over 738,000 acres in five counties. The tributaries, sloughs, and islands support over 750 plant and animal species.

(b) The bay-delta, its tributaries, and watershed are critical to California's economy, supplying drinking water for two-thirds of Californians and irrigation water for over 7,000,000 acres of the most highly productive agricultural land in the world. It also supports 80 percent of the state's commercial salmon fisheries.

(c) The bay-delta is the hub of California's two largest water distribution systems--the Central Valley Project, operated by the federal Bureau of Reclamation and the State Water Project, operated by the California Department of Water Resources. It also provides the conveyance of flood waters from most of the rivers in the Central Valley.

(d) Conflicts currently exist regarding water use for the purposes of water quality, fish protection, and water supply that demonstrate how little flexibility the state's water supply systems have to meet the state's growing demand for water and the need to protect the environment.

(e) A solution to these problems requires state, federal, tribal, and local action in numerous regions throughout the state, not only in the bay-delta itself, but also in the bay-delta watershed and the areas that depend on water exported from the bay-delta. The California Bay-Delta Program is divided into the following five regions:

(1) Sacramento and San Joaquin River Delta.

(2) San Francisco Bay.

(3) Sacramento Valley.

(4) San Joaquin Valley.

(5) Southern California.

(f) Nearly two dozen state and federal agencies have some role in managing or regulating the natural resources of the bay-delta and its watershed. A coordinated implementation structure and organization is necessary for the effective implementation of the California Bay-Delta Program. The state and federal agencies participating in the program include all of the following: the Resources Agency, Department of Water Resources, Department of Fish and Game, Department of Food and Agriculture, California Environmental Protection Agency, State Water Resources Control Board, State Department of Health Services, United States Department of the Interior, United States Department of Agriculture, United States Bureau of Reclamation, United States Fish and Wildlife Service, United States Geological Survey, United States Bureau of Land Management, United States National Marine Fisheries Service, United States Environmental Protection Agency, United States Army Corp of Engineers, United States Natural Resources Conservation Service, United States Forest Service, and Western Area Power Administration.

(g) The agencies participating in the California Bay-Delta Program have prepared a 30-year plan to coordinate existing programs and direct new programs to improve the quality and reliability of the state's water supplies and to restore the ecological health of the bay-delta watershed.

(h) To ensure efficiency, transparency, and accountability in decisionmaking, the implementation of the California Bay-Delta Program requires the establishment of an authority. The authority is intended to accomplish all of the following:

(1) Provide accountability to the Legislature, Congress, and interested parties for the program's performance.

(2) Promote the implementation of the program in a balanced manner.

(3) Provide consistent monitoring, assessment, and reporting of the agencies' individual and cumulative actions.

(4) Provide the use of sound, consistent science across all program elements.

(5) Coordinate existing and new government programs to meet common goals, avoid conflicts, and eliminate redundancy and waste.

(6) Oversee coordinated implementation of the California Bay-Delta Program in a manner that is consistent with the mission statement, goals, and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(7) Promote the development and implementation of regional programs to advance the program elements.

(i) The successful implementation of the California Bay-Delta Program will require the full cooperation and participation of many federal agencies. The Legislature, in adding this division, expects the subsequent enactment of federal legislation authorizing the full participation of federal agencies in the authority established and activities prescribed by this division. Until that federal legislation is enacted, federal agencies are invited to participate in the authority and its activities, as described in this division, to the extent possible under existing federal agency authorizations.

Article 2. Definitions

79402. Unless the context otherwise requires, the following definitions set forth in this section govern the construction of this division:

(a) ''Authority'' means the California Bay-Delta Authority.

(b) ''Balance'' or ''balanced implementation'' means the implementation of projects, programs, or other actions in a manner that meets both of the following requirements:

(1) Is consistent with the implementation schedule and milestones described in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(2) Results in concurrent improvement in all program elements in a manner that ensures that improvements in some program elements are not made without corresponding improvements in other program elements.

(c) ''Bay-delta'' means the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

(d) ''Bay-Delta Public Advisory Committee'' means the Bay-Delta Public Advisory Committee established by charter issued by the United States Department of Interior, dated June 8, 2001, and filed on July 2, 2002.

(e) ''California Bay-Delta Program'' or ''Bay-Delta Program'' means those projects, programs, commitments, and other actions that

address the goals and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(f) ''Category A programs'' means those state and federal agency programs and funds that are to be managed and implemented consistent with the California Bay-Delta Program's goals and objectives.

(g) ''Director'' means the Director of the California Bay-Delta Authority.

(h) ''Implementing agencies'' means those agencies with the primary responsibility for implementing the program elements, subject to Sections 79440 and 79441.

(i) ''Program elements'' means the following 11 program elements of the California Bay-Delta Program:

(1) Levee system integrity.
(2) Water quality.
(3) Water supply reliability.
(4) Ecosystem restoration.
(5) Water use efficiency.
(6) Water transfer.
(7) Watershed.
(8) Storage.
(9) Conveyance.
(10) Science.
(11) Environmental water account.

(j) ''Projects'' means both programs and capital projects.

Article 3. General Provisions

79403.5. (a) The authority and the implementing agencies shall carry out the programs, projects, and activities necessary to implement the Bay-Delta Program in accordance with Section 79441. The authority shall coordinate the activities of the implementing agencies to promote balanced implementation that meets the goals and objectives of the Bay-Delta Program.

(b) State agencies, whenever feasible, shall carry out their authority and responsibilities in a manner that is consistent with the goals of the Bay-Delta Program to promote cooperative and coordinated actions and programs that result in balanced solutions to bay-delta problems.

(c) Nothing in this division shall be construed to restrict or override constitutional, statutory, regulatory, or adjudicatory authority or public trust responsibilities of any federally recognized Indian tribe, or any local, state, or federal agency, or to restrict or override authority or responsibility of state, federal, or local water project operations under applicable law and contracts. This division does not abrogate or modify state laws with respect to responsibilities to the State Water Project

bondholders and shall be implemented in a manner consistent with Sections 10505 and 10505.5, Article 3 (commencing with Section 11460) of Chapter 3 of Part 3 of Division 6, and Chapter 1 (commencing with Section 12200) of Part 4.5 of Division 6.

79404. This division shall be carried out in a manner consistent with respective state and federal agency budget development, review, and approval processes.

79405. The authority is an agency of the state. Nothing in this division shall be construed to waive the state's immunity to suit in federal court under the Eleventh Amendment to the United States Constitution. A federal representative on the authority may participate to the extent allowed by federal law and may decline to participate in any matter with regard to which constitutional concerns arise, as determined by that representative.

79406. State agencies, including the authority, shall work with federal agencies and the Congress of the United States to obtain, as soon as reasonably feasible, the necessary federal approvals, including federal legislation, that will enable the federal agencies to participate with the state in the governance of the Bay-Delta Program pursuant to this division.

79407. (a) Nothing in this division may be construed as a certification of any of the following:

(1) The CALFED Bay-Delta Program final programmatic environmental impact statement/environmental impact report, dated July 21, 2000.

(2) The CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(3) The Framework Agreement, dated June 9, 2000.

(b) Nothing in this division affects the rights of litigants, or the merits of any pending lawsuit relating to the CALFED Bay-Delta Program.

CHAPTER 2. CALIFORNIA BAY-DELTA AUTHORITY

Article 1. California Bay-Delta Authority

79410. There is hereby established in the Resources Agency the California Bay-Delta Authority.

79412. (a) The authority shall include representatives from six state agencies and six federal agencies if those identified federal agencies are authorized to participate, seven public members, one member of the Bay-Delta Public Advisory Committee, and four nonvoting ex officio members, as follows:

(1) The Secretary of the Resources Agency.

(2) The Secretary of the California Environmental Protection Agency.

(3) The Director of Water Resources.

(4) The Director of Fish and Game.

(5) The State Director of Health Services.

(6) The Secretary of the Department of Food and Agriculture.

(7) The Secretary of the Interior.

(8) The Regional Administrator of Region IX of the United States Environmental Protection Agency.

(9) The Operations Manager of the California/Nevada Operations Office of the United States Fish and Wildlife Service.

(10) The Regional Director of the United States Mid-Pacific Region of the Bureau of Reclamation.

(11) The District Engineer of the United States Sacramento District of the Army Corp of Engineers.

(12) The Regional Administrator of the Southwest Region of the United States National Marine Fisheries Service.

(13) One public member from the Sacramento and San Joaquin River Delta Region.

(14) One public member from the San Francisco Bay Region.

(15) One public member from the Sacramento Valley Region.

(16) One public member from the San Joaquin Valley Region.

(17) One public member from the Southern California Region.

(18) One member of the Bay-Delta Public Advisory Committee.

(19) Two at-large members.

(20) The Chairperson and Vice Chairperson of the Assembly Water Parks and Wildlife Committee, or its successor, as a nonvoting, ex officio member.

(21) The Chairperson and Vice Chairperson of the Senate Agriculture and Water Resources Committee, or its successor, as a nonvoting, ex officio member.

(b) The five public members subject to regional requirements shall be appointed by the Governor, in consultation with the Secretary of the Interior if appropriate federal authorizing legislation has not been enacted, or with the concurrence of the Secretary of the Interior if appropriate federal authorizing legislation has been enacted, and with the advice and consent of the Senate.

(c) One at-large public member shall be appointed by the President Pro Tempore of the Senate in consultation with the Secretary of the Interior.

(d) One at-large public member shall be appointed by the Speaker of the Assembly in consultation with the Secretary of the Interior.

(e) (1) For the purposes of being eligible to serve on the board, a public member described in any of the paragraphs (13) to (17), inclusive,

of subdivision (a) shall be required to live in the region he or she represents.

(2) A public member shall have substantial training, expertise, and knowledge as follows:

(A) With regard to at least one of the following areas: ecosystem restoration, levees, water supply, or water quality.

(B) With regard to labor, Native American matters, local government, the environment, or business if that public member meets the requirements of subparagraph (A).

(f) The public members, as a group, shall reflect a broad range of the experience and knowledge described in subdivision (e).

(g) The representative of the Bay-Delta Public Advisory Committee shall be selected by a majority vote of all the members of that committee.

(h) A member of the authority described in any of the paragraphs (1) to (12), inclusive, of subdivision (a) may designate, in writing, a deputy director of that member's agency, or a person occupying an equivalent classification, to act in the place of that member if that member is absent.

(i) The federal representatives described in paragraphs (7) to (12), inclusive, of subdivision (a) may participate as nonvoting members until federal authorizing legislation is enacted and upon the enactment of that legislation, shall become voting members.

79413. Federal participation in the authority is intended to promote coordination and provide advice from federal agencies and thereby assist the state and federal agencies to more effectively meet their common goals and obligations. Nothing in this division extends the application of federal law, including the National Environmental Policy Act, to actions by state agencies, or extends the application of state law, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), to actions by federal agencies.

79414. The authority is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

79415. (a) Except as provided in subdivision (b), a public member of the authority shall hold office for a term of four years, and until a successor is appointed.

(b) In the case of the public members initially appointed by the Governor, two members shall be appointed to serve until January 1, 2004, and three members until January 1, 2006.

(c) The Governor, in consultation with the Secretary of the Interior, shall appoint one of the authority members as a chairperson who shall preside at all meetings, and a vice-chairperson who shall preside in the absence of the chairperson.

(d) For the purposes of conducting the authority's business, a quorum of eleven voting members of the authority shall be present, which shall include at least three public members. All actions approved by the authority shall require an affirmative vote of a majority of the authority members eligible to vote.

(e) The authority may form committees, and the committees may make recommendations to the full authority.

(f) Each public member of the authority shall receive compensation in the amount of one hundred dollars ($100) per day, not to exceed eight hundred dollars ($800) per month, for conducting any authority business authorized by the authority, upon the approval of the compensation by a majority of the authority members by a recorded vote. A public member may also receive reimbursement for the necessary expenses incurred by the member in the performance of the member's duties.

Article 2. Powers and Duties

79420. The authority may exercise all of the following powers:

(a) Sue or be sued.

(b) Delegate administrative functions to the staff of the authority.

(c) Request reports from state, federal, and local government agencies on issues related to the implementation of the California Bay-Delta Program.

(d) Receive funds, including funds from private and local government sources, contributions from public and private sources, as well as state and federal appropriations.

(e) Enter into contracts. The authority and the Department of General Services shall establish procedures to delegate authority to the authority or the director, as appropriate, to execute contracts of up to one million dollars ($1,000,000), and to maximize flexibility and efficiency in implementing authority activities.

(f) Disburse funds through grants, public assistance, loans, and contracts to entities, including federally recognized Indian tribes, within the Bay-Delta Program regions, as described in subdivision (e) of Section 79401, to carry out the Bay-Delta Program goals and objectives.

(g) Employ the services of other public, nonprofit, or private entities.

(h) Employ its own legal staff or contract with other state or federal agencies for legal services, or both. The authority may employ special legal counsel with the approval of the Attorney General.

(i) Adopt regulations as needed for the implementation of this division. A federal representative may decline to participate in actions described in this subdivision if he or she identifies a constitutional or statutory limitation on that participation. The authority granted by this subdivision does not extend to the adoption of regulations to implement

the program elements described in subdivisions (a) to (f), inclusive, and subdivision (h) of Section 79441.

(j) Obtain and hold regulatory permits and prepare environmental documents.

(k) Pursuant to Section 78684.8, the authority is hereby designated the successor to the Secretary of the Resources Agency for the purpose of carrying out the balancing and related procedures established pursuant to Section 78684.12.

79421. The authority shall carry out the following duties:

(a) Develop policies and make decisions at program milestones, and provide direction to achieve balanced implementation, integration, and continuous improvement in all program elements.

(b) Track the progress of all program projects and activities and assess overall achievement of the goals and objectives of the California Bay-Delta Program.

(c) Modify, as needed, the California Bay-Delta Program's timelines and activities where the authority deems it necessary to ensure that the program meets its overall goals and objectives. Modification shall be coordinated with implementing agencies and other affected agencies with public input. The authority shall notify the appropriate policy and fiscal committees of the Legislature with regard to any modifications made by the authority.

(d) Communicate with the Congress of the United States and the Legislature on program progress, answer legislative inquiries, review and respond to legislative proposals, and review and submit legislative proposals.

(e) On or before November 15 of each year, review progress in implementing the program.

(f) On or before December 15 of each year, submit a report to the Governor, the Secretary of the Interior, the Legislature, and the Congress of the United States that describes the status of implementation of all program elements for the prior fiscal year.

(g) If, at the conclusion of each annual review submitted pursuant to subdivision (f), or, if a timely annual review has not been issued, the authority or the Governor, or the Secretary of the Interior if federal authorizing legislation has been enacted, determines, in writing, that either the program schedule or objective has not been substantially adhered to, the authority, in coordination with the Bay-Delta Public Advisory Committee, the Governor shall, and the Secretary of the Interior may, prepare a revised schedule that will achieve balanced progress in all program elements consistent with the intent of the California Bay-Delta Program and applicable regulatory requirements.

(h) To support annual implementation, the director shall prepare and submit to the Department of Finance an annual state proposed budget,

prepared consistent with Section 79423, for each of the program elements and the authority's oversight and coordination duties, in accordance with the annual State Budget process.

(i) Coordinate with federal agencies to develop a proposed federal budget to support the California Bay-Delta Program that the federal agencies can submit to the President of the United States in accordance with the annual federal budget process.

(j) Manage the science program element.

(k) Coordinate, and when appropriate, assist with the integration of, the Bay-Delta Program with other related programs to maximize available resources and reduce conflicts and inconsistencies with other programs.

(*l*) Provide a forum for the resolution of conflicts or disputes among implementing agencies relating to the program.

(m) Seek out and promote partnerships with local interests and programs that seek to integrate various water management options, and cooperate and undertake joint activities with other persons, including local entities, Indian tribes, water users, and landowners. These activities shall include, but are not limited to, planning, design, technical assistance, construction projects, and development of an independent science program.

(n) Develop, in cooperation with federal agencies, a regulatory coordination and streamlining process for the issuance of permits and approvals required under state and federal law as necessary, to achieve the program's goals and objectives that reduces or eliminates duplicative process.

(o) Adopt criteria for review, approval, and modification of annual program plans and projected expenditures pursuant to subdivision (i) of Section 79423. The criteria shall be consistent with existing state and federal agency budget development, review, and approval processes. The authority shall submit a copy of the criteria to the appropriate policy and fiscal committees of the Legislature.

(p) Meet jointly with the Bay-Delta Public Advisory Committee at least once annually.

79422. By December 15, 2003, develop a pilot program in coordination with the Department of Personnel Administration, the State Personnel Board, the Department of General Services, and the Department of Finance to develop and implement actions that are intended to increase the administrative efficiency of the authority, including, but not limited to, budgeting, contracting, purchasing, and personnel management. The authority shall submit a report summarizing the implementation of this section to the appropriate policy and fiscal committees of the Legislature not later than 120 days after the authority commences the implementation of the pilot program.

79423. (a) Implementing agencies shall annually submit to the authority their annual program plan and proposed budget for the following budget year describing how each implementing agency proposes to implement their respective program elements during the following budget year. These programs shall address environmental justice concerns and assess the impacts of projects and activities on tribal trust resources and tribal governmental concerns.

(b) Each annual program plan and proposed budget shall include programs that are designated as Category A programs in Attachment 3, entitled ''Implementation Memorandum of Understanding'' of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(c) Annually, the authority shall consult with the agencies identified in subdivision (f) of Section 79401 and the Bay-Delta Public Advisory Committee, and shall determine, with the concurrence of the implementing agencies, those changes that shall be made to the list of Category A programs.

(d) Each annual program plan and proposed budget shall include program priorities, work plans, proposed budgets, and significant program products, including, but not limited to, regulations, grant or loan solicitations, schedules for production of environmental documents, and project selection processes.

(e) Annual program plans and proposed budgets also shall include a strategy and proposed budget for addressing program-specific, critical scientific uncertainties, developing and implementing performance measures, evaluating program actions, developing strategies for incorporating tribal and environmental justice interests, and conducting scientific review of program implementation and proposed projects. The implementing agency and the director shall consult with the lead scientist, as appropriate, to determine an appropriate science strategy and proposed budget.

(f) Implementing agencies shall coordinate the preparation of annual program plans and proposed budgets with agencies participating in the California Bay-Delta Program, federally recognized Indian tribes, and other appropriate agencies.

(g) The implementing agencies and the director shall seek to integrate the annual plans and proposed budgets for the program elements into a comprehensive and balanced annual implementation plan.

(h) The implementing agencies shall develop comprehensive tribal and environmental justice work plans, including specific goals and objectives and projected expenditures that address all program areas.

(i) The authority shall review and approve, and, as appropriate, may recommend that implementing agencies modify, annual program plans

and projected expenditures on behalf of Category A programs, based on the following criteria:

(1) Consistency with the program.

(2) The balanced achievement of the program's goals and objectives.

(j) If the authority does not approve an implementing agency's program plan or projected expenditures, the authority shall prepare and submit written findings to the appropriate policy and fiscal committees of the Legislature and the implementing agencies, describing how the program plan or projected expenditures do not meet the criteria adopted by the authority pursuant to subdivision (o) of Section 79421.

(k) If the authority recommends modification, the implementing agency shall resubmit the annual program plan or projected expenditures, as appropriate, to the authority for approval after making the necessary modifications.

(*l*) Nothing in this division limits or interferes with the final decisionmaking authority of the implementing agencies.

Article 3. Limitations on Powers and Duties

79430. The authority shall comply with all applicable state and federal laws, including state water laws.

79431. The authority may not levy taxes, user fees, or assessments without explicit legislative approval.

79432. The authority shall exercise its powers consistent with the California Environmental Quality Act (Division 13 commencing with Section 21000) of the Public Resources Code). Nothing in this division prevents the modification or supplementation of the CALFED Final Programmatic Environmental Impact Statement/Environmental Impact Report, certified by the Secretary of Resources August 28, 2000, or defines the manner in which that document may be used.

79440. For the purposes of this division, ''implementing agency'' includes those state agencies identified in Section 79441 until the United States, by statute or otherwise, has authorized the identified federal agencies to participate in the governance and implementation of the Bay-Delta Program in the manner set forth in this division. Until that federal authorization has been provided, the state implementing agencies shall consult, cooperate, and coordinate with federal agencies in all matters related to implementation of the program.

79441. (a) The department, the Department of Fish and Game, and the United States Army Corps of Engineers are the implementing agencies for the levee program element.

(b) The state board, the United States Environmental Protection Agency, and the State Department of Health Services are the implementing agencies for the water quality program element.

(c) The Department of Fish and Game, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the ecosystem restoration program element. If interests in land, water, or other real property are acquired, those interests shall be acquired from willing sellers by means of entering into voluntary agreements.

(d) The department and the United States Bureau of Reclamation are the implementing agencies for the water supply reliability, storage, and conveyance elements of the program.

(e) The department, the state board, and the United States Bureau of Reclamation are the implementing agencies for the water use efficiency and water transfer program elements.

(f) The Resources Agency, the state board, the department, the Department of Fish and Game, the United States Natural Resources Conservation Service, the United States Environmental Protection Agency, and the United States Fish and Wildlife Service are the implementing agencies for the watershed program element.

(g) The authority is the implementing agency for the science program element.

(h) The department, the Department of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the environmental water account program element.

Article 4. Staff

79450. The Governor, in consultation with the Secretary of the Interior, shall appoint a director who shall serve at the pleasure of the authority.

79451. The director shall administer the affairs of the authority as directed by the authority and shall direct the staff of the authority. The annual salary of the director shall be as provided by Section 11552 of the Government Code.

79452. (a) The authority, with the advice of the director, shall appoint a lead scientist. The lead scientist shall report to the authority. The lead scientist, in cooperation with the implementing agencies, shall be responsible for the development of the science program element.

(b) The lead scientist shall meet the following requirements:

(1) Has undertaken substantial scientific research work in any field related to one or more of the program elements.

(2) Has experience managing environmental issues or advising high-level managers in methods for promoting science-based

decisionmaking in the areas of water management and ecosystem restoration.

(3) Has a record of publication in peer reviewed scientific literature.

(c) For all program elements, the lead scientist shall ensure scientific application of adaptive management, monitoring, and investigations to reduce uncertainties, and full investigation of the effects of each program element on other program elements.

(d) The lead scientist shall ensure that peer review is employed extensively and prudently to ensure the quality of program planning, implementation, and evaluation.

(e) The purpose of the science program element shall be to carry out all of the following functions:

(1) Provide implementing agencies and the authority with authoritative and unbiased reviews of the state of scientific knowledge relevant to management and decisionmaking for the California Bay-Delta Program.

(2) Implement programs and projects to articulate, test, refine, and improve the scientific understanding of all aspects of the bay-delta and its watershed areas.

(3) Provide a comprehensive framework to integrate, monitor, and evaluate the use of adaptive management and the best available scientific understandings and practices for implementing the California Bay-Delta Program.

(4) Independently review the technical and scientific performance of the California Bay-Delta Program, including, but not limited to, all of the following:

(A) Conclusions.

(B) Studies, monitoring, performance measures.

(C) Data analyses.

(D) Scientific practices that form the scientific bases for program decisionmaking.

79453. The director may appoint and hire staff as necessary to administer the affairs of the authority at a salary and classification level commensurate with other state and federal agencies.

79454. The director shall organize authority staff in a manner best suited to administer the affairs of the authority and oversee a complex multiagency program.

79455. (a) The director may fill authority staff positions with the state employees hired by the authority, federal employees assigned to the program by cooperating federal agencies, or with staff from other state public entities.

(b) Notwithstanding any other provision of law, and only for the purposes of this division, the authority may hire members of federally recognized Indian tribes and nonprofit organizations in accordance with

the interjurisdictional employee exchange program described in Section 427 of Title 2 of the California Code of Regulations.

(c) The authority shall retain all state civil service positions when the position is filled temporarily by way of the interjurisdictional employee exchange program pursuant to subdivision (b), without regard to whether that state position was vacant.

79456. Notwithstanding Section 19818.10 of the Government Code, and in cooperation with the State Personnel Board, and the Department of Personnel Administration, the authority shall establish personnel classifications, including a new management level classification, specific to the authority's unique role in oversight and coordination.

Article 5. Advisory Committee

79460. (a) The authority shall provide administrative support for the Bay-Delta Public Advisory Committee.

(b) The authority shall take any administrative actions necessary to maintain the Bay-Delta Public Advisory Committee's status as an advisory committee under the Federal Advisory Committee Act (Public Law 92-463, as amended).

(c) The authority shall provide assistance to the Governor and Secretary of the Interior to ensure that the candidates for appointment to the Bay-Delta Public Delta Public Advisory Committee are representatives of federally recognized Indian tribes or ''stakeholder'' groups, reflect a geographic diversity and diversity of interests affected by the health of the bay-delta, and have expertise in the relevant fields as specified in the committee's federal charter. Appointment shall be made to ensure that the committee as a whole is both balanced and diverse.

(d) The Bay-Delta Public Advisory Committee shall advise and make recommendations to the authority and director on issues related to the California Bay-Delta Program and any of the processes, projects, or programs required by this division.

(e) The members of the Bay-Delta Public Advisory Committee may receive reimbursement for necessary travel expenses incurred by the members in the performance of the members' duties, consistent with state per diem rates.

Article 6. Independent Science Board

79470. (a) The lead scientist shall nominate, and the authority shall establish, a board of independent scientists, to be known as the Independent Science Board, that shall advise and make

recommendations to the authority and the Bay-Delta Public Advisory Committee, as appropriate, on the science relative to implementation of all program elements.

(b) The authority may recognize an existing board of independent scientists as members of the board required by this section.

(c) The authority shall respond in writing to the advice and reviews prepared by the Independent Science Board.

79471. The lead scientist may establish, consistent with subdivision (c) of Section 79403.5 and in cooperation with the implementing agencies, additional independent science panels to assist the implementing agencies and the authority by reviewing and providing advice on scientific issues associated with individual program elements, reviewing multiple program actions within scientific geographic areas, and defining the state of knowledge relative to specific scientific issues. Members of additional independent science panels may also be members of the Independent Science Board.

CHAPTER 3. SUNSET

79475. This division shall remain in effect only until January 1, 2006, and as of that date is repealed, unless the Secretary of the Resources Agency determines that federal legislation has been enacted authorizing the participation of appropriate federal agencies in the authority. Upon making that determination, the Secretary of the Resources Agency shall notify, in writing, the Secretary of State with regard to that determination.

79476. Notwithstanding any other provision of law, the authority may not undertake any activities pursuant to this division if the authority fails to submit the annual report described in subdivision (f) of Section 79421 on or before March 15 of the year following the year in which the report was required to be submitted.

CHAPTER 813

An act to amend Sections 1513.5, 1516, and 1520 of the Code of Civil Procedure, relating to escheat.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 1513.5 of the Code of Civil Procedure is amended to read:

1513.5. (a) Except as provided in subdivision (c), if the holder has in its records an address for the apparent owner, which the holder's records do not disclose to be inaccurate, every banking or financial organization shall make reasonable efforts to notify by mail any customer that the customer's deposit, account, shares, or other interest in the banking or financial organization will escheat to the state pursuant to subdivision (a) or (b) of Section 1513. The holder shall give notice either:

(1) Not less than two years nor more than two and one-half years after the date of last activity by, or communication with, the owner with respect to the account, deposit, shares, or other interest, as shown on the record of the financial organization.

(2) Not less than six nor more than 12 months before the time the account, deposit, shares, or other interest becomes reportable to the Controller in accordance with this chapter.

(b) The notice required by this section shall specify the time that the deposit, account, shares, or other interest will escheat and the effects of escheat, including the necessity for filing a claim for the return of the deposit, account, shares, or other interest. The notice required by this section shall, in bold or in a font a minimum of two points larger than the rest of the notice, (1) specify that since the date of last activity, or for the last two years, there has been no customer activity on the deposit, account, shares, or other interest; (2) identify the deposit, account, shares, or other interest by number or identifier; (3) indicate that the deposit, account, shares, or other interest is in danger of escheating to the state; and (4) specify that the California Unclaimed Property Law requires banks, banking organizations, and financial organizations to transfer funds of a deposit, account, shares, or other interest if it has been inactive for three years. It shall also include a form, as prescribed by the Controller, by which the customer may declare an intention to maintain the deposit, account, shares, or other interest. If that form is filled out, signed by the customer, and returned to the banking or financial organization, it shall satisfy the requirement of paragraph (3) of subdivision (a) or paragraph (3) of subdivision (b) of Section 1513. The banking or financial organization may impose a service charge on the deposit, account, shares, or other interest for this notice in an amount not to exceed the administrative cost of mailing the notice and form and in no case to exceed two dollars ($2).

(c) Notice as provided by subdivisions (a) and (b) shall not be required for deposits, accounts, shares, or other interests of less than fifty

dollars ($50), and no service charge may be made for notice on these items.

SEC. 2. Section 1516 of the Code of Civil Procedure is amended to read:

1516. (a) Subject to Section 1510, any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to its shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery, escheats to this state.

(b) Subject to Section 1510, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, escheats to this state if (1) the interest in the association is owned by a person who for more than three years has neither claimed a dividend or other sum referred to in subdivision (a) nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association, and (2) the association does not know the location of the owner at the end of the three-year period. With respect to the interest, the business association shall be deemed the holder.

(c) Subject to Section 1510, any dividends or other distributions held for or owing to a person at the time the stock or other security to which they attach escheats to this state also escheat to this state as of the same time.

(d) With respect to any interest that may escheat pursuant to subdivision (b), the business association shall make reasonable efforts to notify the owner by mail that the owner's interest in the business association will escheat to the state. The notice shall be given not less than 6 nor more than 12 months before the time the interest in the business association becomes reportable to the Controller in accordance with this chapter. The notice required by this subdivision shall specify the time that the interest will escheat and the effects of escheat, including the necessity for filing a claim for the return of the interest. The notice required by this section shall, in bold or in a font a minimum of two points larger than the rest of the notice, (1) specify that since the date of last activity, or for the last two years, there has been no customer activity on the deposit, account, shares, or other interest; (2) identify the deposit, account, shares, or other interest by number or identifier; (3) indicate that the deposit, account, shares, or other interest is in danger of escheating to the state; and (4) specify that the California Unclaimed Property Law requires banks, banking organizations, and financial organizations to transfer funds of a deposit, account, shares, or other interest if it has been inactive for three years. It shall also include a form, as prescribed by the

Controller, by which the owner may confirm the owner's current address. If that form is filled out, signed by the owner, and returned to the holder, it shall be deemed that the business association knows the location of the owner.

SEC. 3. Section 1520 of the Code of Civil Procedure is amended to read:

1520. (a) All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, except property of the classes mentioned in Sections 1511, 1513, 1514, 1515, 1516, 1517, 1518, 1519, and 1521, including any income or increment thereon and deducting any lawful charges, that is held or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable escheats to this state.

(b) Except as provided in subdivision (a) of Section 1513.5 and subdivision (d) of Section 1516, if the holder has in its records an address for the apparent owner of property valued at fifty dollars ($50) or more, which the holder's records do not disclose to be inaccurate, the holder shall make reasonable efforts to notify the owner by mail that the owner's property will escheat to the state pursuant to this chapter. The notice shall be mailed not less than six nor more than 12 months before the time when the owner's property held by the business becomes transferable to the Controller in accordance with this chapter. The notice required by this subdivision shall specify the time when the property will escheat and the effects of escheat, including the need to file a claim in order for the owner's property to be returned to the owner. The notice required by this section shall, in bold or in a font a minimum of two points larger than the rest of the notice, (1) specify that since the date of last activity, or for the last two years, there has been no customer activity on the deposit, account, shares, or other interest; (2) identify the deposit, account, shares, or other interest by number or identifier; (3) indicate that the deposit, account, shares, or other interest is in danger of escheating to the state; and (4) specify that the California Unclaimed Property Law requires banks, banking organizations, and financial organizations to transfer funds of a deposit, account, shares, or other interest if it has been inactive for three years. It shall also include a form, as prescribed by the Controller, by which the owner may confirm the owner's current address. If that form is filled out, signed by the owner, and returned to the holder, it shall be deemed that the account, or other device in which the owner's property is being held, remains currently active and recommences the escheat period.

(c) For purposes of this section, ''lawful charges'' means charges which are specifically authorized by statute, other than the Unclaimed Property Law, or by a valid, enforceable contract.

SEC. 4. This act shall become operative on January 1, 2004.

CHAPTER 814

An act to amend Sections 2543, 2545, 2546.5, and 2546.6 of, and to add Sections 2541.2, 2546.10, and 2564.6 to, the Business and Professions Code, relating to optometry.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 2541.2 is added to the Business and Professions Code, to read:

2541.2. (a) (1) The expiration date of a contact lens prescription shall not be less than one to two years from the date of issuance, unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than one year, or the presence or probability of visual abnormalities related to ocular or systemic disease indicate the need for reexamination of the patient earlier than one year. If the expiration date of a prescription is less than one year, the health-related reasons for the limitation shall be documented in the patient's medical record. In no circumstances shall the prescription expiration date be less than the period of time recommended by the prescriber for reexamination of the patient.

(2) For the purposes of this subdivision, the date of issuance is the date the patient receives a copy of the prescription.

(3) Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.

(b) Upon completion of the eye examination or, if applicable, the contact lens fitting process for a patient as described in subdivision (f), a prescriber or a registered dispensing optician shall provide the patient with a copy of the patient's contact lens prescription signed by the prescriber, unless the prescription meets the standards set forth in subdivision (c).

(c) A prescriber shall retain professional discretion regarding the release of the contact lens prescription for patients who wear the following types of contact lenses:

(1) Rigid gas permeables.

(2) Bitoric gas permeables.

(3) Bifocal gas permeables.

(4) Keratoconus lenses.

(5) Custom designed lenses that are manufactured for an individual patient and are not mass produced.

(d) If a patient places an order with a contact lens seller other than a physician and surgeon, an optometrist, or a registered dispensing optician, the prescriber or his or her authorized agent shall, upon request of the contact lens seller and in the absence of the actual prescription, attempt to promptly confirm the information contained in the prescription through direct communication with the contact lens seller.

(e) The contact lens prescription shall include sufficient information for the complete and accurate filling of a prescription, including, but not limited to, the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and an appropriate expiration date. When a provider prescribes a private label contact lens for a patient, the prescription shall include the name of the manufacturer, the trade name of the private label brand, and, if applicable, the trade name of the equivalent national brand.

(f) The contact lens fitting process begins after the initial comprehensive eye examination, and includes an examination to determine the lens specifications, an initial evaluation of the fit of the lens on the patient's eye, except in the case of a renewal prescription of an established patient, and followup examinations that are medically necessary, and ends when the prescriber or registered dispensing optician determines that an appropriate fit has been achieved, or in the case of a prescription renewal for an established patient, the prescriber determines that there is no change in the prescription.

(g) The payment of professional fees for the eye exam, fitting, and evaluation may be required prior to the release of the prescription, but only if the prescriber would have required immediate payment from the patient had the examination revealed that no ophthalmic goods were required. A prescriber or registered dispensing optician shall not charge the patient any fee as a condition to releasing the prescription to the patient. A prescriber may charge an additional fee for verifying ophthalmic goods dispensed by another seller if the additional fee is imposed at the time the verification is performed.

(h) A prescriber shall not condition the availability of an eye examination, a contact lens fitting, or the release of a contact lens prescription on a requirement that the patient agree to purchase contact lenses from that prescriber. A registered dispensing optician shall not condition the availability of a contact lens fitting on a requirement that the patient agrees to purchase contact lenses from that registered dispensing optician.

(i) A prescriber or a registered dispensing optician shall not place on the contact lens prescription, deliver to the patient, or require a patient to sign a form or notice waiving or disclaiming the liability or responsibility of the prescriber or registered dispensing optician for the accuracy of the ophthalmic goods and services dispensed by another seller. This prohibition against waivers and disclaimers shall not impose liability on a prescriber or registered dispensing optician for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's prescription.

(j) The willful failure or refusal of a prescriber to comply with the provisions of this section shall constitute grounds for professional discipline, including, but not limited to, the imposition of a fine or the suspension or revocation of the prescriber's license. The Medical Board of California and the State Board of Optometry shall adopt regulations, to implement this subdivision, including, but not limited to, standards for processing complaints each receives regarding this subdivision.

(k) For the purposes of this section, ''prescriber'' means a physician and surgeon or an optometrist.

(*l*) Nothing in this section shall be construed to expand the scope of practice of a registered dispensing optician as defined in Sections 2542, 2543, and Chapter 5.5 (commencing with Section 2550).

SEC. 2. Section 2543 of the Business and Professions Code is amended to read:

2543. (a) Except as provided in the Nonresident Contact Lens Seller Registration Act (Chapter 5.45 (commencing with Section 2546), the right to dispense, sell or furnish prescription lenses at retail or to the person named in a prescription is limited exclusively to licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians as provided in this division. This section shall not be construed to affect licensing requirements pursuant to Section 111615 of the Health and Safety Code.

(b) It shall be considered a deceptive marketing practice for any licensed physician and surgeon, licensed optometrist, or registered dispensing optician to publish or cause to be published any advertisement or sales presentation relating to contact lenses representing that contact lenses may be obtained without confirmation of a valid prescription.

SEC. 3. Section 2545 of the Business and Professions Code is amended to read:

2545. (a) Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on

application of the State Board of Optometry, the Division of Licensing of the Medical Board of California, the Osteopathic Medical Board of California, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(b) (1) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500) per violation. The fines collected pursuant to this section from licensed physicians and surgeons and registered dispensing opticians shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement. The fines collected pursuant to this section from licensed optometrists shall be deposited into the Optometry Fund and shall be available upon appropriation to the State Board of Optometry for the purposes of administration and enforcement.

(2) The Medical Board of California and the State Board of Optometry shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.

(3) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 2546.5 of the Business and Professions Code is amended to read:

2546.5. In order to obtain and maintain registration, a nonresident contact lens seller shall:

(a) Be in good standing and either registered or otherwise authorized in the state in which the selling facility is located and from which the contact lenses are sold.

(b) Comply with all directions and requests for information made by the board as authorized under this chapter.

(c) Maintain records of contact lenses shipped, mailed, or delivered to patients in California for a period of at least three years.

(d) Provide a toll-free telephone service for responding to patient questions and complaints during the applicant's regular hours of operation, but in no event less than six days per week and 40 hours per week. The toll-free number shall be included in literature provided with each mailed contact lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the contact lens prescriber.

(e) Provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

(f) Disclose in any price advertisement any required membership fees, enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.

(g) Provide a toll-free telephone number, facsimile line, and electronic mail address that are dedicated to prescribers and their authorized agents for the purposes of confirmation of contact lens prescriptions. These numbers, along with an electronic mail address, shall be included in any communication with the prescriber when requesting confirmation of a contact lens prescription.

(h) It shall be considered a deceptive marketing practice for any nonresident contact lens seller to publish or cause to be published any advertisement or sales presentation relating to contact lenses representing that contact lenses may be obtained without confirmation of a valid prescription.

SEC. 5. Section 2546.6 of the Business and Professions Code is amended to read:

2546.6. (a) Contact lenses may be sold only upon receipt of a written prescription or a copy of a written prescription and may be sold in quantities consistent with the prescription's established expiration date and the standard packaging of the manufacturer or vendor. If the written prescription or a copy of it is not available to the seller, the seller shall confirm the prescription by direct communication with the prescriber or his or her authorized agent prior to selling, shipping, mailing, or delivering any lens, and maintain a record of the communication. A prescription shall be deemed confirmed upon the occurrence of one of the following:

(1) The prescriber or the prescriber's agent confirms the prescription by communication with the seller.

(2) The prescriber fails to communicate with the seller by 2 p.m. of the next business day after the seller requests confirmation, or the prescriber fails to communicate with the seller by the next business day on or before the same time of day that the seller requested confirmation, whichever is sooner. For purposes of this paragraph, ''business day'' means each day except a Sunday or a federal holiday.

(b) If a prescriber communicates with a seller before the time period described in paragraph (2) of subdivision (a) elapses and informs the seller that the contact lens prescription is invalid, the seller shall not fill

the prescription. The prescriber shall specify in the communication with the seller the basis for invalidating the prescription.

(c) A seller shall not alter any of the specifications of a contact lens prescription other than the color or substitute a different manufacturer, brand, or other physical property of the lens. Notwithstanding the provisions of this subdivision, if the contact lens is manufactured by a company, but sold under multiple private labels by that same company to individual providers, the seller may fill the prescription with a contact lens manufactured by that company if the contact lens prescription and the related parameters are not substituted, changed, or altered for a different manufacturer or brand.

SEC. 6. Section 2546.10 is added to the Business and Professions Code, to read:

2546.10. (a) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500) per violation. The fines collected pursuant to this section shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement.

(b) The Medical Board of California shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.

(c) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 7. Section 2564.6 is added to the Business and Professions Code, to read:

2564.6. A registered dispensing optician shall comply with the applicable provisions of Section 2541.2.

CHAPTER 815

An act to add Sections 1747.04, 1748.14, 1748.23, 1748.32, 1749.51, 1749.66, 1785.36, 1785.44, 1786.57, 1787.4, 1788.33, 1789.9, 1789.38, 1798.83, 1798.86, 1799.6, 1799.85, 1799.104, 1799.207, 1812.316, and 1812.609 to the Civil Code, relating to waivers.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

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

(a) This act is declaratory of existing law.

(b) This act may not be applied or construed to alter or diminish the principle expressed in Section 3513 of the Civil Code that a law established for a public reason cannot be contravened by a private agreement.

SEC. 2. Section 1747.04 is added to the Civil Code, to read:

1747.04. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 3. Section 1748.14 is added to the Civil Code, to read:

1748.14. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 4. Section 1748.23 is added to the Civil Code, to read:

1748.23. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 5. Section 1748.32 is added to the Civil Code, to read:

1748.32. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 6. Section 1749.51 is added to the Civil Code, to read:

1749.51. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 7. Section 1749.66 is added to the Civil Code, to read:

1749.66. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 8. Section 1785.36 is added to the Civil Code, to read:

1785.36. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 9. Section 1785.44 is added to the Civil Code, to read:

1785.44. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 10. Section 1786.57 is added to the Civil Code, to read:

1786.57. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 11. Section 1787.4 is added to the Civil Code, to read:

1787.4. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 12. Section 1788.33 is added to the Civil Code, to read:

1788.33. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 13. Section 1789.9 is added to the Civil Code, to read:

1789.9. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 14. Section 1789.38 is added to the Civil Code, to read:

1789.38. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 15. Section 1798.83 is added to the Civil Code, to read:

1798.83. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 16. Section 1798.86 is added to the Civil Code, to read:

1798.86. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 17. Section 1799.6 is added to the Civil Code, to read:

1799.6. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 18. Section 1799.85 is added to the Civil Code, to read:

1799.85. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 19. Section 1799.104 is added to the Civil Code, to read:

1799.104. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 20. Section 1799.207 is added to the Civil Code, to read:

1799.207. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 21. Section 1812.316 is added to the Civil Code, to read:

1812.316. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 22. Section 1812.609 is added to the Civil Code, to read:

1812.609. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 816

An act to add Section 2227.5 to the Business and Professions Code, relating to the healing arts.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 2227.5 is added to the Business and Professions Code, to read:

2227.5. The board shall keep a copy of a complaint it receives concerning the unprofessional conduct of a licensee for seven years or until the statute of limitations for filing an accusation against a licensee has expired, whichever period is shorter, if the board finds after an investigation that there is insufficient evidence to proceed with disciplinary action.

CHAPTER 817

An act to add Section 1368.1 to the Civil Code, relating to common interest developments.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 1368.1 is added to the Civil Code, to read:

1368.1. (a) Any rule or regulation of an association that arbitrarily or unreasonably restricts an owner's ability to market his or her interest in a common interest development is void.

(b) No association may adopt, enforce, or otherwise impose any rule or regulation that does either of the following:

(1) Imposes an assessment or fee in connection with the marketing of an owner's interest in an amount that exceeds the association's actual or direct costs. That assessment or fee shall be deemed to violate the limitation set forth in Section 1366.1.

(2) Establishes an exclusive relationship with a real estate broker through which the sale or marketing of interests in the development is required to occur. The limitation set forth in this paragraph does not apply to the sale or marketing of separate interests owned by the association or to the sale or marketing of common areas by the association.

(c) For purposes of this section, ''market'' and ''marketing'' mean listing, advertising, or obtaining or providing access to show the owner's interest in the development.

(d) This section does not apply to rules or regulations made pursuant to Section 712 or 713 regarding real estate signs.

CHAPTER 818

An act to add Chapter 13 (commencing with Section 13300) to Division 5 of the Business and Professions Code, relating to automatic checkout systems.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. It is the intent of the Legislature that the state laws that protect consumers be adequately enforced to ensure fair business practices. It is also the intent of the Legislature to ensure that business owners are not unfairly harassed by litigation that is without merit. The Legislature finds and declares that the provisions of law relating to frivolous actions apply to actions filed under this act.

SEC. 2. Chapter 13 (commencing with Section 13300) is added to Division 5 of the Business and Professions Code, to read:

CHAPTER 13. AUTOMATIC CHECKOUT SYSTEMS

13300. (a) The operator of a business establishment that uses an automatic checkout system to sell goods or services to consumers shall ensure that the price of each good or service to be paid by the consumer is conspicuously displayed to the consumer at the time that the price is interpreted by the system. All price reductions, surcharges, taxes, and the total amount for each transaction also shall be displayed for the consumer at least once before the consumer is required to pay for the goods or services. The checkout system customer indicator shall be so positioned, and the prices and amounts displayed shall be of a size and form, as to be easily viewable from a typical and reasonable customer position at each checkout location.

(b) For the purposes of this section, ''automatic checkout system'' means a computer or any electronic system used to interpret the universal bar code or any other code that is on an item offered for sale to determine the price of the item being purchased regardless of whether the code entry is accomplished manually by a human or automatically by a machine.

(c) All automatic checkout systems used by a business establishment on and after January 1, 2007, shall comply with the requirement of subdivision (a).

13301. Notwithstanding any other provision of this division, the Attorney General, the district attorney, or city attorney may enforce the provisions of this chapter in accordance with the provisions of Division 5 (commencing with Section 12001) or any other applicable provisions of law.

13302. (a) The sealer may levy a civil penalty against a person violating any provision of this chapter or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing. The request shall be made within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the sealer's evidence and to present evidence on his or her own behalf.

If a hearing is not timely requested, the sealer may take the action proposed without a hearing.

(c) If the person upon whom the sealer levied a civil penalty requested and appeared at a hearing, the person may appeal the sealer's decision to the secretary within 30 days of the date of receiving a copy of the sealer's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the sealer's decision. The appellant shall file a copy of the appeal with the sealer at the same time it is filed with the secretary.

(2) The appellant and the sealer may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, present the record of the hearing including written evidence that was

submitted at the hearing and a written argument to the secretary stating grounds for affirming, modifying, or reversing the sealer's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the sealer, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the sealer's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the sealer's decision, modify the sealer's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the sealer's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the sealer's notice of proposed action given pursuant to subdivision (b). A copy of the secretary's decision shall be delivered or mailed to the appellant and the sealer.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the appeal and review procedures provided in this section, the sealer, or his or her representative, may file a certified copy of a final decision of the sealer that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her authorized representative rendered on an appeal from the sealer's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) If the civil penalty is levied by the State Sealer, the revenues derived therefrom shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation, shall be used by the State

Sealer to carry out his or her responsibilities under this division. If the civil penalty is levied by the county sealer, the revenues shall be deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the county sealer to carry out his or her responsibilities under this chapter.

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 819

An act to amend Section 9787 of, and to add Sections 9715.1, 9721, and 9722 to, the Business and Professions Code and to amend Sections 7054, 7103, 7111, 103775, and 103780 of the Health and Safety Code, relating to health and safety.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 9715.1 is added to the Business and Professions Code, to read:

9715.1. (a) Each cemetery for which a certificate of authority is required shall be operated under the supervision of a manager who is qualified in accordance with the regulations adopted by the bureau. Each cemetery manager shall be required to successfully pass a written examination evidencing an understanding of the applicable provisions of this code and of the Health and Safety Code. No person shall engage in the business of, act in the capacity of, or advertise or assume to act as, a cemetery manager without first obtaining a license from the bureau.

(b) This section shall become operative on July 1, 2003.

SEC. 2. Section 9721 is added to the Business and Professions Code, to read:

9721. (a) The bureau shall inspect the books, records, and premises of any cemetery where a certificate of authority is required under this chapter. In making the inspections, the bureau shall have access to all books and records, buildings, mausoleums, columbariums, storage

areas, including storage areas for human remains, during regular office hours or the hours the cemetery is in operation. No prior notification of the inspection is required to be given to the holder of the certificate of authority. If any certificate holder fails to allow the inspection or any part thereof, disciplinary action including, but not limited to, revocation or suspension may be taken against the certificate of authority. All disciplinary proceedings shall be conducted in accordance with this chapter.

(b) This section shall become operative on July 1, 2003.

SEC. 3. Section 9722 is added to the Business and Professions Code, to read:

9722. (a) The bureau shall annually conduct a minimum of one unannounced inspection of each cemetery for which a certificate of authority is required.

(b) This section shall become operative on July 1, 2003.

SEC. 4. Section 9787 of the Business and Professions Code is amended to read:

9787. (a) Each crematory for which a crematory license is required shall be operated under the supervision of a manager qualified in accordance with rules adopted by the bureau. Each manager shall be required to successfully pass a written examination evidencing an understanding of the applicable provisions of this code and of the Health and Safety Code.

(b) On and after July 1, 2003, no person shall engage in the business of, act in the capacity of, or advertise or assume to act as, a crematory manager without first obtaining a license from the bureau.

SEC. 5. Section 7054 of the Health and Safety Code is amended to read:

7054. (a) (1) Except as authorized pursuant to the sections referred to in subdivision (b), every person who deposits or disposes of any human remains in any place, except in a cemetery, is guilty of a misdemeanor.

(2) Every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) or Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code and the agents and employees of the licensee or registrant, or any unlicensed person acting in a capacity in which a license from the Cemetery and Funeral Bureau is required, who, except as authorized pursuant to the sections referred to in subdivision (b), deposits or disposes of any human remains in any place, except in a cemetery, is guilty of a misdemeanor that shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or both that imprisonment and fine.

(b) Cremated remains may be disposed of pursuant to Sections 7054.6, 7116, 7117, and 103060.

(c) Subdivision (a) of this section shall not apply to the reburial of Native American remains under an agreement developed pursuant to subdivision (*l*) of Section 5097.94 of the Public Resources Code, or implementation of a recommendation or agreement made pursuant to Section 5097.98 of the Public Resources Code.

SEC. 6. Section 7103 of the Health and Safety Code is amended to read:

7103. (a) Every person, upon whom the duty of interment is imposed by law, who omits to perform that duty within a reasonable time is guilty of a misdemeanor.

(b) Every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) or Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, and the agents and employees of the licensee or registrant, or any unlicensed person acting in a capacity in which a license from the Cemetery and Funeral Bureau is required, upon whom the duty of interment is imposed by law, who omits to perform that duty within a reasonable time is guilty of a misdemeanor that shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or both that imprisonment and fine.

(c) In addition, any person, registrant, or licensee described in subdivision (a) or (b) is liable to pay the person performing the duty in his or her stead treble the expenses incurred by the latter in making the interment, to be recovered in a civil action.

SEC. 7. Section 7111 of the Health and Safety Code is amended to read:

7111. A cemetery authority or crematory may make an interment or cremation of any remains upon the receipt of a written authorization of a person representing himself or herself to be a person having the right to control the disposition of the remains pursuant to Section 7100.

A cemetery authority or crematory is not liable for cremating, making an interment, or for other disposition of remains permitted by law, pursuant to that authorization, unless it has actual notice that the representation is untrue.

SEC. 8. Section 103775 of the Health and Safety Code is amended to read:

103775. (a) Every person, except a parent informant for a certificate of live birth and as provided in subdivision (b), who is responsible for supplying information who refuses or fails to furnish correctly any information in his or her possession that is required by this part, or furnishes false information affecting any certificate or record required by this part, is guilty of a misdemeanor.

(b) Every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) or Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, and the agents and employees of the licensee, or any unlicensed person acting in a capacity in which a license from the Cemetery and Funeral Bureau is required, who is responsible for supplying information and who refuses or fails to furnish correctly any information in his or her possession that is required by this part, or furnishes false information with intent to defraud affecting a death certificate or record required by this part, is guilty of a misdemeanor that shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

SEC. 9. Section 103780 of the Health and Safety Code is amended to read:

103780. (a) Every person, except as provided in subdivision (b), who willfully alters or knowingly possesses more than one altered document, other than as permitted by this part, or falsifies any certificate of birth, fetal death, death, or registry of marriage, or any record established by this part is guilty of a misdemeanor.

(b) Every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) or Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, and the agents and employees of the licensee, or any unlicensed person acting in a capacity in which a license from the Cemetery and Funeral Bureau is required, who willfully alters or knowingly possesses more than one altered document, other than as permitted by this part, or falsifies any certificate of death, is guilty of a misdemeanor that shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 820

An act to add Sections 2053.5 and 2053.6 to the Business and Professions Code, relating to health.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

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

(a) Based upon a comprehensive report by the National Institute of Medicine and other studies, including a study published by the New England Journal of Medicine, it is evident that millions of Californians, perhaps more than five million, are presently receiving a substantial volume of health care services from complementary and alternative health care practitioners. Those studies further indicate that individuals utilizing complementary and alternative health care services cut across a wide variety of age, ethnic, socioeconomic, and other demographic categories.

(b) Notwithstanding the widespread utilization of complementary and alternative medical services by Californians, the provision of many of these services may be in technical violation of the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code). Complementary and alternative health care practitioners could therefore be subject to fines, penalties, and the restriction of their practice under the Medical Practice Act even though there is no demonstration that their practices are harmful to the public.

(c) The Legislature intends, by enactment of this act, to allow access by California residents to complementary and alternative health care practitioners who are not providing services that require medical training and credentials. The Legislature further finds that these nonmedical complementary and alternative services do not pose a known risk to the health and safety of California residents, and that restricting access to those services due to technical violations of the Medical Practice Act is not warranted.

SEC. 2. Section 2053.5 is added to the Business and Professions Code, to read:

2053.5. (a) Notwithstanding any other provision of law, a person who complies with the requirements of Section 2053.6 shall not be in violation of Section 2051, 2052, or 2053 unless that person does any of the following:

(1) Conducts surgery or any other procedure on another person that punctures the skin or harmfully invades the body.

(2) Administers or prescribes X-ray radiation to another person.

(3) Prescribes or administers legend drugs or controlled substances to another person.

(4) Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner.

(5) Willfully diagnoses and treats a physical or mental condition of any person under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death.

(6) Sets fractures.

(7) Treats lacerations or abrasions through electrotherapy.

(8) Holds out, states, indicates, advertises, or implies to a client or prospective client that he or she is a physician, a surgeon, or a physician and surgeon.

(b) A person who advertises any services that are not unlawful under Section 2051, 2052, or 2053 pursuant to subdivision (a) shall disclose in the advertisement that he or she is not licensed by the state as a healing arts practitioner.

SEC. 3. Section 2053.6 is added to the Business and Professions Code, to read:

2053.6. (a) A person who provides services pursuant to Section 2053.5 that are not unlawful under Section 2051, 2052, or 2053 shall, prior to providing those services, do the following:

(1) Disclose to the client in a written statement using plain language the following information:

(A) That he or she is not a licensed physician.

(B) That the treatment is alternative or complementary to healing arts services licensed by the state.

(C) That the services to be provided are not licensed by the state.

(D) The nature of the services to be provided.

(E) The theory of treatment upon which the services are based.

(F) His or her educational, training, experience, and other qualifications regarding the services to be provided.

(2) Obtain a written acknowledgement from the client stating that he or she has been provided with the information described in paragraph (1). The client shall be provided with a copy of the written acknowledgement, which shall be maintained by the person providing the service for three years.

(b) The information required by subdivision (a) shall be provided in a language that the client understands.

(c) Nothing in this section or in Section 2053.5 shall be construed to do the following:

(1) Affect the scope of practice of licensed physicians and surgeons.

(2) Limit the right of any person to seek relief for negligence or any other civil remedy against a person providing services subject to the requirements of this section.

CHAPTER 821

An act to amend Sections 2260.5, 16004, and 16105 of the Business and Professions Code, and to amend Section 24185 of, to add Section 24186 to, and to repeal Section 24189 of, the Health and Safety Code, relating to human cloning.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 2260.5 of the Business and Professions Code is amended to read:

2260.5. A violation of Section 24185 of the Health and Safety Code, relating to human cloning, constitutes unprofessional conduct.

SEC. 2. Section 16004 of the Business and Professions Code is amended to read:

16004. Any license issued to a business pursuant to this chapter shall be revoked for a violation of Section 24185 of the Health and Safety Code, relating to human cloning.

SEC. 3. Section 16105 of the Business and Professions Code is amended to read:

16105. Any license issued to a business pursuant to this chapter shall be revoked for violation of Section 24185 of the Health and Safety Code, relating to human cloning.

SEC. 4. Section 24185 of the Health and Safety Code is amended to read:

24185. (a) No person shall clone a human being or engage in human reproductive cloning.

(b) No person shall purchase or sell an ovum, zygote, embryo, or fetus for the purpose of cloning a human being.

(c) For purposes of this chapter, the following definitions apply:

(1) ''Clone'' means the practice of creating or attempting to create a human being by transferring the nucleus from a human cell from whatever source into a human or nonhuman egg cell from which the nucleus has been removed for the purpose of, or to implant, the resulting product to initiate a pregnancy that could result in the birth of a human being.

(2) ''Department'' means the State Department of Health Services.

(3) ''Human reproductive cloning'' means the creation of a human fetus that is substantially genetically identical to a previously born human being. The department may adopt, interpret, and update regulations, as necessary, for purposes of more precisely defining the procedures that constitute human reproductive cloning.

SEC. 5. Section 24186 is added to the Health and Safety Code, to read:

24186. (a) (1) The department shall establish an advisory committee for purposes of advising the Legislature and the Governor on human cloning and other issues relating to human biotechnology. The committee shall be composed of at least nine members, appointed by the Director of Health Services, who shall serve without compensation.

(2) The committee shall include at least one representative from the areas of medicine, religion, biotechnology, genetics, law, and from the general public. The committee shall also include not less than three independent bioethicists who possess the qualifications described in paragraph (3).

(3) The independent bioethicists selected to serve on the committee shall reflect a representative range of religious and ethical perspectives in California regarding the issues of human cloning and human biotechnology. An independent bioethicist serving on the advisory committee shall not be employed by, consult with or have consulted with, or have any direct or indirect financial interest, in any corporation engaging in research relating to human cloning or human biotechnology. A person with any affiliation to the grant-funded cloning research programs operated by the University of California or the California State University is also prohibited from serving as a bioethicist on the advisory committee.

(b) On or before December 31, 2003, and annually thereafter, the department shall report to the Legislature and the Governor regarding the activities of the committee.

(c) The activities of the committee shall, to the extent that funds are available, be funded by the department out of existing resources.

SEC. 6. Section 24189 of the Health and Safety Code is repealed.

CHAPTER 822

An act to amend Sections 9202, 9212, 9221, and 9231 of, and to add Sections 9266, 9267, 9268, and 9269 to, the Food and Agricultural Code, relating to biologics.

[Approved by Governor September 23, 2002. Filed with
Secretary of State September 23, 2002.]

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

SECTION 1. Section 9202 of the Food and Agricultural Code is amended to read:

9202. ''Animal'' includes, but is not limited to, any domesticated fowl or nonhuman mammal and any wild fowl, bird, or mammal that is reduced to captivity.

SEC. 2. Section 9212 of the Food and Agricultural Code is amended to read:

9212. The secretary shall license biologic establishments that meet all of the following:

(a) Operate under conditions, and use methods of production, to insure that the biologics will not be contaminated, dangerous, or harmful.

(b) Produce biologics under the direct supervision of a person qualified in the field of production of biologics.

(c) For those commercial blood banks for animals licensed by the department, maintain onsite records containing information documenting how the animal was acquired and any history of blood draws or use of anesthesia on the animal.

SEC. 3. Section 9221 of the Food and Agricultural Code is amended to read:

9221. An application for a license for any establishment that produces, or proposes to produce, biologics shall be made on forms to be issued by the secretary. The application shall contain all of the following:

(a) The name and address of the person who owns the place, establishment, or institution in which it is proposed to produce biologics.

(b) The name and address of the person who shall be in charge of biologics production.

(c) The type of biologics that shall be produced.

(d) A full description of the building, including its location, facilities, equipment, and apparatus to be used in biologics production.

(e) A written protocol for a commercial blood bank for animals that addresses all of the following:

(1) Maximum length of time for donation by animal donors, or minimum health parameters for animal donors.

(2) Frequency and volume of blood collected from animal blood donors.

(3) Socialization and exercise programs for animal blood donors.

(4) Method of identification of each animal, including microchip or tattoo.

(5) Ongoing veterinary care, including an annual physical exam and vaccination schedule for animals held in blood donor facilities.

(6) Husbandry standards for feeding, watering, sanitation, housing, handling, and care in transit with minimums based on the standards set forth pursuant to the federal Animal Welfare Act in Part 3 (commencing with Section 3.1) of Subchapter A of Chapter 1 of Title 9 of the Code of Federal Regulations.

(7) Implementation of a permissive adoption program.

(f) An ''oversight letter'' letter identifying the oversight veterinarian who will be responsible for oversight of the facility. The letter shall be from the oversight veterinarian, and shall be maintained on file by the secretary. Oversight veterinarians shall be licensed to practice veterinary medicine in California. In the event of a change of the oversight veterinarian, it is the oversight veterinarian's responsibility to give notice to the secretary of the termination of the oversight within 30 days of the termination date of the oversight. An oversight letter from the incoming oversight veterinarian shall be submitted to the secretary within 30 days of the termination date of the prior oversight veterinarian.

(g) Additional information that the secretary finds is necessary for the proper administration and enforcement of this chapter.

SEC. 4. Section 9231 of the Food and Agricultural Code is amended to read:

9231. The license application fee and license renewal fee under this chapter for an establishment proposing to produce or producing biologics shall be as follows:

(a) The application and annual license fee shall be two hundred fifty dollars ($250) for each establishment, which shall be the fee for the fiscal year, or portion thereof, ending June 30 of each year. When an applicant is a city, county, state, or district, or an official thereof, no fee shall be required under this section.

(b) Licenses shall be renewed every year. The annual renewal fee shall be paid on or before the first day of July of each year.

(c) For commercial blood banks for animals licensed by the department, fees may be increased by the department to cover the department's reasonable costs incurred in connection with performing the annual inspection required by Sections 9266 and 9268.

(d) The fees required by this section are maximum, and may be fixed by the secretary at a lesser amount for any fiscal year whenever he or she finds that the cost of administering this chapter can be defrayed from revenues derived from the lower fees.

SEC. 5. Section 9266 is added to the Food and Agricultural Code, to read:

9266. The department, or humane officers under contract with the department, shall inspect commercial blood banks for animals licensed by the department at least once a year to ensure compliance with the protocols required by subdivision (e) of Section 9221.

SEC. 6. Section 9267 is added to the Food and Agricultural Code, to read:

9267. Notwithstanding Section 4827 of the Business and Professions Code, for commercial blood banks for animals licensed by the department, anesthesia shall be performed by a California licensed veterinarian or by a registered veterinary technician under the direct supervision of a California licensed veterinarian.

SEC. 7. Section 9268 is added to the Food and Agricultural Code, to read:

9268. The requirements set forth in subdivision (c) of Section 9212, subdivision (e) of Section 9221, subdivision (c) of Section 9231, and Sections 9265, 9266, and 9267:

(a) Shall not apply to those facilities required to be inspected by the United States Department of Agriculture in accordance with the Animal Welfare Act (Chapter 54 (commencing with Section 2131) of Title 7 of the United States Code), or to federal biologics licensees.

(b) Shall apply to those facilities housing blood donor animals under contract with commercial blood banks for animals licensed by the department.

(c) Shall not apply to private veterinarians who maintain their own, in-office blood donor animals for use in their own practice.

SEC. 8. Section 9269 is added to the Food and Agricultural Code, to read:

9269. (a) Except as provided in subdivision (b), all records held by the department relating to this chapter, including, but not limited to, records relating to applications, fees, or inspections required by this chapter, shall be confidential and not subject to disclosure under the California Public Records Act contained in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Notwithstanding subdivision (a), records held by the department relating to this chapter shall be accessible to law enforcement officers with jurisdiction over any matter covered by this chapter.

CHAPTER 823

An act to amend Sections 2570.2 and 2570.3 of the Business and Professions Code, relating to occupational therapy.

[Approved by Governor September 23, 2002. Filed with
Secretary of State September 23, 2002.]

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

SECTION 1. Section 2570.2 of the Business and Professions Code is amended to read:

2570.2. As used in this chapter, unless the context requires otherwise:

(a) ''Appropriate supervision of an aide'' means that the responsible occupational therapist shall provide direct in-sight supervision when the aide is providing delegated client-related tasks and shall be readily available at all times to provide advice or instruction to the aide. The occupational therapist is responsible for documenting the client's record concerning the delegated client-related tasks performed by the aide.

(b) ''Aide'' means an individual who provides supportive services to an occupational therapist and who is trained by an occupational therapist to perform, under appropriate supervision, delegated, selected client and nonclient-related tasks for which the aide has demonstrated competency. An occupational therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the occupational therapist in his or her practice of occupational therapy. An occupational therapy assistant shall not supervise an aide engaged in client-related tasks.

(c) ''Association'' means the Occupational Therapy Association of California or a similarly constituted organization representing occupational therapists in this state.

(d) ''Board'' means the California Board of Occupational Therapy.

(e) ''Examination'' means an entry level certification examination for occupational therapists and occupational therapy assistants administered by the National Board for Certification in Occupational Therapy or by another nationally recognized credentialing body.

(f) ''Good standing'' means that the person has a current, valid license to practice occupational therapy or assist in the practice of occupational therapy and has not been disciplined by the recognized professional certifying or standard-setting body within five years prior to application or renewal of the person's license.

(g) ''Occupational therapist'' means an individual who meets the minimum education requirements specified in Section 2570.6 and is licensed pursuant to the provisions of this chapter and whose license is in good standing as determined by the board to practice occupational therapy under this chapter. Only the occupational therapist is responsible for the occupational therapy assessment of a client, and the development of an occupational therapy plan of treatment.

(h) ''Occupational therapy assistant'' means an individual who is certified pursuant to the provisions of this chapter, who is in good standing as determined by the board, and based thereon, who is qualified to assist in the practice of occupational therapy under this chapter, and who works under the appropriate supervision of a licensed occupational therapist.

(i) ''Occupational therapy services'' means the services of an occupational therapist or the services of an occupational therapy assistant under the appropriate supervision of an occupational therapist.

(j) ''Person'' means an individual, partnership, unincorporated organization, or corporation.

(k) ''Practice of occupational therapy'' means the therapeutic use of purposeful and meaningful goal-directed activities (occupations) which engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health. Occupational therapy services encompass occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)). Occupational therapy assessment identifies performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities. Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability. Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training). Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, in groups, or through social groups.

(*l*) ''Hand therapy'' is the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity and specialized skills in assessment and treatment to prevent dysfunction, restore function, or reverse the advancement of pathology. This definition is not intended to prevent an occupational therapist practicing hand therapy from providing other occupational therapy services authorized under this act in conjunction with hand therapy.

(m) ''Physical agent modalities'' means techniques that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. These techniques are used as adjunctive methods in conjunction with, or in immediate preparation for, occupational therapy services.

SEC. 2. Section 2570.3 of the Business and Professions Code is amended to read:

2570.3. (a) No person shall practice occupational therapy or hold himself or herself out as an occupational therapist or as being able to practice occupational therapy, or to render occupational therapy services in this state unless he or she is licensed as an occupational therapist under the provisions of this chapter. No person shall hold himself or herself out as an occupational therapy assistant or work as an occupational therapy assistant under the supervision of an occupational therapist unless he or she is certified as an occupational therapy assistant under the provisions of this chapter.

(b) Only an individual may be licensed or certified under this chapter.

(c) Nothing in this chapter shall be construed as authorizing an occupational therapist to practice physical therapy, as defined in Section 2620; speech-language pathology or audiology, as defined in Section 2530.2; nursing, as defined Section 2725; psychology, as defined in Section 2903; or spinal manipulation or other forms of healing, except as authorized by this section.

(d) An occupational therapist may provide advanced practices if the therapist has the knowledge, skill, and ability to do so and has demonstrated to the satisfaction of the board that he or she has met educational training and competency requirements. These advanced practices include the following:

(1) Hand therapy.

(2) The use of physical agent modalities.

(3) Swallowing assessment, evaluation, or intervention.

(e) An occupational therapist providing hand therapy services shall demonstrate to the satisfaction of the board that he or she has completed post professional education and training in all of the following areas:

(1) Anatomy of the upper extremity and how it is altered by pathology.

(2) Histology as it relates to tissue healing and the effects of immobilization and mobilization on connective tissue.

(3) Muscle, sensory, vascular, and connective tissue physiology.

(4) Kinesiology of the upper extremity, such as biomechanical principles of pulleys, intrinsic and extrinsic muscle function, internal forces of muscles, and the effects of external forces.

(5) The effects of temperature and electrical currents on nerve and connective tissue.

(6) Surgical procedures of the upper extremity and their postoperative course.

(f) An occupational therapist using physical agent modalities shall demonstrate to the satisfaction of the board that he or she has completed post professional education and training in all of the following areas:

(1) Anatomy and physiology of muscle, sensory, vascular, and connective tissue in response to the application of physical agent modalities.

(2) Principles of chemistry and physics related to the selected modality.

(3) Physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of a modality.

(4) Guidelines for the preparation of the patient, including education about the process and possible outcomes of treatment.

(5) Safety rules and precautions related to the selected modality.

(6) Methods for documenting immediate and long-term effects of treatment.

(7) Characteristics of the equipment, including safe operation, adjustment, indications of malfunction, and care.

(g) An occupational therapist in the process of achieving the education, training, and competency requirements established by the board for providing hand therapy or using physical agent modalities may practice these techniques under the supervision of an occupational therapist who has already met the requirements established by the board, a physical therapist, or a physician and surgeon.

(h) The board shall develop and adopt regulations regarding the educational training and competency requirements for advanced practices in collaboration with the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, and the Physical Therapy Board of California.

(i) Nothing in this chapter shall be construed as authorizing an occupational therapist to seek reimbursement for services other than for the practice of occupational therapy as defined in this chapter.

(j) ''Supervision of an occupational therapy assistant'' means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client's record, with his or her signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned to that client functions under appropriate supervision. As part of the responsible occupational therapist's appropriate supervision, he or she shall conduct at least weekly review and inspection of all aspects of occupational therapy services by the occupational therapy assistant.

(1) The supervising occupational therapist has the continuing responsibility to follow the progress of each patient, provide direct care to the patient, and to assure that the occupational therapy assistant does not function autonomously.

(2) An occupational therapist shall not supervise more occupational therapy assistants, at any one time, than can be appropriately supervised in the opinion of the board. Two occupational therapy assistants shall be the maximum number of occupational therapy assistants supervised by an occupational therapist at any one time, but the board may permit the supervision of a greater number by an occupational therapist if, in the opinion of the board, there would be adequate supervision and the public's health and safety would be served. In no case shall the total number of occupational therapy assistants exceed twice the number of occupational therapists regularly employed by a facility at any one time.

(k) The amendments to subdivisions (d), (e), (f), and (g) relating to advanced practices, that are made by the act adding this subdivision, shall become operative no later than January 1, 2004, or on the date the board adopts regulations pursuant to subdivision (h) of that section, whichever first occurs.

CHAPTER 824

An act to amend Section 17052.6 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the ''net tax'' (as defined in Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, as modified by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), except that the amount of the credit shall be a percentage, as provided in subdivision (b), of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
$40,000 or less	63%
Over $40,000 but not over $70,000	53%
Over $70,000 but not over $100,000	42%
Over $100,000	0%

(2) For taxable years beginning on or after January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
$40,000 or less	50%
Over $40,000 but not over $70,000	43%
Over $70,000 but not over $100,000	34%
Over $100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, California adjusted gross income means California adjusted gross income as computed for purposes of Section 17041.

(e) The credit authorized by this section shall be limited to those taxpayers who, during the taxable year, maintain a household, within the meaning of Section 21(e)(1) of the Internal Revenue Code, that is located within this state.

SEC. 1.5. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the ''net tax'' (as defined in Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, as modified by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), except that the amount of the credit shall be a percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
$40,000 or less	63%
Over $40,000 but not over $70,000	53%
Over $70,000 but not over $100,000	42%
Over $100,000	0%

(2) For taxable years beginning on or after January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
$40,000 or less	50%
Over $40,000 but not over $70,000	43%
Over $70,000 but not over $100,000	34%
Over $100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, California adjusted gross income means California adjusted gross income as computed for purposes of Section 17041.

(e) The credit authorized by this section shall be limited to those taxpayers who, during the taxable year, maintain a household, within the meaning of Section 21(e)(1) of the Internal Revenue Code, that is located within this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3) of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a ''custodial parent'' (within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who live apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(g) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 17052.6 of the Revenue and Taxation Code proposed by both this bill and AB 2963. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 17052.6 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2963, in which case Section 1 of this bill shall not become operative.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 825

An act to amend Sections 144, 473.1, 9607, 9663, 9731, 9747, 9765, and 9786 of, and to add Sections 7612, 7746, 9605.1, 9605.2, 9610, 9723, 9723.1, 9723.2, 9750.5, 9764.1, 9764.2, 9764.3, 9787.2, 9787.3, and 9787.4 to, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.

SEC. 2. Section 473.1 of the Business and Professions Code is amended to read:

473.1. This division shall apply to all of the following:

(a) Every board, as defined in Section 22, that is scheduled to become inoperative and to be repealed on a specified date as provided by the specific act relating to the board.

(b) The Bureau for Postsecondary and Vocational Education. For purposes of this division, ''board'' includes the bureau.

(c) The Cemetery and Funeral Bureau.

SEC. 3. Section 7612 is added to the Business and Professions Code, to read:

7612. The bureau shall do all of the following:

(a) Conduct a comprehensive study of the need to regulate third-party casket retailers.

(b) Report to the department and the Joint Legislative Sunset Review Committee on or before September 1, 2004, on the matter.

SEC. 4. Section 7746 is added to the Business and Professions Code, to read:

7746. (a) Notwithstanding any other provision of law, a funeral establishment that is otherwise exempt from the requirement of filing an annual preneed trust report or whose preneed trust funds are reported in a combined preneed annual preneed trust report, shall annually file a declaration of nonreporting status with the bureau.

(b) The declaration shall be filed on or before May 1 of each year and shall also be filed upon the transfer of ownership or the cessation of business.

(c) The declaration shall be filed on a form provided by the bureau and shall include, but shall not be limited to, both of the following:

(1) The basis upon which the funeral establishment is exempt from the annual trust reporting requirement.

(2) The specific kind and nature of the exempt preneed arrangements, if any, in which the funeral establishment engages.

(d) The declaration shall be verified by the funeral establishment's owner, a partner, or in the case of a corporation, by the president or vice president.

SEC. 5. Section 9605.1 is added to the Business and Professions Code, to read:

9605.1. (a) A cemetery manager is a person engaged in or conducting, or holding himself or herself out as engaged in those activities involved in, or incidental to, the maintaining, operating, or improving a cemetery licensed under this chapter, the interring of human remains, and the care, preservation, and embellishment of cemetery property.

(b) For persons licensed pursuant to Section 9676, a cemetery manager is a person engaged in or conducting, or holding himself or herself out as engaged in those activities involved in, or incidental to, the following:

(1) The maintaining, operating, or improving of a cemetery licensed under this chapter.

(2) The interment of human remains.

(3) The care, preservation, and embellishment of cemetery property.

(4) Activities described in Section 9677.

SEC. 6. Section 9605.2 is added to the Business and Professions Code, to read:

9605.2. A crematory manager is a person engaged in or conducting, or holding himself or herself out as engaged in those activities involved in, or incidental to, the maintaining, or operating a crematory licensed under this chapter, and the cremation of human remains.

SEC. 7. Section 9607 of the Business and Professions Code is amended to read:

9607. ''Cemetery licensee'' means any cemetery broker, cemetery salesperson, or cemetery manager.

SEC. 8. Section 9610 is added to the Business and Professions Code, to read:

9610. The bureau shall do both of the following:

(a) Conduct a comprehensive study of the need for the regulation of proprietary employees of religious corporations, churches, religious societies, and religious denominations.

(b) Report to the department and the Joint Legislative Sunset Review Committee on or before September 1, 2004, on the matter specified in subdivision (a).

SEC. 9. Section 9663 of the Business and Professions Code is amended to read:

9663. (a) The bureau shall make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. The funeral and cemetery guide that is approved by the bureau, in consultation with the funeral and cemetery industries and any other interested parties, shall be made available in printed form and electronically through the Internet.

(b) A cemetery authority shall prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases, reproduced as specified in subdivision (a).

(c) Prior to drafting a contract for cemetery goods or services, the cemetery authority or cemetery licensee shall provide to the consumer, for retention, a copy of the consumer guide for funeral and cemetery purchases specified.

SEC. 10. Section 9723 is added to the Business and Professions Code, to read:

9723. A cemetery licensed under this chapter shall at all times employ a licensed cemetery manager to manage, supervise, and direct its operations. Notwithstanding any other provision of this chapter, licensed cemeteries within close geographical proximity of each other may request the bureau to allow a licensed cemetery manager to manage, supervise, and direct the business or profession of more than one facility.

(a) Every cemetery shall designate a licensed cemetery manager to manage the cemetery, and shall report the designation to the bureau within 10 days of the effective date. Any change in the designated manager shall be reported to the bureau within 10 days.

(b) The designated cemetery manager shall be responsible for exercising direct supervision and control over the operations, employees, and agents of the cemetery as is necessary to ensure full compliance with the applicable provisions of the Business and Professions Code, the Health and Safety Code, and any regulations adopted thereto. Failure of the designated cemetery manager or the licensed cemetery to exercise that supervision or control shall constitute a ground for disciplinary action.

(c) A cemetery may employ, in addition to the designated cemetery manager, additional licensed cemetery managers. However, only one licensed cemetery manager may be appointed as the designated cemetery manager of the cemetery.

SEC. 11. Section 9723.1 is added to the Business and Professions Code, to read:

9723.1. (a) Application for a cemetery manager license shall be made in writing on the form provided by the bureau, verified by the applicant, and filed at the principal office of the bureau. The application shall be accompanied by the fee fixed by this chapter.

(b) The applicant for a cemetery manager license shall be at least 18 years of age, possess a high school diploma or its equivalent, shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480, shall demonstrate compliance with the training and experience requirements established by the bureau, and shall be a resident of this state.

(c) The bureau shall grant a cemetery manager license to any applicant who meets the requirements of this chapter and who has successfully passed the cemetery manager examination administered by the bureau.

(d) Notwithstanding subdivision (c), until July 1, 2004, the bureau shall grant a cemetery manager license to any applicant who meets the requirements of this chapter and can demonstrate that he or she has, prior to January 1, 2003, successfully passed the cemetery manager examination administered by the bureau. Any person who is eligible to obtain a cemetery manager license under this subdivision and who does not apply for a license by July 1, 2004, shall apply for and successfully pass the examination.

SEC. 12. Section 9723.2 is added to the Business and Professions Code, to read:

9723.2. (a) No person shall engage in or conduct, or hold himself or herself out as engaging in or conducting, the activities of a cemetery manager without holding a valid, unexpired cemetery manager license issued by the bureau.

(b) No licensed cemetery manager shall engage in or conduct, or hold himself or herself out as engaging in or conducting, the activities of a cemetery manager without being employed by, or without being a corporate officer of a licensed cemetery.

SEC. 13. Section 9731 of the Business and Professions Code is amended to read:

9731. If a person fails to apply for a license renewal, no renewal license shall be issued except upon payment of the delinquent renewal fee required under Section 9750.5.

No person who fails to renew his or her license within one year of the expiration date can engage in any of the activities authorized by a license unless he or she first files the application required for an original license, pays the original license fee, and otherwise complies with all of the provisions of this act pertaining to the issuance of an original license.

SEC. 14. Section 9747 of the Business and Professions Code is amended to read:

9747. If a person fails to apply for renewal of his or her cremated remains disposer registration prior to midnight of September 30th of the year for which the registration was issued, no renewal shall be issued except upon payment of the delinquent renewal fee required under Section 9750.5.

SEC. 15. Section 9750.5 is added to the Business and Professions Code, to read:

9750.5. The delinquent renewal fee for a license, registration, or certificate of authority under this chapter shall be 150 percent of the timely fee, but not less than the renewal fee plus twenty-five dollars ($25).

SEC. 16. Section 9764.1 is added to the Business and Professions Code, to read:

9764.1. (a) The fee for a crematory manager examination and reexamination may not exceed five hundred dollars ($500).

(b) The license fee to obtain a crematory manager license may not exceed one hundred dollars ($100).

(c) The renewal fee for a crematory manager license may not exceed one hundred dollars ($100).

SEC. 17. Section 9764.2 is added to the Business and Professions Code, to read:

9764.2. (a) The fee for a cemetery manager examination and reexamination may not exceed nine hundred dollars ($900).

(b) The license fee to obtain a cemetery manager license may not exceed one hundred dollars ($100).

(c) The renewal fee for a cemetery manager license may not exceed one hundred dollars ($100).

SEC. 18. Section 9764.3 is added to the Business and Professions Code, to read:

9764.3. The fee for filing a report of a change of designated manager or a request for approval to share a designated cemetery manager shall not exceed fifty dollars ($50).

SEC. 19. Section 9765 of the Business and Professions Code is amended to read:

9765. Every cemetery authority operating a cemetery shall pay an annual regulatory charge for each cemetery to be fixed by the bureau at not more than four hundred dollars ($400). In addition to an annual

regulatory charge for each cemetery, an additional quarterly charge of not more than eight dollars and fifty cents ($8.50) for each burial, entombment, or inurnment made during the preceding quarter shall be paid until December 31, 2007, to the bureau and these charges shall be deposited in the Cemetery Fund. If the cemetery authority performs a burial, entombment, or inurnment, and the cremation was performed at a crematory located on the grounds of the cemetery and under common ownership with the cemetery authority, the total of all additional charges shall be not more than eight dollars and fifty cents ($8.50).

SEC. 20. Section 9786 of the Business and Professions Code is amended to read:

9786. Every crematory licensee operating a crematory pursuant to a license issued in compliance with this article shall pay an annual regulatory charge for each crematory, to be fixed by the bureau at not more than four hundred dollars ($400). In addition to an annual regulatory charge for each crematory, every licensee operating a crematory pursuant to a license issued pursuant to this article shall pay until December 31, 2007, an additional charge of not more than eight dollars and fifty cents ($8.50) per cremation made during the preceding quarter, which charges shall be deposited in the Cemetery Fund.

SEC. 21. Section 9787.2 is added to the Business and Professions Code, to read:

9787.2. A crematory shall at all times employ a licensed crematory manager to manage, supervise, and direct its operations.

(a) Every crematory shall designate a licensed crematory manager to manage the crematory, and shall report the designation to the bureau within 10 days of the effective date. Any change in the designated manager shall be reported to the bureau within 10 days.

(b) The designated crematory manager shall be responsible for exercising direct supervision and control over the operations, employees, and agents of the crematory as is necessary to ensure full compliance with the applicable provisions of the Business and Professions Code, the Health and Safety Code, and any regulations adopted thereto. Failure of the designated crematory manager or the licensed crematory to exercise that supervision or control shall constitute a ground for disciplinary action.

(c) A crematory may employ, in addition to the designated crematory manager, additional licensed crematory managers. However, only one licensed crematory manager may be appointed as the designated crematory manager of the crematory.

SEC. 22. Section 9787.3 is added to the Business and Professions Code, to read:

9787.3. (a) Application for a crematory manager license shall be made in writing on the form provided by the bureau, verified by the

applicant and filed at the principal office of the bureau. The application shall be accompanied by the fee fixed by this chapter.

(b) The applicant for a crematory manager license shall be at least 18 years of age, possess a high school diploma or its equivalent, shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480, shall demonstrate compliance with the training and experience requirements established by the bureau, and shall be a resident of this state.

(c) The bureau shall grant a crematory manager license to any applicant who meets the requirements of this chapter and who has successfully passed the crematory manager examination administered by the bureau.

(d) Notwithstanding subdivision (c), until July 1, 2004, the bureau shall grant a crematory manager license to any applicant who meets the requirements of this chapter and can demonstrate that he or she has, prior to January 1, 2003, successfully passed the crematory manager examination administered by the bureau. Any person who is eligible to obtain a crematory manager license under this subdivision and who does not apply for a license by July 1, 2004, shall apply for and successfully pass the examination.

SEC. 23. Section 9787.4 is added to the Business and Professions Code, to read:

9787.4. (a) No person shall engage in or conduct, or hold himself or herself out as engaging in or conducting, the activities of a crematory manager without holding a valid, unexpired crematory manager license issued by the bureau.

(b) No licensed crematory manager shall engage in or conduct, or hold himself or herself out as engaging in or conducting, the activities of a crematory manager without being employed by, or without being a sole proprietor, partner, or corporate officer of, a licensed crematory.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 826

An act to amend Section 11515 of, and to add Section 11568 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 23, 2002.]

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

SECTION 1. Section 11515 of the Vehicle Code is amended to read:

11515. (a) Whenever an insurance company makes a total loss settlement on a total loss salvage vehicle, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee, to the department. An occupational licensee of the department may submit a certificate of license plate destruction in lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar ($3) fee, shall issue a salvage certificate for the vehicle.

(b) Whenever the owner of a total loss salvage vehicle retains possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar ($3) fee, shall issue a salvage certificate for the vehicle.

(c) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee to the department.

(d) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee to the department.

(e) Prior to sale or disposal of a total loss salvage vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed salvage certificate and deliver it to the purchaser within 10 days after payment in full for the salvage vehicle and shall also comply with Section 5900. The department shall accept the endorsed salvage certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle which has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a total loss salvage vehicle.

(g) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with intent to defraud, a violation of subdivision (c) is a misdemeanor.

(h) (1) A salvage certificate issued under this section shall include a statement that the seller and any subsequent sellers that transfer ownership of a total loss vehicle pursuant to a properly endorsed salvage certificate are required to disclose to the purchaser at, or prior to, the time of sale that the vehicle has been declared a total loss salvage vehicle.

(2) Effective on and after the department includes in the salvage certificate form the statement described in paragraph (1), a seller who fails to make the disclosure described in paragraph (1) shall be subject to a civil penalty of not more than five hundred dollars ($500).

(3) Nothing in this subdivision affects any other civil remedy provided by law, including, but not limited to, punitive damages.

SEC. 2. Section 11568 is added to the Vehicle Code, to read:

11568. (a) Whenever an insurer makes a total loss settlement on a total loss salvage vehicle, the insurer or a dealer, automobile dismantler, or salvage pool authorized by the insurer, shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee, to the department. A dealer, automobile dismantler, or salvage pool licensed by the department may submit a certificate of license plate destruction in lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar ($3) fee, shall issue a salvage certificate for the vehicle.

(b) Whenever the owner of a total loss salvage vehicle enters into a settlement with the insurer responsible for paying for the damage and the owner retains possession of the vehicle, the insurer shall notify the department of the retention on a form prescribed by the department. The

insurer shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the three-dollar ($3) fee, shall issue a salvage certificate for the vehicle.

(c) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee to the department.

(d) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a three-dollar ($3) fee to the department.

(e) Prior to sale or disposal of a total loss salvage vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed salvage certificate and deliver it to the purchaser within 10 days after payment in full for the salvage vehicle and shall also comply with Section 5900. The department shall accept the endorsed salvage certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle which has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a total loss salvage vehicle.

(g) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with intent to defraud, a violation of subdivision (c) is a misdemeanor.

(h) (1) A salvage certificate issued under this section shall include a statement that the seller and any subsequent sellers that transfer ownership of a total loss vehicle pursuant to a properly endorsed salvage certificate are required to disclose to the purchaser at, or prior to, the time of sale that the vehicle has been declared a total loss salvage vehicle.

(2) Effective on and after the department includes in the salvage certificate form the statement described in paragraph (1), a seller who

fails to make the disclosure described in paragraph (1) shall be subject to a civil penalty of not more than five hundred dollars ($500).

(3) Nothing in this subdivision affects any other civil remedy provided by law, including, but not limited to, punitive damages.

SEC. 3. Section 2 of this bill adds Section 11568 to the Vehicle Code. It shall only become operative if (1) this bill and SB 1743 are enacted and become effective on or before January 1, 2003, (2) each bill adds Section 11568 to the Vehicle Code, and (3) this bill is enacted after SB 1743, in which case Section 1 of this bill shall not become operative.

CHAPTER 827

An act to amend Section 102875 of the Health and Safety Code, relating to vital statistics.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 102875 of the Health and Safety Code is amended to read:

102875. The certificate of death shall be divided into two sections.

(a) The first section shall contain those items necessary to establish the fact of the death, including all of the following and those other items as the State Registrar may designate:

(1) Personal data concerning decedent including full name, sex, color or race, marital status, name of spouse, date of birth and age at death, birthplace, usual residence, and occupation and industry or business.

(2) Date of death, including month, day, and year.

(3) Place of death.

(4) Full name of father and birthplace of father, and full maiden name of mother and birthplace of mother.

(5) Informant.

(6) Disposition of body information including signature and license number of embalmer if body embalmed or name of embalmer if affixed by attorney-in-fact; name of funeral director, or person acting as such; and date and place of interment or removal. Notwithstanding any other provision of law to the contrary, an electronic signature substitute, or some other indicator of authenticity, approved by the State Registrar may be used in lieu of the actual signature of the embalmer.

(7) Certification and signature of attending physician and surgeon or certification and signature of coroner when required to act by law.

Notwithstanding any other provision of law to the contrary, the person completing the portion of the certificate setting forth the cause of death may attest to its accuracy by use of an electronic signature substitute, or some other indicator of authenticity, approved by the State Registrar in lieu of a signature.

(8) Date accepted for registration and signature of local registrar. Notwithstanding any other provision of law to the contrary, the local registrar may elect to use an electronic signature substitute, or some other indicator of authenticity, approved by the State Registrar in lieu of a signature.

(b) The second section shall contain those items relating to medical and health data, including all of the following and other items as the State Registrar may designate:

(1) Disease or conditions leading directly to death and antecedent causes.

(2) Operations and major findings thereof.

(3) Accident and injury information.

(4) Information indicating whether the decedent was pregnant at the time of death, or within the year prior to the death, if known, as determined by observation, autopsy, or review of the medical record. This paragraph shall not be interpreted to require the performance of a pregnancy test on a decedent, or to require a review of medical records in order to determine pregnancy.

SEC. 2. The requirements specified by paragraph (4) of subdivision (b) of Section 102875 of the Health and Safety Code, as amended by this act, shall apply only to death certificate forms that are produced on and after January 1, 2003. Death certificate forms that are in existence on January 1, 2003, and that do not comply with paragraph (4) of subdivision (b) of Section 102875 of the Health and Safety Code, may be used until that supply of forms is exhausted.

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 828

An act to amend Section 1108 of the Evidence Code, and to amend Section 802 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 1108 of the Evidence Code is amended to read:

1108. (a) In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered in compliance with the provisions of Section 1054.7 of the Penal Code.

(c) This section shall not be construed to limit the admission or consideration of evidence under any other section of this code.

(d) As used in this section, the following definitions shall apply:

(1) ''Sexual offense'' means a crime under the law of a state or of the United States that involved any of the following:

(A) Any conduct proscribed by Section 243.4, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.2, 288.5, or 289, or subdivision (b), (c), or (d) of Section 311.2 or Section 311.3, 311.4, 311.10, 311.11, 314, or 647.6, of the Penal Code.

(B) Any conduct proscribed by Section 220 of the Penal Code, except assault with intent to commit mayhem.

(C) Contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person.

(D) Contact, without consent, between the genitals or anus of the defendant and any part of another person's body.

(E) Deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person.

(F) An attempt or conspiracy to engage in conduct described in this paragraph.

(2) ''Consent'' shall have the same meaning as provided in Section 261.6 of the Penal Code, except that it does not include consent which is legally ineffective because of the age, mental disorder, or developmental or physical disability of the victim.

SEC. 2. Section 802 of the Penal Code is amended to read:

802. (a) Except as provided in subdivision (b), prosecution for an offense not punishable by death or imprisonment in the state prison shall be commenced within one year after commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a committed with or upon a minor under the age of 14 years shall be commenced within three years after commission of the offense.

(c) Prosecution of a misdemeanor violation of Section 729 of the Business and Professions Code shall be commenced within two years after commission of the offense.

CHAPTER 829

An act to amend Sections 3000 and 3001 of the Penal Code, relating to parole.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is a sexually violent predator shall not toll, discharge, or otherwise affect that person's period of parole.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be five years. Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2),

and (3) shall be computed from the date of initial parole or from the date of extension of parole pursuant to paragraph (3) and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole or from the date of extension of parole pursuant to paragraph (3).

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 2. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections

recommends to the Board of Prison Terms that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) or (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement or since extension of parole, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(c) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

(d) The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

CHAPTER 830

An act to amend Sections 166, 12021, 12028.5, and 12028.7 of the Penal Code, relating to firearms.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by any court, including orders pending trial.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone or mail, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, or that is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) apply to the following court orders:

(A) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or ''a credible threat'' of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with the provisions of Section 1203.097 of the Penal Code.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 2. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or

elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b)

of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order

is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how

defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) ''Abuse'' means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) ''Domestic violence'' means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) ''Deadly weapon'' means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision

(c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than five business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within five business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of

Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 3.5. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) ''Abuse'' means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) ''Domestic violence'' means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) ''Deadly weapon'' means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than five business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within five business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police

department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn

the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 4. Section 12028.7 of the Penal Code is amended to read:

12028.7. (a) Except where a procedure is already provided by existing law, or other provisions of law apply, when a firearm is taken into custody by a law enforcement officer, the officer shall issue the person who possessed the firearm a receipt describing the firearm, and listing any serial number or other identification on the firearm.

(b) The receipt shall indicate where the firearm may be recovered, any applicable time limit for recovery, and the date after which the owner or possessor may recover the firearm, provided however, that no firearm shall be held less than 48 hours, and no more than 5 business days. In any civil action or proceeding for the return of a firearm seized and not

returned within 5 business days, pursuant to this section, the court shall award reasonable attorney's fees to the prevailing party.

(c) Nothing in this section is intended to displace any existing law regarding the seizure or return of firearms.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and SB 1807. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after SB 1807, in which case Section 3 of this bill shall not become operative.

CHAPTER 831

An act to amend Sections 1202.1 and 1524.1 of the Penal Code, relating to offenders.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 1202.1 of the Penal Code is amended to read:

1202.1. (a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of, or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not a sentence or fine is imposed or probation is granted, to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) within 180 days of the date of conviction. Each person tested under this section shall be informed of the results of the blood or oral mucosal transudate saliva test.

(b) Notwithstanding Section 120980 of the Health and Safety Code, the results of the blood or oral mucosal transudate saliva test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and the local health officer.

(c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 647f or 12022.85, if the results are on file with the department, to the defense

attorney upon request and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a subsequent offense under Section 647f or sentence enhancement under Section 12022.85 or complying with subdivision (d).

(d) (1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood or oral mucosal transudate saliva test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of human immunodeficiency virus (HIV) from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

(2) Notwithstanding any other law, upon the victim's request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, as specified in subdivision (g), positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows:

(A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator.

(B) To ensure that the victim understands both the benefits and limitations of the current tests for HIV.

(C) To obtain referrals to appropriate health care and support services.

(e) For purposes of this section, ''sexual offense'' includes any of the following:

(1) Rape in violation of Section 261 or 264.1.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5 or 266c.

(3) Rape of a spouse in violation of Section 262 or 264.1.

(4) Sodomy in violation of Section 266c or 286.

(5) Oral copulation in violation of Section 266c or 288a.

(6) (A) Any of the following offenses if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid

capable of transmitting HIV has been transferred from the defendant to the victim:

(i) Sexual penetration in violation of Section 264.1, 266c, or 289.

(ii) Aggravated sexual abuse of a child in violation of Section 269.

(iii) Lewd or lascivious conduct with a child in violation of Section 288.

(iv) Continuous sexual abuse of a child in violation of Section 288.5.

(v) The attempt to commit any offense described in clauses (i) to (iv), inclusive.

(B) For purposes of this paragraph, the court shall note its finding on the court docket and minute order if one is prepared.

(f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (a) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the person who is tested unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances.

(h) The local health officer and the victim shall comply with all laws and policies relating to medical confidentiality, subject to the disclosure authorized by subdivisions (g) and (i).

(i) Any victim who receives information from the local health officer pursuant to subdivision (g) may disclose the information as he or she deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person who transmits test results or discloses information pursuant to this section shall be immune from civil liability for any action taken in compliance with this section.

SEC. 2. Section 1524.1 of the Penal Code is amended to read:

1524.1. (a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.

(b) (1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(2) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or with an attempt to commit any of the offenses, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds that there is probable cause to believe that the accused committed the uncharged offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim. As used in this paragraph, ''Section

289.5'' refers to the statute enacted by Chapter 293 of the Statutes of 1991, penetration by an unknown object.

(3) (A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (2) shall be admissible.

(4) A request for a probable cause hearing made by a victim under paragraph (2) shall be made before sentencing in the superior court, or before disposition on a petition in a juvenile court, of the criminal charge or charges filed against the defendant.

(c) (1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for prerequest counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.

(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).

(f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i). Any individual who files a false report of sexual assault in order to obtain test result information pursuant to this section shall, in addition to any other liability under law, be guilty of a misdemeanor punishable as provided in subdivision (c) of Section 120980 of the Health and Safety Code. Any individual as described in the preceding sentence who discloses test result information obtained pursuant to this section shall also be guilty of an additional misdemeanor punishable as provided for in subdivision (c) of Section 120980 of the Health and Safety Code for each separate disclosure of that information.

(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

(k) The results of any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.

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 832

An act to amend Section 646.9 of the Penal Code, relating to stalking.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

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

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

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

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

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

(f) For the purposes of this section, ''course of conduct'' means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of ''course of conduct.''

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

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

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

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

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

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

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

SEC. 2. 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 833

An act to amend Section 12028.5 of the Penal Code, relating to firearms.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) ''Abuse'' means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) ''Domestic violence'' means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) ''Deadly weapon'' means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the date of seizure of the firearm.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the

family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 1.5. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) ''Abuse'' means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) ''Domestic violence'' means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) ''Deadly weapon'' means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be

recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 5 business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 5 business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a

petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at

the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and AB 2695. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after AB 2695, in which case Section 1 of this bill shall not become operative.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 834

An act relating to domestic violence programs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. The Maternal and Child Health Branch of the State Department of Health Services shall fund domestic violence programs that have previously received funding, but were not selected for funding in 2000, using funds appropriated in the Budget Act of 2002 in Item 4260-111-0642, payable from the Domestic Violence Training and Education Fund, for payment to Item 4260-111-0001.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide timely relief to victims of sexual assault and domestic violence, it is necessary that agencies that assist these victims

by providing services and emergency shelter be provided with funds that will allow them to maintain these services at their previously funded level.

CHAPTER 835

An act to add Section 454.5 to the Public Utilities Code, relating to public utilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Provide guidance to electrical corporations and the Public Utilities Commission for the prospective procurement of electricity and electricity demand reductions by an electrical corporation.

(b) Ensure, by no later than January 1, 2003, that each electrical corporation whose customers are currently being served by the Department of Water Resources will resume procurement for those needs that are not being met by the Department of Water Resources.

(c) Direct the Public Utilities Commission, consistent with subdivisions (a) and (b) of Section 701.1 of the Public Utilities Code, to review each electrical corporation's procurement plan in a manner that assures creation of a diversified procurement portfolio, assures just and reasonable electricity rates, provides certainty to the electrical corporation in order to enhance its financial stability and creditworthiness, and eliminates the need, with certain exceptions, for after-the-fact reasonableness reviews of an electrical corporation's prospective electricity procurement performed consistent with an approved procurement plan.

(d) Direct the Public Utilities Commission to assure that each electrical corporation optimizes the value of its overall supply portfolio, including Department of Water Resources contracts and procurement pursuant to Section 454.5 of the Public Utilities Code, for the benefit of its bundled service customers.

SEC. 2. Section 454.5 is added to the Public Utilities Code, to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its

power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 90 days before the electrical corporation resumes procurement pursuant to this section.

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Section 399.6, to cover the above-market costs for new renewable energy resources.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reductions products.

(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply

contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the

act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 3. Nothing in this act is intended to imply that procurement of electricity from third parties in a wholesale transaction is the preferred method of fulfilling an electrical corporation's obligation to serve its customers at just and reasonable rates.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. The sum of six hundred thousand dollars ($600,000) is hereby appropriated from the Public Utilities Commission Utility Reimbursement Account in the General Fund to the Public Utilities Commission for the purposes of implementing this act.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Public Utilities Commission may undertake the review and approval of each electric corporation's procurement plan at the earliest possible time, in a manner consistent with this act, it is necessary that this act take effect immediately.

CHAPTER 836

An act to add Section 25401.6 to the Public Resources Code, and to amend Sections 2827 and 2827.7 of, to add Section 2827.8 to, and to repeal Section 2827 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 25401.6 is added to the Public Resources Code, to read:

25401.6. (a) In its administration of subdivision (e) of Section 383.5 of the Public Utilities Code, the commission shall establish a separate rebate for eligible distributed emerging technologies for affordable housing projects including, but not limited to, projects undertaken pursuant to Section 50052.5, 50053, or 50199.4 of the Health and Safety Code. In establishing the rebate, where the commission determines that the occupants of the housing shall have individual meters, the commission may adjust the amount of the rebate based on the capacity of the system, provided that a system may receive a rebate only up to 75 percent of the total installed costs. The commission may establish a reasonable limit on the total amount of funds dedicated for purposes of this section.

(b) It is the intent of the Legislature that this section fulfills the purpose of subparagraph (E) of paragraph (2) of subdivision (e) of Section 383.5 of the Public Utilities Code.

SEC. 2. Section 2827 of the Public Utilities Code, as amended by Section 11 of Chapter 8 of the Statutes of the 2001–02 First Extraordinary Session, 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 substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy supply infrastructure, 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 electrical 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, or any other entity that offers electrical service. This section shall not apply to a local publicly owned electric utility, as defined in Section 9604 of the Public Utilities Code, that serves more than 750,000 customers and that also conveys water to its customers.

(2) ''Eligible customer-generator'' means a residential, small commercial customer as defined in subdivision (h) of Section 331, commercial, industrial, or agricultural customer 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 one megawatt that is located on the customer's owned, leased, or rented

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 (h). 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 (h), 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) ''Wind energy co-metering'' means any wind energy project greater than 50 kilowatts, but not exceeding one megawatt, where 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 is as described in subdivision (h). Wind energy co-metering shall be accomplished pursuant to Section 2827.8.

(5) ''Co-energy metering'' means a program that is the same in all other respects as a net energy metering program, except that the local publicly owned electric utility, as defined in Section 9604, has elected to apply a generation-to-generation energy and time-of-use credit formula as provided in subdivision (i).

(6) ''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 local publicly owned 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 exceeds one-half of 1 percent of the electric service provider's aggregate customer peak demand.

(2) On an annual basis, beginning in 2003, 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 exceeds one-half of 1 percent of the aggregate customer peak demand of those electric service providers.

(d) Electric service providers shall make all necessary forms and contracts for net metering service available for download from the Internet.

(e) (1) Every electric service provider shall ensure that requests for establishment of net energy metering are processed in a time period not exceeding that for similarly situated customers requesting new electric service, but not to exceed 30 working days from the date the electric service provider receives a completed application form for net metering service, including a signed interconnection agreement from an eligible customer-generator and the electric inspection clearance from the governmental authority having jurisdiction. If an electric service provider is unable to process the request within the allowable timeframe, the electric service provider shall notify both the customer-generator and the ratemaking authority of the reason for its inability to process the request and the expected completion date.

(2) Electric service providers shall ensure that requests for an interconnection agreement from an eligible customer-generator are

processed in a time period not to exceed 30 working days from the date the electric service provider receives a completed application form from the eligible customer-generator for an interconnection agreement. If an electric service provider is unable to process the request within the allowable timeframe, the electric service provider shall notify the customer-generator and the ratemaking authority of the reason for its inability to process the request and the expected completion date.

(f) (1) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric supplier that does not provide distribution service for the direct transactions, the service provider that provides distribution service for an eligible customer-generator is not obligated to provide net energy metering to the customer.

(2) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric supplier, and the customer is an eligible customer-generator, the service provider 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 ratemaking authority.

(g) 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 the customer did not use an eligible solar or wind electrical generating facility, except that eligible customer-generators shall not be assessed standby charges on the electrical generating capacity or the kilowatthour production of an eligible solar or wind electrical generating facility. 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. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge that would increase an eligible customer-generator's costs beyond those of other customers who are not customer-generators in the rate class to which the eligible customer-generator would otherwise be assigned if the customer did not own, lease, rent, or otherwise operate an eligible solar or wind electrical generating facility are contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.

(h) For eligible residential and small commercial customer-generators, 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 residential or small commercial 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 residential or small commercial 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 residential or small commercial customer-generator during that same period, the eligible residential or small commercial 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 residential or small commercial customer-generator's consumption shall be calculated as follows:

(A) For all 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 all 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 residential and small commercial customer-generators and for each billing 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 as a monetary value until the end of each 12-month period. For all commercial, industrial, and agricultural customer-generators the net balance of moneys owed shall be paid in accordance with the electric service provider's normal billing cycle, except that if the commercial, industrial, or agricultural customer-generator is a net electricity producer over a normal billing cycle, any excess kilowatthours generated during the billing cycle shall be carried over to the following billing period as a monetary value, calculated according to the procedures set forth in this section, and appear as a credit on the customer-generator's account, until the end of the annual period when paragraph (3) shall apply.

(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 residential or small commercial 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 this subdivision, an electric service provider shall permit that customer to pay monthly for net energy consumed.

(5) If an eligible residential or small commercial 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 residential or small commercial 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.

(i) Notwithstanding any other provisions of this section, the following provisions shall apply to an eligible customer-generator with a capacity of more than 10 kilowatts, but not exceeding one megawatt, that receives electrical service from a local publicly owned electric utility, as defined in Section 9604, that has elected to utilize a co-energy metering program unless the electric service provider chooses to provide service for eligible customer-generators with a capacity of more than 10 kilowatts in accordance with subdivisions (g) and (h):

(1) The eligible customer-generator shall be required to utilize a meter, or multiple meters, capable of separately measuring electricity flow in both directions. All meters shall provide ''time-of-use'' measurements of electricity flow, and the customer shall take service on a time-of-use rate schedule. If the existing meter of the eligible customer-generator is not a time-of-use meter or is not capable of measuring total flow of energy in both directions, the eligible customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is both time-of-use and able to measure total electricity flow in both directions. This subdivision shall not restrict the ability of an eligible customer-generator to utilize any economic incentives provided by a government agency or the electric service provider to reduce its costs for purchasing and installing a time-of-use meter.

(2) The consumption of electricity from the electric service provider shall result in a cost to the eligible customer-generator to be priced in accordance with the standard rate charged to the eligible customer-generator in accordance with the rate structure to which the customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility. The generation of electricity provided to the electric service provider shall result in a credit to the eligible customer-generator and shall be priced in accordance with the generation component, established under the applicable structure to which the customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility.

(3) All costs and credits shall be shown on the eligible customer-generator's bill for each billing period. In any months in which the eligible customer-generator has been a net consumer of electricity calculated on the basis of value determined pursuant to paragraph (2), the customer-generator shall owe to the electric service provider the balance of electricity costs and credits during that billing period. In any billing

period in which the eligible customer-generator has been a net producer of electricity calculated on the basis of value determined pursuant to paragraph (2), the electric service provider shall owe to the eligible customer-generator the balance of electricity costs and credits during that billing period. Any net credit to the eligible customer-generator of electricity costs may be carried forward to subsequent billing periods, provided that an electric service provider may choose to carry the credit over as a kilowatt hour credit consistent with the provisions of any applicable tariff, including any differences attributable to the time of generation of the electricity. At the end of each 12-month period, the electric service provider may reduce any net credit due to the eligible customer-generator to zero.

(j) 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.

(k) If the commission determines that there are cost or revenue obligations for an electric corporation, as defined in Section 218, that may not be recovered from customer-generators acting pursuant to this section, those obligations shall remain within the customer class from which any shortfall occurred and may not be shifted to any other customer class. Net-metering and co-metering customers shall not be exempt from the public benefits charge. In its report to the Legislature, the commission shall examine different methods to ensure that the public benefits charge remains a nonbypassable charge.

(*l*) A net metering customer shall reimburse the Department of Water Resources for all charges that would otherwise be imposed on the customer by the commission to recover bond-related costs pursuant to an agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, as well as the costs of the department equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the customer. The commission shall incorporate the determination into an existing proceeding before the commission, and shall ensure that the charges are nonbypassable. Until the commission has made a determination regarding the nonbypassable charges, net metering shall

continue under the same rules, procedures, terms, and conditions as were applicable on December 31, 2002.

(m) In implementing the requirements of subdivisions (k) and (*l*), a customer-generator shall not be required to replace its existing meter except as set forth in paragraph (3) of subdivision (b), nor shall the electric service provider require additional measurement of usage beyond that which is necessary for customers in the same rate class as the eligible customer-generator.

(n) On or before January 1, 2005, the commission shall submit a report to the Governor and the Legislature that assesses the economic and environmental costs and benefits of net metering to customer-generators, ratepayers, and utilities, including any beneficial and adverse effects on public benefit programs and special purpose surcharges. The report shall be prepared by an independent party under contract with the commission.

(o) It is the intent of the Legislature that the Treasurer incorporate net energy metering and co-energy metering projects undertaken pursuant to this section as sustainable building methods or distributive energy technologies for purposes of evaluating low-income housing projects.

SEC. 3. Section 2827 of the Public Utilities Code, as added by Section 12 of Chapter 8 of the Statutes of the 2001–02 First Extraordinary Session, is repealed.

SEC. 4. Section 2827.7 of the Public Utilities Code is amended to read:

2827.7. Generation eligible for net energy metering that has all local and state permits required to commence construction on or before December 31, 2002, and has completed construction on or before September 30, 2003, shall be entitled, regardless of any change in customer or ownership of the energy system, for the life of the installation, to the net energy metering terms in effect on the date the local and state permits were acquired.

SEC. 5. Section 2827.8 is added to the Public Utilities Code, to read:

2827.8. Notwithstanding any other provisions of this article, the following provisions apply to an eligible customer-generator utilizing wind energy co-metering with a capacity of more than 50 kilowatts, but not exceeding one megawatt, unless approved by the electric service provider.

(a) The eligible customer-generator shall be required to utilize a meter, or multiple meters, capable of separately measuring electricity flow in both directions. All meters shall provide ''time-of-use'' measurements of electricity flow, and the customer shall take service on a time-of-use rate schedule. If the existing meter of the eligible customer-generator is not a time-of-use meter or is not capable of measuring total flow of energy in both directions, the eligible

customer-generator is responsible for all expenses involved in purchasing and installing a meter that is both time-of-use and able to measure total electricity flow in both directions. This subdivision shall not restrict the ability of an eligible customer-generator to utilize any economic incentives provided by a government agency or the electric service provider to reduce its costs for purchasing and installing a time-of-use meter.

(b) The consumption of electricity from the electric service provider for wind energy co-metering by an eligible customer-generator shall be priced in accordance with the standard rate charged to the eligible customer-generator in accordance with the rate structure to which the customer would be assigned if the customer did not use an eligible wind electrical generating facility. The generation of electricity provided to the electric service provider shall result in a credit to the eligible customer-generator and shall be priced in accordance with the generation component, excluding surcharges to cover the purchase of power by the Department of Water Resources, established under the applicable structure to which the customer would be assigned if the customer did not use an eligible wind electrical generating facility.

SEC. 6. Section 1 of this act, adding Section 25401.6 to the Public Utilities Code, shall only become operative if SB 1038 of the 2001–02 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2003, and SB 1038 amends Section 383.5 of the Public Utilities Code.

CHAPTER 837

An act to add Section 366.1 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. (a) It is the intent of the Legislature, in enacting the act adding this section, to recognize contributions made in response to California's need for the expedited investment in and development of new environmentally superior electrical generation projects.

(b) It is further the intent of the Legislature to avoid the potential delay in adding new electrical generating capacity that might be caused if certain project participants are not allowed to utilize community

aggregation to deliver their share of the project output to customers within their jurisdiction.

SEC. 2. Section 366.1 is added to the Public Utilities Code, to read:

366.1. (a) As used in this section, the following terms have the following meanings:

(1) ''Department'' means the Department of Water Resources with respect to its power program described in Chapter 2 (commencing with Section 80100) of Division 27 of the Water Code.

(2) ''Existing project participant'' means a city with rights and obligations to the Magnolia Power Project under the Magnolia Power Project Planning Agreement, dated May 1, 2001.

(3) ''Magnolia Power Project'' means a proposed natural gas-fired electric generating facility to be located at an existing site in Burbank and for which an application for certification has been filed with the State Energy Resources Conservation and Development Act (Docket No. 00-SIT-1) and deemed data adequate pursuant to the expedited six-month licensing process established under Section 25550 of the Public Resources Code.

(b) Notwithstanding Section 80110 of the Water Code or Commission Decision 01-09-060, if the Magnolia Power Project has been constructed and is otherwise capable of beginning deliveries of electricity to the existing project participants, an existing project participant may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction.

(c) Subdivision (b) shall not become operative until both of the following occur:

(1) The commission implements a cost-recovery mechanism, consistent with subdivision (d), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and the effective date of the act adding this section.

(2) The commission submits a report certifying its satisfaction of paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the department's power purchase costs, as well as power purchase contract obligations incurred as of January 1, 2003, that are recoverable from electrical corporation customers in commission-approved rates. It is the further intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that the provisions in this subdivision are consistent with the requirements of Section 360.5 and

Division 27 (commencing with Section 80000) of the Water Code, and are therefore declaratory of existing law.

(e) A retail end-use customer purchasing power from a community aggregator pursuant to subdivision (b) shall reimburse the department for all of the following:

(1) A charge equivalent to the charge which would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to an agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, that charge shall be payable until all obligations of the Department of Water Resources pursuant to Division 27 of the Water Code are fully paid or otherwise discharged.

(2) The costs of the department, equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from a community aggregator, through the expiration of all then existing power purchase contracts entered into by the department.

(f) A retail end-use customer purchasing power from a community aggregator pursuant to subdivision (b) shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections, including all financing costs attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) The costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community aggregator, through the expiration of all then existing power purchase contracts entered into by the electrical corporation.

(g) (1) A charge or cost imposed pursuant to subdivision (e), and all revenues received to pay the charge or cost, shall be the property of the Department of Water Resources. A charge or cost imposed pursuant to subdivision (f), and all revenues received to pay the charge or cost, shall be the property of the particular electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to assure that the revenues received to pay a charge or cost payable pursuant to this section are promptly remitted to the party entitled to those revenues.

(2) A charge or cost imposed pursuant to this section shall be nonbypassable.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the Magnolia Power Project

and a city with rights and obligations to the Magnolia Power Project under the Magnolia Power Project Planning Agreement dated May 1, 2001, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 838

An act to amend Sections 218.3, 366, 394, and 394.25 of, and to add Sections 331.1, 366.2, and 381.1 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 218.3 of the Public Utilities Code is amended to read:

218.3. ''Electric service provider'' means an entity that offers electrical service to customers within the service territory of an electrical corporation, as defined in Section 218, but does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. ''Electric service provider'' includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

SEC. 2. Section 331.1 is added to the Public Utilities Code, to read:

331.1. For purposes of this chapter, ''community choice aggregator'' means any of the following entities, if that entity is not within the jurisdiction of a local publicly owned electric utility that provided electrical service as of January 1, 2003:

(a) Any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a communitywide electricity buyers' program.

(b) Any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers agency established under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

SEC. 3. Section 366 of the Public Utilities Code is amended to read:

366. (a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2.

(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.

SEC. 4. Section 366.2 is added to the Public Utilities Code, to read:

366.2. (a) (1) Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(3) If a customer opts out of a community choice aggregator's program, or has no community choice program available, that customer shall have the right to continue to be served by the existing electrical corporation or its successor in interest.

(b) If a public agency seeks to serve as a community choice aggregator, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(c) (1) Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and

leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility, as defined in subdivision (d) of Section 9604. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of the following:

(A) An organizational structure of the program, its operations, and its funding.

(B) Ratesetting and other costs to participants.

(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.

(D) The methods for entering and terminating agreements with other entities.

(E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.

(F) Termination of the program.

(G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

(4) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

(A) Universal access.

(B) Reliability.

(C) Equitable treatment of all classes of customers.

(D) Any requirements established by state law or by the commission concerning aggregated service.

(5) In order to determine the cost-recovery mechanism to be imposed on the community choice aggregator pursuant to subdivisions (d), (e), and (f) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost-recovery mechanism in subdivisions (d), (e), and (f).

(6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed, within 10 days of the filing.

(7) Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f).

(8) No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost-recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.

(9) All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical

corporation provides services to community choice aggregators and retail customers.

(10) (A) A city, county, or city and county that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter shall do so by ordinance.

(B) Two or more cities, counties, or cities and counties may participate as a group in a community choice aggregation pursuant to this chapter, through a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A).

(11) Following adoption of aggregation through the ordinance described in paragraph (10), the program shall allow any retail customer to opt out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

(12) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.

(13) (A) The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts

in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the community choice aggregator without penalty.

(ii) The terms and conditions of the services offered.

(B) The community choice aggregator may request the commission to approve and order the electrical corporation to provide the notification required in subparagraph (A). If the commission orders the electrical corporation to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the community choice aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the community choice aggregator in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area.

(14) The community choice aggregator shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

(15) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

(16) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

(17) An electrical corporation shall recover from the community choice aggregator any costs reasonably attributable to the community choice aggregator, as determined by the commission, of implementing this section, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. Any costs not reasonably attributable to a community choice

aggregator shall be recovered from ratepayers, as determined by the commission. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

(18) At the request and expense of any community choice aggregator, electrical corporations shall install, maintain and calibrate metering devices at mutually agreeable locations within or adjacent to the community aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community aggregator at the aggregator's expense. To the extent that the community aggregator requests a metering location that would require alteration or modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if such alteration or modification does not compromise the safety, reliability or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be born by the community aggregator.

(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that this subdivision is consistent with the requirements of Division 27 (commencing with Section 80000) of the Water Code and Section 360.5, and is therefore declaratory of existing law.

(e) A retail end-use customer that purchases electricity from a community choice aggregator pursuant to this section shall pay both of the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.

(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(f) A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(g) (1) Any charges imposed pursuant to subdivision (e) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (f) shall be the property of the electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to subdivisions (d), (e), and (f) shall be nonbypassable.

(h) Notwithstanding Section 80110 of the Water Code, the commission shall authorize community choice aggregation only if the commission imposes a cost-recovery mechanism pursuant to subdivisions (d), (e), (f), and (g). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice aggregators, pursuant to Section 80110 of the Water Code.

(i) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism, consistent with subdivisions (d), (e), and (f), that is applicable to customers that

elected to purchase electricity from an alternate provider between February 1, 2001, and January 1, 2003.

(2) The commission shall not authorize community choice aggregation until it submits a report certifying compliance with paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(3) The commission shall not authorize community choice aggregation until it has adopted rules for implementing community choice aggregation.

(j) The commission shall prepare and submit to the Legislature, on or before January 1, 2006, a report regarding the number of community choices aggregations, the number of customers served by community choice aggregations, third party suppliers to community choice aggregations, compliance with this section, and the overall effectiveness of community choice aggregation programs.

SEC. 5. Section 381.1 is added to the Public Utilities Code, to read:

381.1. (a) No later than July 15, 2003, the commission shall establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs established pursuant to Section 381. In determining whether to approve an application to become administrators, the commission shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators. The commission shall weigh the benefits of the party's proposed program to ensure that the program meets the following objectives:

(1) Is consistent with the goals of the existing programs established pursuant to Section 381.

(2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.

(3) Accommodates the need for broader statewide or regional programs.

(b) All audit and reporting requirements established by the commission pursuant to Section 381 and other statutes shall apply to the parties chosen as administrators under this section.

(c) If a community choice aggregator is not the administrator of energy efficiency and conservation programs for which its customers are eligible, the commission shall require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer

class. To the extent that energy efficiency and conservation programs are targeted to specific locations to avoid or defer transmission or distribution system upgrades, the targeted expenditures shall continue irrespective of whether the loads in those locations are served by an aggregator or by an electrical corporation. The commission shall also direct the administrator to work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community choice aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures. The commission may order an adjustment to the share of energy efficiency program activities directed to a community aggregator's territory if necessary to ensure an equitable and cost-effective allocation of energy efficiency program activities.

SEC. 6. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, ''electric service provider'' means an entity that offers electrical service to customers within the service territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, does not include an entity that offers electrical service solely to serve customer load consistent with subdivision (b) of Section 218, and does not include a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. ''Electric service provider'' includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

(1) Legal name and any other names under which the electric service provider is doing business in California.

(2) Current telephone number.

(3) Current address.

(4) Agent for service of process.

(5) State and date of incorporation, if any.

(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.

(7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director of the company. In addition, each electric service provider shall furnish the commission with fingerprints for those owners, partners, officers, and managers of the electric service provider specified by any commission decision applicable to all electric service providers. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine an electric service provider's eligibility for registration.

(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than March 31, 1998. In determining the financial viability of the electric service provider, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatthours of electricity it expects to provide, and any other appropriate criteria to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.

(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than March 31, 1998.

(c) Any registration filing approved by the commission prior to the effective date of this section which does not comply in all respects with the requirements of subdivision (a) of Section 394 shall nevertheless continue in force and effect so long as within 90 days of the effective date of this section the electric service provider undertakes to supplement its registration filing to the satisfaction of the commission. Any registration that is not supplemented by the required information within the time set forth in this subdivision shall be suspended by the commission and shall not be reinstated until the commission has found the registration to be in full compliance with subdivision (a) of Section 394.

(d) Any public agency offering aggregation services as provided for in Section 366 solely to retail electric customers within its jurisdiction that has registered with the commission prior to the enactment of this

section may voluntarily withdraw its registration to the extent that it is exempted from registration under this chapter.

(e) Before reentering the market, electric service providers whose registration has been revoked shall file a formal application with the commission that satisfies the requirements set forth in Section 394.1 and demonstrates the fitness and ability of the electric service provider to comply with all applicable rules of the commission.

(f) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.

SEC. 7. 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.

(e) If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electric corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider

becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 839

An act to add Chapter 2 (commencing with Section 3250) to Part 4 of, Division 1, of the Public Utilities Code, relating to natural gas.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. The Legislature finds and declares that it is the intent of the Legislature to encourage the increased production of natural gas within the state. It is the further intent of the Legislature to encourage the private ownership, maintenance, and operation of natural gas pipelines operated for the sole purpose of gathering natural gas from producing wells, as a means to facilitate the increased production of natural gas production in the state.

SEC. 2. Chapter 2 (commencing with Section 3250) is added to Part 4 of Division 1 of the Public Utilities Code, to read:

CHAPTER 2. GAS PRODUCER ACQUISITION OF EASEMENT RIGHTS

Article 1. Definitions

3250. Unless the context otherwise requires the definitions in this article govern the construction of this chapter.

3251. ''Person'' means an individual, partnership, limited liability company, or corporation, but does not include an association, as defined in Section 3002.

3252. ''Natural gas'' means all gas produced in this state, natural or manufactured, except propane, for light, heat, or power.

Article 2. Acquisition of Easement Rights

3255. (a) A person involved in the production of natural gas may buy, hold, and exercise all privileges of ownership of real or personal property as may be necessary or convenient for the conduct and operation of, or incidental to, transmission of natural gas. Without limiting the foregoing, a person involved in the production of natural gas may acquire a real property easement from a public utility for the purpose of accommodating the person's gas plant, and the easement shall be deemed to be held for a public purpose by the person, provided that the commission finds that the use by the person is in the public interest.

(b) Within 10 days of submitting an application to the commission for an order authorizing a public utility to transfer a real property easement to a person, the public utility shall provide written notification of the application and of the commission's pending review of the application, to each owner of real property affected by the easement. Costs of notification required by this subdivision shall be paid by the person to whom the public utility proposes to transfer a real property easement.

CHAPTER 840

An act to add Section 377.1 to the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 377.1 is added to the Public Utilities Code, to read:

377.1. Section 377 does not apply to the four run-of-river hydroelectric project works located on the Truckee River, as referenced in Section 210(b)(17) of Public Law 101-618 or to the two run-of-river hydroelectric projects, also known as the Naches Drop plant and Naches plant, located on the Wapatox Canal on the Naches River in the State of Washington.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable only to the four run-of-river hydroelectric project works located on the Truckee River and the two run-of-river hydroelectric project located on the Naches River in the

State of Washington, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 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 the public's best interest is served and to assist in the implementation of the Truckee River Operating Agreement by expediting the sale of the four run-of-river hydroelectric project works located on the Truckee River and the two run-of-river hydroelectric projects located on the Wapatox Canal on the Naches River in the State of Washington, it is necessary that this act take effect immediately.

CHAPTER 841

An act to add and repeal Division 20.5 (commencing with Section 73500) of the Water Code, relating to regional water systems.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) The City and County of San Francisco has acquired or constructed a system of reservoirs, pipelines and tunnels, and treatment plants that provides water to 2.4 million Californians who live in San Francisco and in neighboring communities in the Counties of Alameda, San Mateo, and Santa Clara.

(b) Over two-thirds of the Californians who rely on San Francisco's regional water system, approximately 1.6 million persons, live outside San Francisco. A substantial majority of industrial, commercial, institutional, and governmental users are also located outside San Francisco.

(c) The reliability of this water infrastructure system is of vital importance to the health, welfare, safety, and economy of the region that it supplies.

(d) In turn, this region is of vital importance to the entire State of California, because of the resident industries, universities, and commercial enterprises that employ millions of Californians and generate billions of dollars in exports and tax revenues to the state.

(e) The regional water system is old, and designed to outdated seismic safety standards. The system either crosses, is located on, or is adjacent to, three major active earthquake faults, including the Calaveras fault, the San Andreas fault and the Hayward fault. Engineering investigations have disclosed that the system is at risk of catastrophic failure in a major earthquake. Many areas in all four counties served by the system face interruptions in their supplies of potable water for up to 30 days, and some areas could be without water for as long as 60 days.

(f) Interruptions in water supply of this magnitude and duration to a densely populated metropolitan region would be disastrous for public health and safety and for the regional and state economy. In addition, uncontrolled releases of water from pipelines, tunnels, and reservoirs could create severe flood damage and environmental harm to fish and wildlife habitat in the communities in which water facilities are located.

(g) Californians in neighboring counties, including those Californians outside the immediate service area of the regional water system, will benefit from the implementation of the act adding this section. Access to a reliable supply of water is an important component of the infrastructure necessary to a prosperous metropolitan economy.

(h) The state has concerns for the health, safety, and the economic strength of the region that warrant requiring San Francisco to take prudent steps to upgrade the regional water system in a timely manner.

SEC. 2. Division 20.5 (commencing with Section 73500) is added to the Water Code, to read:

DIVISION 20.5. WHOLESALE REGIONAL WATER SYSTEM SECURITY AND RELIABILITY ACT

73500. This division shall be known as and may be cited as the Wholesale Regional Water System Security and Reliability Act.

73501. (a) Unless the context otherwise requires, the definitions set forth in this section govern the construction of this division.

(b) ''Association'' means the San Francisco Bay Area Water Users Association.

(c) ''Bay area regional water system'' means the facilities for the storage, treatment, and transmission of water located in the Counties of Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, and San Mateo, together with three terminal reservoirs in the city.

(d) ''Bay area wholesale customers'' means the 26 public agencies in the Counties of San Mateo, Alameda, and Santa Clara that purchase water from the city pursuant to the master water sales contract, including the Alameda County Water District, the City of Brisbane, the City of Burlingame, the Coastside County Water District, the City of Daly City, the City of East Palo Alto, the Estero Municipal Improvement District,

Guadalupe Valley Municipal Improvement District, City of Hayward, the Town of Hillsborough, the Los Trancos County Water District, the City of Menlo Park, the Mid-Peninsula Water District, the City of Millbrae, the City of Milpitas, the City of Mountain View, the North Coast County Water District, the City of Palo Alto, the Purissima Hills Water District, the City of Redwood City, the City of San Bruno, the City of San Jose, the City of Santa Clara, the Skyline County Water District, the City of Sunnyvale, and the Westborough Water District, Stanford University, the California Water Service Company, and the Cordilleras Mutual Water Association.

(e) ''City'' means the City and County of San Francisco.

(f) ''Master water sales contract'' means the agreement entitled ''Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers'' entered into in 1984 by the city and the wholesale customers.

(g) ''Regional water system'' means facilities for the storage, treatment, and transmission of water owned and operated by a regional wholesale water supplier, other than the city.

(h) ''Regional wholesale water supplier'' means any city, county, or city and county, including the city, that operates a regional water system, and furnishes water on a wholesale basis to local government agencies and public utilities that, in turn, supply water to a combined population of 1.5 million or more residents of geographic areas outside the boundary of the regional wholesale water supplier.

(i) ''Wholesale customers'' means local government agencies and public utilities, including, but not limited to, the bay area wholesale customers, that purchase water from a regional wholesale water supplier and distribute that water to retail customers in their respective service areas.

73502. (a) The city, on or before February 1, 2003, shall adopt the program of capital improvement projects designed to restore and improve the bay area regional water system that are described in the capital improvement program report prepared by the San Francisco Public Utilities Commission dated February 25, 2002. A copy of the program shall be submitted, on or before March 1, 2003, to the State Department of Health Services. The program shall include a schedule for the completion of design and award of contract, and commencement and completion of construction of each described project. The schedule shall require that projects representing 50 percent of the total program cost be completed on or before 2010 and that projects representing 100 percent of the total program cost be completed on or before 2015. The program shall also contain a financing plan. The city shall review and update the program, as necessary, based on changes in the schedule set forth in the plan adopted pursuant to subdivision (d).

(b) The plan shall require completion of the following projects:

Project	Location	Project Identification Number
1. Irvington Tunnel Alternative	Alameda/Santa Clara Counties	9970
2. Crystal Springs Pump Station & Pipeline	San Mateo County	201671
3. BDPL 1 & 2–Repair of Caissons/Pipe Bridge	Alameda/San Mateo Counties	99
4. BDPL Pipeline Upgrades at Hayward Fault	Alameda County	128
5. Calaveras Fault Crossing Upgrade	Alameda County	9897
6. Crystal Springs Bypass Pipeline	San Mateo County	9891
7. BDPL Cross Connections 3 & 4	Alameda/Santa Clara Counties	202339
8. Conveyance Capacity West of Irvington Tunnel	Alameda/Santa Clara/San Mateo Counties	201441
9. Calaveras Dam Seismic Improvements	Alameda County	202135

(c) The city shall submit a report to the Joint Legislative Audit Committee, the Seismic Safety Commission, and the State Department of Health Services, on or before September 1 of each year, describing the progress made on the implementation of the capital improvement program for the bay area regional water system during the previous fiscal year.

(d) (1) The city may determine that completion dates for projects contained in the capital improvement program adopted pursuant to subdivision (a), including those projects described in subdivision (b), should be delayed or that different projects should be constructed.

(2) The city shall provide written notice, not less than 30 days prior to the date of a meeting of the city agency responsible for management of the bay area regional water system, that a change in the program is to be considered. The notice shall include information about the reason for the proposed change and the availability of materials related to the

proposed change. All bay area wholesale customers shall be permitted to testify or otherwise submit comments at the meeting.

(3) If the city adopts a change in the program that deletes one or more projects from the program, or postpones the scheduled completion dates, the city shall promptly furnish a copy of that change and the reasons for that change to the State Department of Health Services and the Seismic Safety Commission. The State Department of Health Services and the Seismic Safety Commission shall each submit written comments with regard to the significance of that change with respect to public health and safety to the city and the Joint Legislative Audit Committee not later than 90 days after the date on which those entities received notice of that change.

73503. (a) The city, in consultation with the association and the offices of emergency services in Alameda County, Santa Clara County, and San Mateo County, shall prepare an emergency response plan describing how water service will be restored to the area served by the bay area regional water system after an interruption caused by earthquake or other natural or manmade catastrophe. A draft of the plan shall be submitted to the Office of Emergency Services on or before July 1, 2003, for comment and shall be adopted by the city on or before September 1, 2003, and thereafter shall be implemented.

(b) During any interruption in supply caused by earthquake, or other natural or manmade catastrophe, a regional wholesale water supplier shall distribute water to customers on an equitable basis, to the extent feasible given physical damage to the regional water system, without preference or discrimination based on a customer's geographic location within or outside the boundary of the regional wholesale water supplier.

73504. (a) Commencing in 2003, a regional wholesale water supplier shall submit a report to the Legislature and the State Department of Health Services, on or before February 1 of each year, describing the progress made during the previous calendar year on securing supplemental sources of water to augment existing supplies during dry years.

(b) In order to supply adequately, dependably, and safely the requirements of all users of water, the city shall continue its practice of operating the reservoirs in the Counties of Tuolumne and Stanislaus in a manner that ensures that the generation of hydroelectric power will not cause any reasonably anticipated adverse impact on water service. The city shall assign higher priority to delivery of water to the bay area than to the generation of electric power, unless the Secretary of the Interior, in writing, notifies the city that doing so would violate the Raker Act (63 P.L. 41). The city shall make available to the public, on request, its plans of operations (rule curves) for these reservoirs.

(c) The city shall be deemed to be a local public agency for the purposes of Article 4 (commencing with Section 1810) of Chapter 11 of Part 2 of Division 2.

73505. The State Department of Health Services shall conduct an audit, or arrange for an audit to be performed by contract, of the city's program of maintenance of the bay area regional water system prior to July 1, 2004. The audit shall include both of the following:

(a) A review of the adequacy of the city's procedures and resources for all of the following:

(1) Identifying needed maintenance.

(2) Planning, budgeting, scheduling, and completing maintenance.

(3) Recordkeeping of maintenance activities.

(b) A field investigation of the major facilities of the bay area regional water system to determine the general condition of those facilities and the adequacy of existing maintenance efforts.

(c) The State Department of Health Services shall submit a report to the city, the Joint Legislative Audit Committee, and the Seismic Safety Commission on its findings and recommendations based on the audit on or before January 1, 2005.

73506. The State Department of Health Services shall conduct an audit of the regional water systems operated by all regional wholesale water suppliers, other than the city, subject to this division and shall submit to the Legislature a report thereon on or before February 1, 2006.

73508. If the city and the bay area wholesale customers that are public agencies form a special district with authority and responsibility to own, operate, and manage the bay area regional water system and whose governing board's composition reflects the proportionate use of water delivered by the bay area regional water system within the city and within the aggregate geographic area served by the bay area wholesale customers, the obligations imposed on the city by this division shall be applicable to that district. The city shall be relieved of all obligations under this division at the time the ownership and control of the bay area regional water system are transferred to that district.

73510. Notwithstanding Section 116500 of the Health and Safety Code, the State Department of Health Services shall ensure that the bay area regional water system is operated in compliance with the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code) and the guidelines established by the United States Environmental Protection Agency for the purposes of administering the comparable provisions of the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.).

73511. A special district composed of some or all of the bay area wholesale customers may receive state funds for the purpose of

protecting the bay area regional water system against seismic risk, without regard to whether the city is a member of that district.

73512. A regional wholesale water supplier shall reimburse the state for all costs incurred by the State Department of Health Services or the Seismic Safety Commission in carrying out the duties imposed by this division. The bay area wholesale customers shall reimburse the city for their share of those costs as provided in the master water sales contract. The wholesale customers of regional wholesale water suppliers other than the city are responsible for reimbursing the regional wholesale water supplier for their proportionate share of those costs, through the imposition of water charges.

73513. Nothing in this division affects the rights and obligations of the city, the Modesto Irrigation District, or the Turlock Irrigation District, as between themselves, whether arising from statute or contract.

73513.5. Nothing in this division changes the governance, control, or ownership of the bay area regional water system.

73514. This division shall become inoperative on the earlier of either of the following dates, and on January 1 immediately following that earlier date, is repealed:

(a) The date on which the State Director of Health Services notifies, in writing, the Chairperson of the Joint Legislative Audit Committee and certifies that the city has awarded contracts for construction of each of the projects described in subdivision (b) of Section 73502.

(b) December 31, 2010.

SEC. 3. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. 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 842

An act to add Section 52.4 to the Civil Code, relating to gender violence.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

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

(a) Existing state and federal laws do not adequately prevent and remedy gender-related violence, such as domestic violence, which disproportionately occurs against women.

(b) Sexual abuse harms many women, children, and families, and is often not reported to the authorities or prosecuted.

(c) Acts of domestic violence and sexual abuse on the basis of gender constitute a form of sexual discrimination.

(d) All persons within California have the right to be free from crimes of violence motivated by gender.

(e) It is the purpose of this act to protect the civil rights of victims of gender-motivated violence and thereby to promote the public safety, health, and well-being of all persons within California.

SEC. 2. Section 52.4 is added to the Civil Code, to read:

52.4. (a) Any person who has been subjected to gender violence may bring a civil action for damages against any responsible party. The plaintiff may seek actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) An action brought pursuant to this section shall be commenced within three years of the act, or if the victim was a minor when the act occurred, within eight years after the date the plaintiff attains the age of majority or within three years after the date the plaintiff discovers or reasonably should have discovered the psychological injury or illness occurring after the age of majority that was caused by the act, whichever date occurs later.

(c) For purposes of this section, ''gender violence,'' is a form of sex discrimination and means any of the following:

(1) One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(2) A physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(d) Notwithstanding any other laws that may establish the liability of an employer for the acts of an employee, this section does not establish

any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence.

CHAPTER 843

An act to add Sections 17138.1 and 24308.1 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 17138.1 is added to the Revenue and Taxation Code, to read:

17138.1. Gross income does not include any amount received as a rebate, voucher, or other financial incentive issued by the California Energy Commission, the Public Utility Commission, or a local publicly owned electric utility, as defined in subdivision (d) of Section 9604 of the Public Utilities Code, for any expenses paid or incurred by a taxpayer for the purchase or installation of any of the following devices:

(a) A thermal system as defined in Section 25600 of the Public Resources Code.

(b) A solar system as defined in Section 25600 of the Public Resources Code.

(c) A wind energy system device that produces electricity.

(d) A fuel cell generating system, as described in the California Energy Commission's Emerging Renewable Resources Account Guidebook, that produces electricity.

SEC. 2. Section 24308.1 is added to the Revenue and Taxation Code, to read:

24308.1. Gross income does not include any amount received as a rebate, voucher, or other financial incentive issued by the California Energy Commission, the Public Utility Commission, or a local publicly owned electric utility, as defined in subdivision (d) of Section 9604 of the Public Utilities Code, for any expenses paid or incurred by a taxpayer for the purchase or installation of any of the following devices:

(a) A thermal system as defined in Section 25600 of the Public Resources Code.

(b) A solar system as defined in Section 25600 of the Public Resources Code.

(c) A wind energy system device that produces electricity.

(d) A fuel cell generating system, as described in the California Energy Commission's Emerging Renewable Resources Account Guidebook, that produces electricity.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 844

An act to add Division 31 (commencing with Section 81300) to the Water Code, relating to water.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Division 31 (commencing with Section 81300) is added to the Water Code, to read:

DIVISION 31. BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

81300. This division shall be known and may be cited as the Bay Area Water Supply and Conservation Agency Act.

81301. The Legislature finds and declares all of the following:

(a) Many separate cities, districts, and public utilities are responsible for distribution of water in portions of the Bay Area served by the regional system operated by the City and County of San Francisco. Residents in the Counties of Alameda, San Mateo, and Santa Clara who depend on the water made available on a wholesale basis by the regional system have no right to vote in elections in the City and County of San Francisco and are not represented on the San Francisco commission that oversees operation of the regional system.

(b) The San Francisco regional system is vulnerable to catastrophic damage in a severe earthquake, which could result in San Francisco and neighboring communities being without potable water for up to 60 days. The San Francisco regional system is also susceptible to severe water shortages during periods of below average precipitation because of

insufficient storage and the absence of contractual arrangements for alternative dry year supplies.

(c) The lack of a local, intergovernmental, cooperative governance structure for the San Francisco regional system prevents a systematic, rational, cost-effective program of water supply, water conservation, and recycling from being developed, funded, and implemented.

(d) It is the intent of the Legislature to enable local governments responsible for water distribution in the three counties to establish a multicounty agency authorized to plan for and acquire supplemental water supplies, to encourage water conservation and use of recycled water on a regional basis, and to assist in the financing of essential repairs and improvements to the San Francisco regional water system, including seismic strengthening.

(e) The need for coordinated planning and implementation of strategies for water supply, water conservation, water recycling, and repair and improvement of the San Francisco regional system may appropriately lead to the establishment of the Bay Area Water Planning and Conservation Agency.

Article 2. Definitions

81302. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

81303. ''Agency'' means the Bay Area Water Supply and Conservation Agency.

81304. ''Board'' means the board of directors of the agency.

81305. ''Eligible public entities'' means the 26 public entities in San Mateo County, Alameda County, and Santa Clara County that purchase water from San Francisco pursuant to the Master Water Sales Contract, that include Alameda County Water District, City of Brisbane, City of Burlingame, Coastside County Water District, City of Daly City, City of East Palo Alto, Estero Municipal Improvement District, Guadalupe Valley Municipal Improvement District, City of Hayward, Town of Hillsborough, Los Trancos County Water District, City of Menlo Park, Mid-Peninsula Water District, City of Millbrae, City of Milpitas, City of Mountain View, North Coast County Water District, City of Palo Alto, Purissima Hills Water District, City of Redwood City, City of San Bruno, City of San Jose, City of Santa Clara, Skyline County Water District, City of Sunnyvale, and Westborough Water District.

81306. ''Project'' means a work and all of the activities related to, or necessary for, the acquisition, construction, operation and maintenance of a work, including, but not limited to, planning, design, financing, contracting, project management, and administration.

81307. ''Regional water system'' means facilities for the storage, treatment, and transmission of water operated by San Francisco located in the Counties of Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, San Mateo, and three terminal reservoirs in San Francisco.

81307.5. ''San Francisco'' means the City and County of San Francisco.

81308. ''Work'' or ''works'' include, but is not limited to, reservoirs, water treatment plants, facilities for the transmission of water, water conservation measures and programs, facilities for the conjunctive use of surface water and groundwater, and facilities for the transmission of recycled water.

81309. ''Zone'' means an improvement district, assessment district, or area benefiting from a project.

CHAPTER 2. FORMATION OF AGENCY

Article 1. Resolution of Intention

81315. (a) The governing body of a public entity identified in Section 81305, by a majority vote of all of its members, may declare the intention of that entity to form the agency with all of the other public entities identified in that section.

(b) The resolution shall meet all of the following requirements:

(1) Identify the name of the public entity adopting the resolution.

(2) Identify the name of each public entity proposed to be a member of the agency, which shall include all public entities identified in Section 81305.

(3) Fix the time and place within the boundaries of the public entity adopting the resolution at which a hearing will be held by its governing body to determine whether to form the agency and whether to become a member of the agency. The date of the hearing may not be less than 30 days, nor more than 60 days, from the date of the adoption of the resolution.

(4) Direct publication of the resolution one time in a newspaper of general circulation within the boundaries of the public entity adopting the resolution at least two weeks prior to the date set for the hearing.

81316. The governing board of the public entity adopting the resolution pursuant to Section 81315, not later than 10 days after the date of the adoption of the resolution, shall mail a certified copy of the resolution to the governing body of each public entity identified in the resolution as a proposed member of the agency. The governing body of each proposed member, not later than 60 days after the date of the adoption of the resolution described in Section 81315, shall adopt a resolution fixing the time and place within the boundaries of that public

entity at which a hearing will be held to determine whether to form the agency and whether to become a member. The date of the hearing shall be not less than 30 days, nor more than 60 days, from the date of the adoption of the resolution by that public entity. The resolution shall be published one time in a newspaper of general circulation within the boundaries of that public entity at least two weeks prior to the date set for the public hearing.

Article 2. Formation Hearings

81317. At the times and places specified in the resolutions adopted pursuant to Section 81315 or 81316, the governing body of each public entity shall hold a public hearing on the question of whether to form, and become a member of, the agency.

81318. As soon as practicable after the completion of the public hearing described in Section 81317, and in any event not later than 60 days thereafter, the governing body of each public entity shall adopt a resolution that declares the finding of the governing body as to whether to form and become a member of the agency. The adoption of the resolution, whether affirmative or negative, is subject to referendum pursuant to Division 9 (commencing with Section 9000) of the Elections Code, but shall not be a ''project'' for the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

81319. Not later than 10 days after the date of the adoption of the resolution required by Section 81318, the governing body of each public entity shall cause a certified copy of the resolution to be forwarded to the Board of Supervisors of San Mateo County.

Article 3. Establishment of Agency

81325. Not later than 60 days from the date of the receipt of the resolutions pursuant to Section 81319, the Board of Supervisors of San Mateo County shall determine whether or not resolutions to form and join the agency have been adopted by at least 15 public entities representing collectively at least 60 percent of the total water deliveries of all the public entities identified in Section 81305. In making that determination, the board of supervisors shall use the water delivery quantities set forth in subdivision (b) of Section 81460. If 15 or more public entities representing collectively 60 percent or more of those water deliveries have adopted those resolutions, the board of supervisors, by order entered in its minutes, shall declare that the agency has been formed and list each public entity that is a member of the agency.

81325.5. In making the determination required by Section 81325, the board of supervisors shall include all resolutions received by the county at least 10 days before the date of the public meeting at which the determination is made.

81325.7. If the board of supervisors determines that the resolutions submitted are insufficient to form the agency, the eligible public entities may again undertake the process described in Sections 81315 to 81319, inclusive, at any time. In addition, resolutions adopted that approve formation of the agency may remain in effect for the time specified in those resolutions, unless those resolutions are otherwise repealed.

81326. The Clerk of the Board of Supervisors of San Mateo County, not later than 10 days from the date of entry of an order described in Section 81325, shall file a certificate with the Secretary of State identifying the name of the agency and the names of each public entity that is a member of the agency. The board of supervisors shall include a map showing the boundaries of the agency, with reference to the boundaries of each member public entity.

81327. The Secretary of State, not later than 10 days from the date of the receipt of the certificate described in Section 81326, shall issue a certificate of formation reciting that the agency has been formed pursuant to this division and identifying the public entities of which the agency is comprised. The Secretary of State shall transmit a copy of the certificate to each public entity that is a member of the agency.

81328. The formation of the agency shall be effective on the date of the issuance of the Secretary of State's certificate.

81329. No invalidity or irregularity in any proceeding that does not substantially and adversely affect the interests of any public entity identified in Section 81305 may be held to invalidate the formation of the agency.

81330. Any action or proceeding in which the validity of the formation of the agency, or any of the proceedings in relation thereto, is contested, questioned, or challenged shall be commenced not later than 60 days from the date of the Secretary of State's certificate of formation. In the absence of that action or proceeding, the formation and legal existence of the agency, and all proceedings in relation thereto, shall be held to be in every respect valid, legal, and incontestable.

81331. The formation of the agency, proceedings to increase its membership pursuant to Section 81456 or 81456.5, or the establishment or modification of any zone or improvement district is not subject to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

CHAPTER 3. GOVERNMENT OF AGENCY

Article 1. Board of Directors

81335. The agency shall be governed by a board of directors.

81336. (a) The governing body of each member public entity shall appoint one member to the board of the agency. Each director shall be a registered voter and reside within the boundaries of the member public entity whose governing board appoints him or her.

(b) For the purposes of subdivision (a), the governing body may appoint one of its own members to the board if that person otherwise meets the requirements of that subdivision.

(c) (1) The Board of Supervisors of San Mateo County shall appoint one member to the board who is an officer or employee of the California Water Service Company.

(2) The Board of Supervisors of Santa Clara County shall appoint one member to the board who is an officer or employee of Stanford University.

(d) The initial appointments shall be made not later than 60 days after the date of the issuance of the certificate of formation pursuant to Section 81327.

81336.5. (a) No incompatibility of office shall result from an elected official serving on the board of the agency and on the governing board of a member public entity. A board member may vote on contracts or other matters involving the member public entity he or she represents.

(b) The agency may enter into a contract with California Water Service Company only if both of the following requirements are met:

(1) The director appointed by the Board of Supervisors of San Mateo County does not participate in a vote on the contract.

(2) The contract is approved by the affirmative vote of a majority of all members of the board other than the director appointed by the Board of Supervisors of San Mateo County.

(c) The agency may enter into a contract with Stanford University only if both of the following requirements are met:

(1) The director appointed by the Board of Supervisors of Santa Clara County does not participate in a vote on the contract.

(2) The contract is approved by the affirmative vote of a majority of all members of the board other than the director appointed by the Board of Supervisors of Santa Clara County.

(d) A contract approved pursuant to the requirements of this division does not constitute a violation of Section 1090 or 1097 of the Government Code, nor is it void or voidable pursuant to Section 1092 of the Government Code.

81337. Each director, before entering upon the duties of his or her office, shall take the oath of office as provided for in the California Constitution and laws of the state.

81338. (a) Each director shall serve a term of four years.

(b) Notwithstanding subdivision (a), the directors initially appointed to the board shall determine, by lot, that one-half plus one of their number shall serve for four years and the remaining directors shall serve for two years. Thereafter, each appointing authority shall appoint a person to replace its respective director or may reappoint its director for an unlimited number of terms.

(c) A vacancy on the board shall be filled by the respective appointing authority not later than 90 days from the date of the occurrence of the vacancy.

81339. Each director may receive compensation in an amount prescribed by the board, not to exceed one hundred dollars ($100) per day for each day's attendance at meetings of the board, not to exceed four meetings in any calendar month. In addition, each director may be reimbursed for actual, necessary, and reasonable expenses incurred in the performance of duties performed at the request of the board. The compensation of directors may be increased pursuant to Chapter 2 (commencing with Section 20200) of Division 10.

81400. A majority of the members of the board constitutes a quorum for the transaction of business. The board shall act only by ordinance, resolution, or motion.

81401. The board shall hold its first meeting as soon as possible after the appointment of the initial directors. At its first meeting, and at its first meeting in January each year thereafter, the board shall elect a chairperson and a vice-chairperson from among its members.

81402. The board shall provide for the time and place of holding its regular meetings. All meetings of the board shall be called and held in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

81403. Subject to Section 81405, each director has one vote. The affirmative vote of a majority of the total membership of the board is necessary and sufficient to carry any motion, resolution, or ordinance, except when weighted voting is in effect pursuant to Section 81404 or as otherwise provided by this division.

81404. Before the vote on any motion, resolution, or ordinance is taken, any director may call for weighted voting. Upon such a call, Section 81405 shall apply as to that motion, resolution, or ordinance.

81405. (a) Weighted voting shall be based on the average deliveries of water during the 2000–01 fiscal year, as set forth in Section 81460.

(b) When weighted voting is in effect, there shall be a total of 100 possible votes. The allocation of these votes among the directors shall be determined as follows:

(1) The water deliveries to each member public entity, California Water Service Company, and Stanford University, as set forth in Section 81460, shall be totaled.

(2) Each director representing a member public entity whose individual water delivery is less than 1.5 percent of the total amount calculated pursuant to paragraph (1) shall be assigned one vote.

(3) The water deliveries to all member public entities assigned one vote pursuant to paragraph (2) shall be totaled and that sum shall be subtracted from the total amount calculated pursuant to paragraph (1).

(4) The ratio of individual water deliveries to each remaining member public entity, California Water Service Company, and Stanford University to the total water deliveries calculated pursuant to paragraph (3) shall be determined and expressed as a fraction.

(5) The total number of votes assigned to directors pursuant to paragraph (2) shall be subtracted from 100.

(6) The number resulting from the calculation described in paragraph (5) shall be multiplied by the fractions calculated pursuant to paragraph (4), and the products of that multiplication shall be rounded to the nearest whole number. Each director, other than those assigned one vote pursuant to paragraph (2), shall be assigned the number of votes resulting from this calculation.

(c) When weighted voting is in effect, the affirmative vote of directors representing both (1) a majority of the members of the board present and voting, and (2) a majority of the number of votes, determined pursuant to this section, represented by directors present and voting shall be necessary to carry any motion, resolution, or ordinance.

(d) Notwithstanding any other provision of this division, the board may establish alternative procedures and methods for weighted voting, including a limitation on the types of measures to which it applies, by a vote of (1) at least two-thirds of all the directors of the board, each director having one vote on the question, and (2) at least 51 votes, determined pursuant to this section.

81406. (a) On all ordinances and resolutions, and on all questions to be decided by weighted voting, the roll shall be called and ayes and noes recorded in the minutes of the proceedings of the board.

(b) Motions, other than motions to be decided by weighted voting, may be adopted by voice vote, except that the roll shall be called at the request of any director.

Article 2. Officers and Employees

81407. The board shall appoint a general manager, a financial officer, and a secretary. The board may establish other offices that may be necessary or convenient. The board shall appoint, and prescribe the duties, compensation, and terms and conditions of employment of, all officers.

81408. The board may employ other employees that the board determines are necessary or convenient and may delegate to the general manager the authority to employ or contract for the services of additional assistants or employees that the general manager determines necessary or convenient to operate the agency. The board shall extend offers of employment on terms comparable to those applicable to the employees of the Bay Area Water Users Association on January 1, 2003, as determined by the board.

81409. The board may require, and establish the amount of, official bonds of officers and employees that are necessary for the protection of the funds and property of the agency.

81410. (a) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code applies to all officers and employees of the agency.

(b) The agency is a ''local government agency'' for the purposes of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

Chapter 4. Powers and Functions of Agency

Article 1. Powers

81415. The agency may exercise the powers that are expressly granted by this division, together with other powers that are reasonably implied from those express powers, and powers necessary and proper to carry out this division.

81416. The agency may adopt a seal and alter it at pleasure.

81417. The agency may adopt regulations to carry out this division.

81418. (a) The agency may make contracts of any nature, including, but not limited to, contracts to employ labor, to indemnify and hold harmless, and to do all acts necessary or convenient for the full exercise of its powers.

(b) The agency may contract with any department or agency of the United States, the state, a public or private entity, or person.

81419. The agency may take by grant, purchase, bequest, devise, lease, or eminent domain, and may hold, enjoy, lease, sell, or otherwise

dispose of real and personal property of any kind, within or outside the boundaries of the agency.

81420. The agency may plan, finance, acquire, construct, maintain, and operate facilities for the collection, transmission, treatment, reclamation, reuse, and conservation of water. The agency may carry out any project or work.

81421. The agency may disseminate information concerning its activities.

81422. The agency may apply for and receive state and federal grants, loans, and other financial assistance.

Article 2. Financial Matters

81425. The board shall adopt a budget for each fiscal year.

81426. The accounts of the agency shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants with experience in auditing the accounts of local public entities.

81427. The agency may borrow money, incur indebtedness, and issue notes and bonds, as provided in this division or as otherwise authorized by law.

81428. (a) The agency may issue revenue bonds upon the adoption of an ordinance by a two-thirds vote of all of the members of the board present and voting which also represents at least 51 votes determined pursuant to Section 81405. For the purposes of issuing bonds pursuant to this subdivision, the agency need not conduct an election or otherwise secure the approval of the voters within the boundaries of the agency.

(b) The agency shall publish a notice in a newspaper of general circulation at least 15 days before the meeting at which issuance of revenue bonds is to be considered and shall provide an opportunity for public comments during that meeting and before the directors vote on the issuance of those bonds.

81429. The agency may issue bonds for the purpose of refunding any revenue bonds of the agency, whether due or not due.

81430. The agency may issue negotiable promissory notes to acquire funds for any agency purpose. The notes shall have a term not to exceed five years. The total amount of notes issued pursuant to this section that may be outstanding at any one time may not exceed one million dollars ($1,000,000).

81431. The authority granted pursuant to the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with

Section 8500) of the Streets and Highways Code), and the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) may be exercised by the agency to carry out this division.

81432. Bonds and other evidences of indebtedness issued by the agency are legal investments for all trust funds and for funds of all insurers, commercial and savings banks, trust companies, and state schools. Funds that may be invested in bonds of cities, cities and counties, counties, school districts, or other local agencies may also be invested in bonds and other evidences of indebtedness of the agency.

81433. The board may impose assessments sufficient to pay the operating expenses included in the budget, which shall be an obligation of each member public entity, the California Water Service Company, and Stanford University. The assessments shall be based on, and proportional to, water delivery amounts described in Section 81460.

81434. The agency may use proceeds of bonds authorized by this division for the construction, reconstruction, or improvement of any works carried out by the agency. The agency may also make proceeds of bonds authorized by this division available to other local public agencies on mutually satisfactory terms and conditions to assist in the construction, reconstruction, or improvement of works designed and intended in whole or in part to furnish water to the members of the agency, whether those works are carried out jointly by the agency and other local public agencies, or solely by those other public agencies.

81435. The agency may impose reasonable rates, fees, and charges on Stanford University, the California Water Service Company, and the agency's member public entities for any program or service provided or work performed by the agency. The agency may also impose reasonable rates, fees, and charges on any other public or private entity that enters into a contract with the agency for use of any program or service provided or work performed by the agency. These rates, fees, and charges shall be at least sufficient to generate revenue to pay the principal and interest on any bonds issued by the agency to carry out the work. The agency shall be solely responsible for servicing the debt on any bonds it issues and the State of California has no responsibility for those bonds.

Article 3. Controversies

81440. The agency may sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.

81441. All claims for money or damages against the agency are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

81442. An action to determine the validity of any contract, or any bond, note, or other evidence of indebtedness, may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

CHAPTER 5. WATER SUPPLY

81445. The agency may do all of the following:

(a) Acquire water and water rights within or outside the state.

(b) Develop, store, and transport water.

(c) Provide, deliver, and sell water at wholesale for municipal, domestic, and industrial purposes to any city, county, district, other local public entity, public utility, or mutual water company located within the boundaries of the agency, and to Stanford University.

(d) Acquire, construct, operate, and maintain any and all works, facilities, improvements, and property within or outside the boundaries of the agency necessary or convenient to carry out this division.

81446. The agency may conduct studies of the water supplies available to its members, and their current and future demand for water. The agency may develop plans for projects and programs that can assist its members to meet those future water needs.

81447. The agency may provide, deliver, and sell water not needed for municipal, domestic, or industrial uses within the boundaries of the agency for beneficial purposes but shall give preference to users within the agency. The supply of surplus water shall in every case be subject to the paramount right of the agency to discontinue that supply in whole or in part upon one year's notice to the purchaser or user of that surplus water.

81448. The agency may not sell water to any retail user within the boundaries of the agency. Sales to Stanford University shall not be deemed sales to a retail user.

81449. Except as provided in Section 81452, the agency may exercise the right of eminent domain in the manner provided by law to acquire any property, within or outside the boundaries of the agency, necessary or convenient to carry out this division.

81450. The agency is entitled to the benefit of any reservation or grant, in all cases, where any right has been reserved or granted to the state, or any agency or political subdivision thereof, or any public corporation, to construct or maintain water-related facilities in, under, or over any public or private lands. Nothing in this section authorizes the agency to construct facilities on lands owned or controlled by San Francisco without the consent of San Francisco.

81451. The agency may construct and operate works and facilities in, under, over, across, or along any street or public highway or over any

of the lands which are the property of the state to the same extent that those rights and privileges are granted to cities within the state.

81452. The agency may not acquire by eminent domain, interfere with, or exercise any control over, any water distribution facility owned and operated by any city, city and county, local public entity, or public utility without the consent of, and upon those terms that are mutually agreed to by, that city, city and county, local public agency, or public utility.

CHAPTER 6. CHANGES IN ORGANIZATION

81455. Any territory annexed to, or detached from, a member public entity, upon completion of the annexation or detachment, shall be deemed annexed to, or detached from, the agency.

81456. (a) A public entity identified in Section 81305 that is not a member at the time the agency is formed pursuant to Section 81328 may thereafter join the agency, with the approval of the board of the agency and subject to those terms and conditions that the board determines are necessary to ensure that the new member pays an equitable share of the costs previously incurred by the agency.

(b) The new member shall appoint one director and, for the purposes of this division, the new member shall be subject to the water delivery amounts described in Section 81460 that apply to that new member.

81456.5. San Francisco may become a member of the agency pursuant to Section 81456.

81456.7. Not later than 10 days after the date on which any new member is admitted, the agency shall notify in writing the Secretary of State with regard to the name of the new member and the date of its admission.

CHAPTER 7. MISCELLANEOUS

81457. Membership of a public entity in the agency does not affect the identity or legal existence, nor impair the powers, of that public entity.

81459. This division shall be liberally construed to carry out its purposes.

81460. (a) The water delivery quantities set forth in subdivision (b) describe, for the purposes of this division, the average daily deliveries of water from San Francisco to the identified entities during the 2000–01 fiscal year.

(b) The water delivery quantities are as follows:

Name	Average Daily Deliveries in Hundred Cubic Feet
Alameda County Water District	15,709
California Water Service Company	49,223
City of Brisbane	489
City of Burlingame	6,503
City of Daly City	6,070
City of East Palo Alto	2,864
City of Hayward	24,546
Town of Hillsborough	5,099
City of Menlo Park	4,616
City of Millbrae	3,669
City of Milpitas	9,437
City of Mountain View	14,860
City of Palo Alto	18,438
City of Redwood City	15,753
City of San Bruno	3,266
City of San Jose	6,436
City of Santa Clara	5,473
City of Sunnyvale	13,112
Coastside County Water District	2,070
Estero Municipal Improvement District	7,873
Guadalupe Valley Municipal Improvement District	611
Los Trancos County Water District	161
Mid–Peninsula Water District	4,789
North Coast County Water District	4,594
Purissima Hills Water District	2,921
Skyline County Water District	226
Stanford University	3,604
Westborough Water District	1,352

(c) If San Francisco becomes a member of the agency, the average daily delivery of water to San Francisco during the 2000–01 fiscal year, for the purposes of this division, shall be determined to be 118,973 hundred cubic feet.

81461. Nothing in this act changes the governance, control, or ownership of the regional water system.

SEC. 2. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity

shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. The Legislature finds and declares that this act, which is applicable only to the Bay Area Water Supply and Conservation Agency, is necessary because of the unique and special water supply problems prevailing in the geographic area that may be included in the boundaries of the agency. It is, therefore, hereby declared that a general law within the meaning of Section 16 of Article IV of the California Constitution cannot be made applicable to the agency and the enactment of this special law is necessary for the conservation, development, control, and use of water supplied to that geographic area for the public good.

SEC. 4. 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 845

An act to add and repeal Section 2827.9 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 2827.9 is added to the Public Utilities Code, to read:

2827.9. (a) (1) The Legislature finds and declares that a pilot program to provide net energy metering for eligible biogas digester customer-generators would enhance the continued diversification of California's energy resource mix and would encourage the installation of livestock air emission controls that the State Air Resources Board believes may produce multiple environmental benefits.

(2) The Legislature further finds and declares that the net energy metering pilot program authorized pursuant to this section for eligible biogas digester customer-generators, which nets out generation charges against generation charges on a time of use basis, furthers the intent of Chapter 7 of the Statutes of 2001, First Extraordinary Session, by facilitating the implementation of energy efficiency programs in order

to reduce consumption of energy, reduce the costs associated with energy demand, and achieve a reduction in peak electricity demand.

(b) As used in this section, the following definitions apply:

(1) '' Electrical corporation'' means an electrical corporation, as defined in Section 218.

(2) (A) ''Eligible biogas digester customer-generator'' means a customer of an electrical corporation that meets both of the following criteria:

(i) Uses a biogas digester electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid, and is sized to offset part or all of the eligible biogas digester customer-generator's own electrical requirements.

(ii) Is the recipient of local, state, or federal funds, or who self-finances pilot projects designed to encourage the development of eligible biogas digester electrical generating facilities.

(3) ''Eligible biogas digester electrical generating facility'' means a generating facility used to produce electricity by either a manure methane production project or as a byproduct of the anaerobic digestion of bio-solids and animal waste.

(4) ''Net energy metering'' means measuring the difference between the electricity supplied through the electric grid and the difference between the electricity generated by an eligible biogas digester 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 time of use meter capable of registering the flow of electricity in two directions. If the existing electrical meter of an eligible biogas digester customer-generator is not capable of measuring the flow of electricity in two directions, the eligible biogas digester 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 time of use meter.

(c) Every electrical corporation shall, not later than 60 days from the effective date of this section, file with the commission a standard tariff providing for net energy metering for eligible biogas digester customer-generators, consistent with this section. Every electrical corporation shall make this tariff available to eligible biogas digester customer-generators upon request, on a first come, first serve basis, until the total cumulative rated generating capacity used by the eligible biogas digester customer-generators equals 5 megawatts within the service territory of the electrical corporation. The combined statewide

cumulative rated generating capacity used by the eligible biogas digester customer-generators in the service territories of all three electrical corporations in the state may not exceed 15 megawatts.

(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 the customer was not an eligible biogas digester customer-generator, except as set forth in 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 biogas digester customer-generator's costs beyond those of other customers in the rate class to which the eligible biogas digester customer-generator would otherwise be assigned are contrary to the intent of this legislation, and shall not form a part of net energy metering 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 metering calculation:

(1) The eligible biogas digester customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible biogas digester customer-generator's system with an electrical corporation, and at each anniversary date thereafter, be billed for electricity used during that period. The electrical corporation shall determine if the eligible biogas digester customer-generator was a net consumer or a net producer of electricity during that period. For purposes of determining if the biogas digester customer-generator was a net consumer or a net producer of electricity during that period, the electrical corporation shall aggregate the electrical load of a dairy operation under the same ownership, including, but not limited to, the electrical load attributable to milking operations, milk refrigeration, and water pumping located on property adjacent or continuous to the dairy. Each aggregated account shall be billed and measured according to a time of use rate schedule.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electrical corporation exceeds the electricity generated by the eligible biogas digester customer-generator during that same period, the eligible biogas digester customer-generator is a net electricity consumer and the electrical corporation shall be owed compensation for the eligible biogas digester customer-generator's net kilowatthour consumption over that same period. The compensation

owed for the eligible biogas digester customer-generator's consumption shall be calculated as follows:

(A) The generation charges for any net monthly consumption of electricity shall be calculated according to the terms of the tariff to which the same customer would be assigned to or be eligible for if the customer was not an eligible biogas digester customer-generator. When those eligible biogas digester 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 electrical corporation would charge for retail kilowatthour sales for generation, exclusive of any surcharges, during that same time of use period. If the eligible biogas digester customer-generator's time of use electrical meter is unable to measure the flow of electricity in two directions, paragraph (4) of subdivision (b) shall apply. All other charges, other than generation charges, shall be calculated in accordance with the eligible biogas digester customer-generator's applicable tariff and based on the total killowatthours delivered by the electrical corporation to the eligible biogas digester customer-generator. To the extent that charges for transmission and distribution services are recovered through demand charges in any particular month, no standby reservation charges shall apply in that monthly billing cycle.

(B) The net balance of moneys owed shall be paid in accordance with the electrical corporation's normal billing cycle.

(3) At the end of each 12-month period, where the electricity generated by the eligible biogas digester customer-generator during the 12-month period exceeds the electricity supplied by the electrical corporation during that same period, the eligible biogas digester customer-generator is a net electricity producer and the electrical corporation shall retain any excess kilowatthours generated during the prior 12-month period. The eligible biogas digester customer-generator shall not be owed any compensation for those excess kilowatthours.

(4) If an eligible biogas digester customer-generator terminates service with the electrical corporation, the electrical corporation shall reconcile the eligible biogas digester customer-generator's consumption and production of electricity during any 12-month period.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

CHAPTER 846

An act to add Section 24252.1 to the Water Code, relating to irrigation districts.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 24252.1 is added to the Water Code, to read:

24252.1. A district may enter into any forward contract, or futures contract, or put, call, or swap agreement, or similar procurement method for electricity, natural gas, or coal, or any weather, fuel, or energy risk management contract determined to be in the best interests of the district by the board of directors of the district for any of the uses or purposes of the district and by those contracts or agreements to bind the district for the payment of the consideration specified therein.

CHAPTER 847

An act to add Section 345.5 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 345.5 is added to the Public Utilities Code, to read:

345.5. (a) The Independent System Operator, as a nonprofit, public benefit corporation, shall conduct its operations consistent with applicable state and federal laws and consistent with the interests of the people of the state.

(b) To ensure the reliability of electric service and the health and safety of the public, the Independent System Operator shall manage the transmission grid and related energy markets in a manner that is consistent with all of the following:

(1) Making the most efficient use of available energy resources. For purposes of this section, ''available energy resources'' include energy, capacity, ancillary services, and demand bid into markets administered by the Independent System Operator. ''Available energy resources'' do not include a schedule submitted to the Independent System Operator by

an electrical corporation or a local publicly owned electric utility to meet its own customer load.

(2) Reducing, to the extent possible, overall economic cost to the state's consumers.

(3) Applicable state law intended to protect the public's health and the environment.

(4) Maximizing availability of existing electric generation resources necessary to meet the needs of the state's electricity consumers.

(c) The Independent System Operator shall do all of the following:

(1) Consult and coordinate with appropriate state and local agencies to ensure that the Independent System Operator operates in furtherance of state law regarding consumer and environmental protection.

(2) Ensure that the purposes and functions of the Independent System Operator are consistent with the purposes and functions of nonprofit, public benefit corporations in the state, including duties of care and conflict-of-interest standards for officers and directors of a corporation.

(3) Maintain open meeting standards and meeting notice requirements consistent with the general policies of the Bagley-Keene Open Meetings Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of the Government Code) and affording the public the greatest possible access, consistent with other duties of the corporation. The Independent System Operator's Open Meeting Policy, as adopted on April 23, 1998, and in effect as of May 1, 2002, meets the requirements of this paragraph. The Independent System Operator shall maintain a policy that is no less consistent with the Bagley-Keene Open Meetings Act than its policy in effect as of May 1, 2002.

(4) Provide public access to corporate records consistent with the general policies of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and affording the public the greatest possible access, consistent with the other duties of the corporation. The Independent System Operator's Information Availability Policy, as adopted on October 22, 1998, and in effect as of May 1, 2002, meets the requirements of this paragraph. The Independent System Operator shall maintain a policy that is no less consistent with the California Public Records Act than its policy in effect as of May 1, 2002.

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 848

An act to add Sections 31149.7 and 71663.5 to the Water Code, relating to electric power.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Section 31149.7 is added to the Water Code, to read:

31149.7. (a) A district may provide, generate, and deliver electric power, and may construct, operate, and maintain any and all works, facilities, improvements, and property, or portion thereof, necessary or convenient for that generation and delivery.

(b) The electric powerplant or plants and transmission lines constructed pursuant to this section may be leased for operation. The power generated shall be used by a district for its own purposes. A district may sell surplus power to a public or private entity that is engaged in the distribution or sale of electricity. For purposes of this section, ''for its own purposes'' means a district performing only functions in its capacity as a water district, including, but not be limited to, any of the following:

(1) Pumping operations.

(2) Water treatment operations.

(3) Barrier intrusion operations.

(4) Desalination operations.

(c) Nothing in this section grants to a district the authority to provide, sell, or deliver electric power at retail.

(d) A district may not acquire property employed in the generation or delivery of electric power for public or private utility purposes, except by mutual agreement between the district and the owner of that property.

(e) (1) It is the intent of the Legislature, that each district that has purchased electricity from an electrical corporation on or after February 1, 2001, regardless of whether the district thereafter generates its own electricity, bear a pro rata share of the Department of Water Resources' electricity purchase costs, that are recoverable from electrical corporation customers in commission-approved rates. It is the further intent of the Legislature to prevent any shifting of recoverable costs from

districts that generate their own electricity pursuant to this section, to electrical corporation bundled customers.

(2) To the extent that any shifting of recoverable costs would occur, in the determination of the commission, those costs shall be recovered from districts that generate their own electricity, pursuant to this section.

(3) The Legislature finds and declares that the revisions of this subdivision are consistent with the requirements of Chapter 4 of the Statutes of 2001, First Extraordinary Session, and do not constitute a change in, but are declaratory of existing law.

(f) A district that generates its own electricity pursuant to this section shall be responsible for paying the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the district by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charges shall be payable until all obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged. All bond charges are the property of the Department of Water Resources.

(2) If a district generates new offsite power, it shall be responsible for the additional costs of the Department of Water Resources, equal to the share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs attributable to the district as determined by the commission, for the period commencing with the district's initial generation of its offsite electricity, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(g) A district generating its own electricity pursuant to this section shall reimburse the electrical corporation that previously served the district for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that district, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the district, as determined by the commission, for the period commencing with the district's initial generation of electricity pursuant to this section, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(h) (1) Any charges imposed pursuant to subdivision (f) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (g) shall be the property of the particular

electrical corporation. The commission shall establish sufficient mechanisms, including agreements with, or orders with respect to, electrical corporations as are necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to the payment.

(2) Charges imposed pursuant to this section shall be nonbypassable.

(i) Prior to implementing this section, the commission shall submit a report certifying its satisfaction of the provisions of this section to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

SEC. 2. Section 71663.5 is added to the Water Code, to read:

71663.5. (a) A district may provide, generate, and deliver electric power, and may construct, operate, and maintain any and all works, facilities, improvements, and property, or portion thereof, necessary or convenient for that generation and delivery.

(b) The electric powerplant or plants and transmission lines constructed pursuant to this section may be leased for operation. The power generated shall be used by a district for its own purposes. A district may sell surplus power to a public or private entity that is engaged in the distribution or sale of electricity. For purposes of this section, ''for its own purposes'' means a district performing only functions in its capacity as a water district, including, but not be limited to, any of the following:

(1) Pumping operations.

(2) Water treatment operations.

(3) Barrier intrusion operations.

(4) Desalination operations.

(c) Nothing in this section grants to a district the authority to provide, sell, or deliver electric power at retail.

(d) A district may not acquire property employed in the generation or delivery of electric power for public or private utility purposes, except by mutual agreement between the district and the owner of that property.

(e) (1) It is the intent of the Legislature, that each district that has purchased electricity from an electrical corporation on or after February 1, 2001, regardless of whether the district thereafter generates its own electricity, bear a pro rata share of the Department of Water Resources' electricity purchase costs, that are recoverable from electrical corporation customers in commission-approved rates. It is the further intent of the Legislature to prevent any shifting of recoverable costs from districts that generate their own electricity pursuant to this section, to electrical corporation bundled customers.

(2) To the extent that any shifting of recoverable costs would occur, in the determination of the commission, those costs shall be recovered from districts that generate their own electricity, pursuant to this section.

(3) The Legislature finds and declares that the revisions of this subdivision are consistent with the requirements of Chapter 4 of the Statutes of 2001, First Extraordinary Session, and do not constitute a change in, but are declaratory of existing law.

(f) A district that generates its own electricity pursuant to this section shall be responsible for paying the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the district by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charges shall be payable until all obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged. All bond charges are the property of the Department of Water Resources.

(2) If a district generates new offsite power, it shall be responsible for the additional costs of the Department of Water Resources, equal to the share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs attributable to the district as determined by the commission, for the period commencing with the district's initial generation of its offsite electricity, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(g) A district generating its own electricity pursuant to this section shall reimburse the electrical corporation that previously served the district for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that district, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the district, as determined by the commission, for the period commencing with the district's initial generation of electricity pursuant to this section, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(h) (1) Any charges imposed pursuant to subdivision (f) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (g) shall be the property of the particular electrical corporation. The commission shall establish sufficient mechanisms, including agreements with, or orders with respect to,

electrical corporations as are necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to the payment.

(2) Charges imposed pursuant to this section shall be nonbypassable.

(i) Prior to implementing this section, the commission shall submit a report certifying its satisfaction of the provisions of this section to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

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 849

An act to add Division 31.7 (commencing with Section 81600) to the Water Code, relating to water.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

SECTION 1. Division 31.7 (commencing with Section 81600) is added to the Water Code, to read:

DIVISION 31.7. SAN FRANCISCO BAY AREA REGIONAL WATER SYSTEM FINANCING AUTHORITY

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

81600. This division shall be known and may be cited as the San Francisco Bay Area Regional Water System Financing Authority Act.

81601. The Legislature finds and declares all of the following:

(a) The City and County of San Francisco has acquired or constructed a system of reservoirs, pipelines and tunnels, and treatment plants that

provides water to 2.4 million Californians who live in San Francisco and in neighboring communities in Alameda, San Mateo, and Santa Clara Counties.

(b) Over two-thirds of the Californians who rely on San Francisco's regional water system, approximately 1.6 million persons, live outside San Francisco. A substantial majority of industrial, commercial, institutional, and governmental users are also located in neighboring communities rather than in San Francisco itself.

(c) The reliability of this water infrastructure system is of vital importance to the health, welfare, safety, and economy of the region which it supplies.

(d) In turn, this region is of vital importance to the entire State of California, because of the resident industries, universities, and commercial enterprises that employ millions of Californians and generate billions of dollars in exports and tax revenues to the state.

(e) The regional water system is old, designed to outdated seismic safety standards, and either crosses or is located on, or adjacent to, three major active earthquake faults, the Calaveras Fault, the San Andreas Fault, and the Hayward Fault. Engineering investigations have disclosed that the system is at risk of catastrophic failure in a major earthquake. Many areas in all four counties now served, in the event of a major earthquake, face possible interruptions in their supplies of potable water for up to 30 days, and some areas could be without water for as long as 60 days.

(f) Interruptions in water supply of this magnitude and duration to a densely populated metropolitan region could be disastrous for public health and safety and for the regional and state economy. In addition, uncontrolled releases of water from pipelines, tunnels, and reservoirs could create severe flood damage and environmental harm to fish and wildlife habitat in the communities in which those facilities are located.

(g) Pursuant to the terms of the master water sales contract between the City and County of San Francisco and its wholesale customers, the retail water customers of the City and County of San Francisco provide the initial financing for the construction of improvements to the regional water system, and the wholesale customers do not pay for those improvements until those improvements are placed into service.

(h) Many separate cities, special districts, and public utilities are responsible for the distribution of water in portions of the bay area served, on a wholesale basis, by the San Francisco regional water supply system. The distribution of responsibility among many agencies impedes coordinated regional actions, including financing, to respond to the crisis.

(i) It is the intent of the Legislature to enable the City and County of San Francisco, and the entities in Alameda, San Mateo, and Santa Clara

Counties that rely on the San Francisco regional water system, acting collectively, to secure funds necessary to implement the prompt construction and reconstruction of the San Francisco regional water system, and to make those funds available to the City and County of San Francisco for projects designed and intended in substantial part to improve the reliability of the regional water system, including, but not limited to, strengthening the system's ability to withstand seismic events.

(j) It is not the intent of the Legislature to change the governance structure, operational control, or existing ownership of San Francisco's regional water system.

Article 2. Definitions

81602. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

81603. ''Authority'' means the San Francisco Bay Area Regional Water System Financing Authority.

81604. ''Board'' means the board of directors of the authority.

81606. ''Master water sales contract'' means the document entitled ''Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers in San Mateo County, Santa Clara County, and Alameda County,'' dated July 1, 1984.

81608. ''Project'' means a work and all of the activities related to, or necessary for, the acquisition, construction, operation, and maintenance of a work including, but not limited to, planning, design, financing, contracting, project management, and administration.

81608.5. ''Public entities'' means San Francisco and the public entities in the Counties of Alameda, San Mateo, and Santa Clara that purchase water from San Francisco pursuant to the master water sales contract, that include Alameda County Water District, City of Brisbane, City of Burlingame, Coastside County Water District, City of Daly City, City of East Palo Alto, Estero Municipal Improvement District, Guadalupe Valley Municipal Improvement District, City of Hayward, Town of Hillsborough, Los Trancos County Water District, City of Menlo Park, Mid-Peninsula Water District, City of Millbrae, City of Milpitas, City of Mountain View, North Coast County Water District, City of Palo Alto, Purissima Hills Water District, City of Redwood City, City of San Bruno, City of San Jose, City of Santa Clara, Skyline County Water District, City of Sunnyvale, and Westborough Water District.

81609. ''Regional water system'' means facilities for the storage, treatment, and transmission of water operated and maintained by San Francisco located in the Counties of Tuolumne, Stanislaus, San Joaquin,

Alameda, Santa Clara, San Mateo, and three terminal reservoirs in San Francisco.

81610. "San Francisco" means the City and County of San Francisco.

CHAPTER 2. CREATION OF AUTHORITY

81615. (a) The San Francisco Bay Area Regional Water System Financing Authority is hereby created.

(b) The members of the authority include the public entities identified in Section 81608.5, Stanford University, and the California Water Service Company.

CHAPTER 3. GOVERNMENT OF AUTHORITY

Article 1. Board of Directors

81628. The authority shall be governed by a board of directors.

81629. (a) The governing body of each member public entity, other than San Francisco, shall appoint one voting member to the board of the authority. Subject to Section 81673, the governing body of San Francisco shall appoint one nonvoting member to the board of the authority. Each director shall be a registered voter and reside within the boundaries of the member public entity whose governing board appoints him or her.

(b) For the purposes of subdivision (a), the governing body of a member public entity may appoint one of its own members to the board if the person otherwise meets the requirements of that subdivision.

(c) (1) The Board of Supervisors of San Mateo County shall appoint one voting member to the board who is a resident of San Mateo County, receives water from the California Water Service Company, and is not an officer or employee of the California Water Service Company.

(2) The Board of Supervisors of Santa Clara County shall appoint one voting member to the board who is a resident of Santa Clara County, receives water from Stanford University, and is not an officer or employee of Stanford University.

(d) If a person appointed pursuant to this section ceases to possess the qualifications for this office set forth in this section, the office shall become vacant and the vacancy shall be filled pursuant to subdivision (c) of Section 81631.

(e) No incompatibility of office shall result from an elected official serving on the board of the authority and on the governing board of a member public entity.

(f) The initial appointments shall be made not later than March 1, 2003.

81630. Each director, before entering upon the duties of his or her office, shall take the oath of office as provided for in the Constitution and laws of the state.

81631. (a) Each director shall serve for a term of four years.

(b) Notwithstanding subdivision (a), the directors initially appointed to the board shall determine, by lot, that one-half plus one of their number shall serve for four years and the remaining directors shall serve for two years. Thereafter, each appointing authority shall appoint a person to replace its respective director or may reappoint its director for an unlimited number of terms.

(c) A vacancy on the board shall be filled by the respective appointing authority not later than 90 days from the date of the occurrence of the vacancy.

81632. Each director who is not an officer or employee of an appointing entity may receive compensation in an amount prescribed by the board, not to exceed one hundred dollars ($100) per day for each day's attendance at meetings of the board, not to exceed four meetings in any calendar month. In addition, each director may be reimbursed for actual, necessary, and reasonable expenses incurred in the performance of duties performed at the request of the board. The compensation of directors may be increased pursuant to Chapter 2 (commencing with Section 20200) of Division 10.

81633. A majority of the voting members of the board constitutes a quorum for the transaction of business. The board may act only by ordinance, resolution, or motion.

81634. The board shall hold its first meeting as soon as possible after the appointment of the initial directors. At its first meeting, and at its first meeting in January each year thereafter, the board shall elect a chairperson and a vice-chairperson from among its members.

81635. The board shall provide for the time and place of holding its regular meetings. All meetings of the board shall be called and held in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

81636. Each voting director has one vote on any ordinance, resolution, or motion before the board. Except as provided in Section 81653, the affirmative vote of a majority of all voting members of the board is necessary and sufficient to carry any motion, resolution, or ordinance.

81637. (a) On all ordinances and resolutions, the roll shall be called and ayes and noes recorded in the minutes of the proceedings of the board.

(b) Motions may be adopted by voice vote, except that the roll shall be called at the request of any director.

Article 2. Officers and Employees

81640. The board shall appoint a general manager, a financial officer, and a secretary. The board may establish other offices that may be necessary or convenient. The board shall appoint, and prescribe the duties, compensation, and terms and conditions of employment of, all officers.

81641. The board may employ other employees that the board determines are necessary or convenient and may delegate to the general manager the authority to employ or contract for the services of additional assistants or employees that the general manager determines to be necessary or convenient to operate the authority.

81642. The board may require, and establish the amount of, official bonds of officers and employees that are necessary for the protection of the funds and property of the authority.

81643. (a) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code applies to all officers and employees of the authority, except that a director may vote on a contract between the authority and the public entity that appointed him or her to the authority's board. Notwithstanding the membership on the board of the members appointed pursuant to subdivision (c) of Section 81629, a contract between the authority and the California Water Service Company or between the authority and Stanford University does not violate Section 1090 of the Government Code, nor is that contract void or voidable under Section 1092 of the Government Code.

(b) The authority is a ''local government agency'' for purposes of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

Chapter 4. Powers and Functions of Authority

Article 1. Powers

81645. The authority may exercise the powers that are expressly granted by this division, together with other powers that are reasonably implied from those expressed powers, and powers necessary and proper to carry out this division.

81646. (a) The authority may make contracts of any nature, including, but not limited to, contracts to employ labor, to indemnify and hold harmless, and to do all acts necessary or convenient for the full exercise of its powers.

(b) The authority may contract with any department or agency of the United States or the state, or with any public or private entity, or person.

81647. The authority may take by grant, purchase, bequest, devise, or lease and may hold, enjoy, lease, sell, or otherwise dispose of real and personal property of any kind, within or outside the boundaries of the authority.

81648. The authority may apply for and receive state and federal grants, loans, and other financial assistance.

81649. Nothing in this division changes the governance, control, or ownership of the regional water system.

Article 2. Financial Matters

81650. The board shall adopt a budget for each fiscal year.

81651. The accounts of the authority shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants with experience in auditing the accounts of local public entities.

81652. The authority may borrow money, incur indebtedness, and issue notes and bonds as provided in this division, or as otherwise authorized by law.

81653. (a) The authority may issue revenue bonds upon the adoption of an ordinance by a two-thirds vote of all of the voting members of the board, after notice and public hearing. For the purposes of issuing bonds pursuant to this subdivision, the authority need not conduct an election or otherwise secure the approval of the voters within the boundaries of the authority.

(b) The authority shall publish a notice in a newspaper of general circulation at least 15 days before the date of the meeting at which the issuance of revenue bonds is to be considered and shall provide an opportunity for public comments during that meeting and before the directors vote on the issuance of those bonds.

(c) The authority may not issue any revenue bonds after December 31, 2020.

81654. The authority may issue bonds for the purpose of refunding any revenue bonds of the authority, whether due or not due.

81655. The authority may issue negotiable promissory notes to acquire funds for any authority purpose. The notes shall have a term not to exceed five years. The total amount of notes issued pursuant to this section that may be outstanding at any one time may not exceed one million dollars ($1,000,000).

81656. Bonds and other evidences of indebtedness issued by the authority are legal investments for all trust funds and for funds of all insurers, commercial and savings banks, trust companies, and state

schools. Funds that may be invested in bonds of cities, cities and counties, counties, school districts, or other local entities may also be invested in bonds and other evidences of indebtedness of the authority.

81658. (a) The proceeds of revenue bonds issued by the authority in accordance with this division may be used only on projects designed and intended in substantial part to improve the reliability of the regional water system, including, but not limited to, strengthening the system's ability to withstand seismic events.

(b) The proceeds shall be made available for the purposes set forth in subdivision (a) upon terms and conditions that the board determines necessary and appropriate. The terms and conditions shall include, but are not limited to, San Francisco's entering into one or more legally binding contracts with the authority that, at a minimum, do all of the following:

(1) Identify specific projects and proposed completion dates, subject to reasonable delays, for which the proceeds are to be used.

(2) Grant to the authority the authority to oversee and audit the disposition of proceeds to third party consultants, suppliers, and contractors.

(3) Grant to the authority the authority to determine the procedure by which contracts are awarded to consultants, suppliers, and contractors, consistent with the requirements of San Francisco's charter and ordinances.

(4) Grant to the authority the authority to inspect the construction of projects on which bond proceeds are expended.

(5) Require San Francisco to provide complete, accurate, and timely information to the authority on the expenditure of the bond proceeds.

(6) (A) (i) Require San Francisco, on behalf of the authority, to impose a surcharge on Stanford University, the California Water Service Company, and each of the public entities identified in Section 81608.5, other than San Francisco, in an amount that will generate sufficient revenue to pay the debt service on bonds issued by the authority and the operating expenses of the authority.

(ii) The surcharge shall be calculated annually by the authority as a uniform percentage of each entity's water bill.

(B) Require San Francisco to impose the surcharge described in clause (i) of subparagraph (A) on its retail water customers upon the occurrence of either of the following events:

(i) The voters of San Francisco approve a ballot measure authorizing retail water rates to be increased to pay for the retail water customer's share of the debt service on bonds issued by the authority and the operating expenses of the authority.

(ii) The restrictions on water rate increases set forth in ''Proposition H,'' adopted by the voters of San Francisco on June 2, 1998, are not in effect.

(7) Require San Francisco to transmit the proceeds of the surcharge collected by San Francisco to the authority in the manner determined by the authority.

(8) Provide that, for the purposes of the master water sales contract, the revenue generated by the surcharge imposed pursuant to paragraph (6) does not constitute revenue of the regional water system or revenue as defined in San Francisco's indenture of trust relating to its revenue bonds.

(9) Provide that the facilities constructed with the proceeds of bonds issued by the authority shall not be included in the wholesale system rate base.

(10) Provide for the continuation of the surcharge imposed pursuant to paragraph (6) after the expiration of the master water sales contract in 2009.

(11) Provide that the ownership and operational control of improvements to the regional water system that are financed in any part by the authority shall remain with San Francisco, unless San Francisco agrees to a change in that ownership or operational control.

(c) San Francisco may require the authority to reimburse San Francisco for the direct and reasonable costs San Francisco actually incurs in implementing the requirements of paragraphs (6) and (7) of subdivision (b).

(d) The authority may not take any action that results in an affirmative or defacto pledge of any facilities of, or improvements to, the regional water system. The authority may not take any action that results in a pledge of revenue collected by San Francisco, other than revenue generated by the imposition of the surcharge described in paragraph (6) of subdivision (b).

Article 3. Controversies

81660. The authority may sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.

81661. All claims for money or damages against the authority are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

81662. An action to determine the validity of any contract, bond, note, or other evidence of indebtedness may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

CHAPTER 5. MISCELLANEOUS

81670. Membership of any public entity in the authority does not affect the identity or legal existence, nor impair the powers, of that public entity.

81671. San Francisco shall provide the authority with prompt access to any public records requested by the authority unless those records are exempt from disclosure pursuant to Section 6254 of the Government Code. San Francisco may not withhold public records from the authority pursuant to a balancing of the public interest in accordance with Section 6255 of the Government Code.

81671.5. If the proceeds of bonds issued by the authority are made available for use on projects described in subdivision (a) of Section 81658, with the agreement and consent of San Francisco as required by subdivision (b) of Section 81658, San Francisco may not, for as long as those bonds are outstanding, sell, lease, or otherwise transfer title to, or control over, any facility used for the storage, transmission, or treatment of water to any private person or corporation.

81671.6. This division does not modify the provisions of the master water sales contract.

81671.7. The authority shall dissolve upon the repayment of all revenue bonds issued pursuant to this division and the satisfaction of all other debts and obligations of the authority.

81672. This division shall be liberally construed to carry out its purposes.

81673. San Francisco shall become a voting member of the authority if the surcharge is imposed on San Francisco's retail water customers in accordance with subparagraph (B) of paragraph (6) of subdivision (b) of Section 81658.

81674. (a) San Francisco shall submit a report to the Joint Legislative Audit Committee on or before September 1 of each year describing the progress made on projects financed by the authority and on the implementation of the capital improvement program for the regional water system.

(b) With regard to the projects financed by the authority, San Francisco shall include in the report, to the degree feasible, all of the following information:

(1) The expenditure of the bond proceeds.

(2) The expenditure on each project relative to budget and schedule.

(3) A description of the physical portion of each project completed compared to schedule.

(4) Significant revisions to a budget or schedule, including the reason for the change and the plan or effort taken to complete the project in accordance with the original budget and schedule.

(5) A description of potential service impacts of schedule delays and measures planned or being taken to reduce the risks of long-term service interruptions.

(6) The plan for work remaining, including projected schedule and cost for each project completion relative to original budget and schedule.

(c) With regard to the implementation of the regional water system's capital improvement program, San Francisco shall include in the report all of the following information:

(1) The status of current projects, without regard to the source of financing.

(2) Modifications to the capital improvement program relative to the capital improvement program adopted by the San Francisco Public Utilities Commission in May 2002, noting the significance of any change in schedule and project completion dates that decrease or increase the risk of long-term service interruptions to the customers of the regional water system.

(3) A description of measures planned or taken to reduce risk if a project is delayed.

SEC. 2. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. The Legislature finds and declares that the act adding this section, which is applicable only to the San Francisco Bay Area Regional Water System Financing Authority, is necessary because of the unique and special water supply problems prevailing in the geographic area that may be included in the boundaries of the authority. It is, therefore, hereby declared that a general law within the meaning of Section 16 of Article IV of the California Constitution cannot be made applicable to the authority and the enactment of this special law is necessary for the conservation, development, control, and use of water supplied to that geographic area for the public good.

SEC. 4. 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 850

An act to add Section 454.5 to the Public Utilities Code, relating to electricity, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

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

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

(a) Californians can significantly increase the reliability of the electricity system and reduce the level of wholesale electricity prices by reducing electricity usage at peak times through a variety of measures designed to reduce electricity consumption during those periods.

(b) Dynamic pricing, including real-time pricing, provides incentives to reduce electricity consumption in precisely those hours when supplies are tight and provides lower prices when wholesale prices are low.

(c) The State of California, through Assembly Bill 29 of the 2001–02 First Extraordinary Session, has already invested thirty-five million dollars ($35,000,000) in real-time metering systems for customers who consume greater than 200 kilowatts.

(d) Real-time pricing integrates information technology into the energy business, and creates new markets for communications, microelectronic controls, and information.

(e) Electricity consumption for air conditioning purposes during peak demand periods significantly contributes to California's electricity shortage vulnerability during summer periods.

(f) It is the intent of the Legislature to promote energy conservation and demand reduction in the State of California.

SEC. 2. (a) On or before March 31, 2003, the State Energy Resources Conservation and Development Commission, in consultation with the Public Utilities Commission, shall report to the Legislature and the Governor regarding the feasibility of implementing real-time pricing, critical peak pricing, and other dynamic pricing tariffs for electricity in California, as strategies which can either reduce peak demand or shift peak demand load to off-peak periods.

(b) The report shall consider all of the following:

(1) How wholesale real-time prices would be calculated and made available to customers.

(2) Options for day-ahead and hour-ahead retail prices.

(3) Options for facilitating customer response to real-time and critical peak prices and managing total customer costs, including, but not limited to, interval metering and communication systems,

consumer-side of the meter notification, and automatic response equipment.

(4) An assessment of the options for a variety of customer classes, including, but not limited to, industrial, commercial, residential, and tenants of a mobilehome park, apartment building, or similar residential complex, that receive electricity from a master-meter customer through a submetered system.

(5) Estimates of potential peak load reductions, including the shifting of peak load demand to off-peak periods.

(6) Options for incorporating demand responsiveness into the wholesale competitive market and operations of the California Independent System Operator.

(7) Options for ensuring customer protection under a real-time, critical peak, and other dynamic pricing scenarios, including identifying potentially disadvantaged groups who may be disproportionately vulnerable to the impact of volatile prices and suggestions for effective safeguards for those customers.

SEC. 3. Section 454.5 is added to the Public Utilities Code, to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section.

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement related financial product, including support

and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Section 399.6, to cover the above-market costs for new renewable energy resources.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reductions products.

(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement

plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall

establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and

decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. 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 determine the feasibility of dynamic pricing as soon as possible, and in order that the Public Utilities Commission may undertake the review and approval of each electric corporation's

procurement plan at the earliest possible time in a manner consistent with this act, it is necessary that this act take effect immediately.

CHAPTER 851

An act to amend Section 530.6 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. Section 530.6 of the Penal Code is amended 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, or the court, on its own motion or upon application of the prosecuting attorney, may move, for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, 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 or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the

victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(d) A court that has issued 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.

(e) The Judicial Council of California shall develop a form for use in issuing an order pursuant to this section.

CHAPTER 852

An act to add Chapter 12 (commencing with Section 115340) to Part 9 of Division 104 of the Health and Safety Code, relating to health.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

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

(a) Radioactive iodine can cause cancer when ingested in very small amounts.

(b) Radioactive iodine can be leaked, or released into the atmosphere, as a result of nuclear powerplant accidents, threatening the health and safety of those exposed.

(c) Potassium iodide is an effective and inexpensive drug, approved by the Food and Drug Administration to mitigate and prevent the harmful effects of radioactive iodine.

(d) It is the intent of the Legislature to ensure that residents, workers, and visitors in the state-designated emergency planning zone around each operational nuclear powerplant in California are provided with potassium iodide tablets, in the event of a nuclear emergency.

SEC. 2. Chapter 12 (commencing with Section 115340) is added to Part 9 of Division 104 of the Health and Safety Code, to read:

CHAPTER 12. PROTECTION FROM EFFECTS OF EXPOSURE TO RADIOACTIVE IODINE IN NUCLEAR EMERGENCIES

115340. (a) The State Department of Health Services shall work with the KI working group, which is coordinated by the Office of Emergency Services, to establish and implement a program to oversee the distribution of potassium iodide (KI) tablets to all persons who reside, work, visit, or attend school within the state-designated emergency planning zone of an operational nuclear powerplant, in order to provide protection to members of the public in the event of an accident causing leakage of radioactive iodine, pursuant to the offer of the Nuclear Regulatory Commission to provide the state with a supply of KI tablets.

(b) In order to implement the program required by subdivision (a), the department, in consultation with local health departments and local emergency management agencies, shall develop and implement a plan for both of the following:

(1) The prompt distribution of the tablets to persons at risk in the event of a nuclear emergency, in a manner to best protect the public health.

(2) The dissemination of instructions on the use of the tablets, including the possible need for medical consultation, if indicated.

(c) The department shall work with the KI working group described in subdivision (a) to develop and implement a plan and method for the efficient storage of KI tablets.

(d) The department, in consultation with the KI working group, shall evaluate areas in the state, other than those described in subdivision (a), in which leakage of radioactive iodine is possible, and evaluate the need to store quantities of KI tablets in those areas.

(e) No later than July 1, 2004, the department shall submit a plan to the Governor and the Legislature on the establishment and implementation of the program required pursuant to subdivisions (a) and (b), and on the development and implementation of the plan and method required in subdivision (c). No later than July 1, 2004, the department shall also submit to the Governor and the Legislature the evaluation required in subdivision (d).

115342. This chapter shall be implemented only to the extent that funds are appropriated for the purposes of this chapter in the annual Budget Act or another measure.

CHAPTER 853

An act to amend Sections 56.05, 56.101, 56.11, and 56.12 of, and to add Section 56.102 to, the Civil Code, relating to medical information.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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'' does 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, pharmaceutical company, 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) ''Pharmaceutical company'' means any company or business, or an agent or representative thereof, that manufactures, sells, or distributes pharmaceuticals, medications, or prescription drugs. ''Pharmaceutical company'' does not include a pharmaceutical benefits manager, as included in subdivision (c), or a provider of health care.

(i) ''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'' does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.

SEC. 2. Section 56.101 of the Civil Code is amended to read:

56.101. Every provider of health care, health care service plan, pharmaceutical company, 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, pharmaceutical company, 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. 3. Section 56.102 is added to the Civil Code, to read:

56.102. (a) A pharmaceutical company may not require a patient, as a condition of receiving pharmaceuticals, medications, or prescription drugs, to sign an authorization, release, consent, or waiver that would permit the disclosure of medical information that otherwise may not be disclosed under Section 56.10 or any other provision of law, unless the disclosure is for one of the following purposes:

(1) Enrollment of the patient in a patient assistance program or prescription drug discount program.

(2) Enrollment of the patient in a clinical research project.

(3) Prioritization of distribution to the patient of a prescription medicine in limited supply in the United States.

(4) Response to an inquiry from the patient communicated in writing, by telephone, or by electronic mail.

(b) Except as provided in subdivision (a) or Section 56.10, a pharmaceutical company may not disclose medical information

provided to it without first obtaining a valid authorization from the patient.

SEC. 4. 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, health care service plan, pharmaceutical company, 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, pharmaceutical company, 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, health care service plan, pharmaceutical company, or 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, pharmaceutical company, 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, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

SEC. 5. Section 56.12 of the Civil Code is amended to read:

56.12. Upon demand by the patient or the person who signed an authorization, a provider of health care, health care service plan, pharmaceutical company, or contractor possessing the authorization shall furnish a true copy thereof.

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 854

An act to add Article 9 (commencing with Section 4750) to Chapter 10 of Part 2 of Division 4 of the Public Resources Code, relating to sudden oak death, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. Article 9 (commencing with Section 4750) is added to Chapter 10 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 9. Sudden Oak Death Management Act of 2002

4750. This article shall be known and may be cited as the Sudden Oak Death Management Act of 2002.

4750.1. The Legislature finds and declares all of the following:

(a) The need for expanding the current efforts to slow the spread of sudden oak death grows more urgent with the discovery of each new plant host and the spread of the disease to an increasing number of counties.

(b) The cause of sudden oak death, a fungus known as Phytophthora ramorum, has only recently been discovered. There is currently no known cure for trees and other plant species infected with this fungus, leaving removal as the only current option. Although costly, infected trees and other plant species can be removed.

(c) Ten counties have now confirmed the presence of sudden oak death in several trees and other plant species. The counties are Marin, Sonoma, Monterey, Mendocino, Napa, San Mateo, Santa Cruz, Santa Clara, Solano, and Alameda. Trees and other plant species in several other counties are potentially affected with sudden oak death, but are not yet confirmed.

(d) In addition to the tens of thousands of tanoaks (Lithocarpus densiflorus), coast live oaks (Quercus agrifolia), and black oaks (Quercus kelloggii) that are currently dying of Phytophthora ramorum, the fungus has also been confirmed in Shreve's oak (Quercus parvula, var. shrevei), rhododendron (Rhododendron species, except azaleas), California bay laurel (Umbellularia californica), madrone (Arbutus menziesii), huckleberry (Vaccinium ovatum), arrowwood (Viburnum x bodnantense), bigleaf maple (Acer macrophyllum), California buckeye (Aesculus californica), California coffeeberry (Rhamnus californica), a honeysuckle (Lonicera hispidula), manzanita (Arctostaphylos manzanita), and Toyon or Christmas berry (Heteromeles arbutifolia). Several more species are suspected of infestation.

(e) Research is urgently needed to determine the range of host trees and other plants that may be infected, to help develop sufficient control strategies.

(f) There is now a significant danger that sudden oak death may spread to other regions of California, other states, or countries. Currently, federal agencies, California, Oregon, Canada, and South Korea have imposed quarantines in an attempt to halt the spread of the fungus.

(g) The effect of the spread of this devastating disease is potentially disastrous: massive die-offs of oak trees covering thousands of acres; a serious increase in fire threats in areas that include densely populated areas; a dramatic change in forest cover and ecosystems with a devastating effect on California's wildlife; and severe consequences to California's economy, including threats to tourism and the continued sale of nursery stock and forest products.

(h) Therefore, it is the intent of the Legislature to provide continuing funding to the Resources Agency for its program to combat sudden oak

death. Funding is necessary to address this situation quickly and adequately, and to ensure that necessary actions are taken to protect the public safety and the environment. It is the intent of the Legislature that the Department of Forestry and Fire Protection, with recommendations from the California Oak Mortality Task Force, administer this program.

4750.2. As used in this article, ''task force'' means the California Oak Mortality Task Force.

4750.3. It is hereby declared to be the policy of the state, to the extent feasible, to stop the spread of sudden oak death and conserve oak trees and other plant species affected by the disease. The purpose of this article is to accomplish all of the following:

(a) Prevent the introduction and spread within this state of sudden oak death caused by Phytophthora ramorum.

(b) Reduce or eliminate the loss of oak trees and other plant species infected with Phytophthora ramorum.

(c) Encourage the coordination of efforts between federal, state, and local agencies and organizations to effectively allocate resources to manage Phytophthora ramorum.

4750.4. (a) (1) The department shall implement a program to detect, remove, and treat, if possible, trees infected with Phytophthora ramorum. This program shall encourage tree management and replanting in urban and other infected areas and assist counties in seeking innovative solutions to problems caused by Phytophthora ramorum.

(2) The department is primarily responsible for carrying out the intent of this article in cooperation with the task force and other private and public entities or persons and appropriate local, state, and federal agencies.

(b) (1) The department shall cooperate with those agencies of the federal government that have powers and duties concerning forestry, and shall perform all actions necessary to secure for this state the benefits of federal forestry programs.

(2) To facilitate the implementation of this article, the director may enter into agreements and contracts with any public or private entity, including any local agency, that has forestry related jurisdictional responsibilities. The director may consult with those entities and agencies when carrying out the objectives of this article.

(c) The director shall take all necessary steps to prevent or retard the introduction, establishment, and spread of Phytophthora ramorum.

(d) The department and the Department of Food and Agriculture shall cooperate in setting quarantine boundary lines, if necessary, and in enforcing the provisions relating to plant quarantine and pest control in Division 4 (commencing with Section 5001) of the Food and

Agricultural Code if a quarantine is established with regard to Phytophthora ramorum.

4750.5. (a) The department shall provide information and technical assistance to cities, counties, districts, regional entities, homeowner neighborhood groups, and nonprofit organizations on Phytophthora ramorum.

(b) The department and any other state agency may assist local tree maintenance programs by loaning surplus equipment for regional and local urban forestry. Eligible programs shall include, but are not limited to, urban tree care by nonprofit organizations.

4750.6. The director, with advice from the task force, may enter into contracts to provide assistance for project costs associated with the implementation of this article. Eligible projects shall include all of the following:

(a) Infected tree detection, including coordination of local agency efforts and citizen involvement.

(b) Funding for seedlings, tree stock, and replanting.

(c) Other categories of projects recommended by the task force and approved by the director.

4750.7. (a) (1) The Department of Forestry and Fire Protection shall expend funds, subject to appropriation in the Budget Act of 2002, on sudden oak death management activities pursuant to this section. The department shall take into account the recommendations of the task force for the expenditure of the funds.

(2) The department shall expend the funds appropriated pursuant to this subdivision to take various actions to control the spread of Phytophthora ramorum, to find effective treatments to prevent or eliminate sudden oak death, and to assist state and local agencies and private property owners to perform, identify, remove, and appropriately dispose of trees and plants that have become infected or expired due to sudden oak death.

(3) (A) Of the amount to be expended pursuant to this subdivision, the department shall expend the amount of funds it deems necessary on sudden oak death monitoring including, but not limited to, open-space surveys, roadside surveys, aerial surveys, monitoring technique workshops, development of baseline information on the distribution, condition, and mortality rates of oaks in California, and maintaining an up-to-date geographic information system database.

(B) Of the amount to be expended pursuant to this subdivision, the department shall expend not less than seven hundred thousand dollars ($700,000) on sudden oak death management activities pursuant to contracts with counties, which may include, but need not be limited to, hazard tree assessment, contracts with counties for hazard tree removal pursuant to the process established by clause (i), biomass utilization,

assessment and management of restoration and mitigation options, establishment and operation of demonstration projects, including green waste treatment facilities, and grants to counties for oak tree restoration pursuant to the process established by clause (ii).

(i) The department shall utilize a portion of the funds to be expended pursuant to this subparagraph to contract with affected counties for the removal of trees that have died or are dying as a result of sudden oak death. An affected county may apply to the department for a contract, and shall provide the department with an action plan for the removal and disposition of affected trees within its jurisdiction. The department shall approve or deny an affected county's action plan in a timely manner. If the department approves the action plan of an affected county, the department may enter into a contract with that county. The department shall consider the recommendation of the task force prior to approving or denying any county action plan and prior to entering into any contract under this clause. Any action plan approved by the board prior to January 1, 2003, is deemed sufficient to comply with this section.

(ii) The department shall utilize a portion of the funds to be expended pursuant to this subparagraph to contract with affected counties for activities designed to restore oak trees in areas that have been affected by sudden oak death. An affected county may apply to the department for these funds, and provide the department with an action plan for the restoration of affected trees within its jurisdiction. The department shall approve or deny an affected county's action plan in a timely manner. If the department approves the action plan of an affected county, the department may enter into a contract with that county. The department shall consider the recommendations of the task force prior to approving or denying any county action plan and prior to entering into a contract under this clause. The department may reallocate to other sudden oak management activities authorized under this section any amount allocated under this subdivision and not expended within one year after the date it was originally allocated.

(C) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary on research activities, including, but not limited to, research on forest pathology and Phytophthora ecology, forest insects associated with oak decline, urban forestry and arboriculture, forest ecology, fire management and silviculture, genetic resistance, ecosystem impacts, and landscape ecology, epidemiology, and monitoring techniques.

(D) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary on education activities, including, but not limited to, support for two regional education project coordinators, one public information officer, Internet Web site design and maintenance training, and development and

distribution of educational materials on sudden oak death for homeowners, arborists, urban foresters, park managers, public works personnel, utility crews, recreationists, nursery workers, landscapers, naturalists, and firefighting personnel.

(E) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary on fire protection and prevention activities, including, but not limited to, assessing fire risk in heavily impacted areas, inspecting property to encourage increased clearing of vegetation in heavily infested areas and to mitigate the fire risk, producing and distributing safety information for firefighters working in areas affected by sudden oak death, and treating vegetation to prevent fire.

(F) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary to fund administrative activities necessary to oversee the activities listed in subparagraphs (A) to (E), inclusive, including, but not limited to, an overall statewide task force coordinator, miscellaneous expenses associated with the operation of the task force, and staff of the department to carry out contract preparation, administration, and fiscal audits of contract expenditures.

(b) Of the amount to be expended under this section, the department may allocate funds to the Department of Food and Agriculture for regulatory activities, including, but not limited to, nursery surveys and other regulatory enforcement activities performed by agricultural commissioners, diagnostic services, and public agency coordination efforts. Of the amount allocated to be expended under this subdivision, the department may expend the amount of funds it deems necessary to fund administrative activities necessary to oversee the activities listed in this subdivision.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide funding, at the earliest possible time, to prevent, control, and manage the rapidly spreading condition known as ''sudden oak death,'' it is necessary that this act take effect immediately.

CHAPTER 855

An act to add Section 8593.4 to the Government Code, relating to emergency systems.

[Approved by Governor September 25, 2002. Filed with
Secretary of State September 25, 2002.]

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

SECTION 1. Section 8593.4 is added to the Government Code, to read:

8593.4. (a) The Office of Emergency Services shall conduct a study of the emergency notification systems at California television and radio broadcast stations to determine the ability of these stations to notify the public of emergency situations 24 hours a day.

(b) The office shall report its findings and any recommendations for improving the system to the Legislature no later than July 1, 2003.

CHAPTER 856

An act to add Section 3048 to the Family Code, relating to child custody.

[Approved by Governor September 25, 2002. Filed with
Secretary of State September 25, 2002.]

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

SECTION 1. This act shall be known and may be cited as the Synclair-Cannon Child Abduction Prevention Act of 2002.

SEC. 2. Section 3048 is added to the Family Code, to read:

3048. (a) Notwithstanding any other provision of law, in any proceeding to determine child custody or visitation with a child, every custody or visitation order shall contain all of the following:

(1) The basis for the court's exercise of jurisdiction.

(2) The manner in which notice and opportunity to be heard were given.

(3) A clear description of the custody and visitation rights of each party.

(4) A provision stating that a violation of the order may subject the party in violation to civil or criminal penalties, or both.

(5) Identification of the country of habitual residence of the child or children.

(b) (1) In cases in which the court becomes aware of facts which may indicate that there is a risk of abduction of a child, the court shall, either on its own motion or at the request of a party, determine whether measures are needed to prevent the abduction of the child by one parent.

To make that determination, the court shall consider the risk of abduction of the child, obstacles to location, recovery, and return if the child is abducted, and potential harm to the child if he or she is abducted. To determine whether there is a risk of abduction, the court shall consider the following factors:

(A) Whether a party has previously taken, enticed away, kept, withheld, or concealed a child in violation of the right of custody or of visitation of a person, regardless of whether the party acted in compliance with Section 278.7 of the Penal Code or not.

(B) Whether a party has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of the right of custody or of visitation of a person.

(C) Whether a party lacks strong ties to this state.

(D) Whether a party has strong familial, emotional, or cultural ties to another state or country, including foreign citizenship. This factor shall be considered only if evidence exists in support of another factor specified in this section.

(E) Whether a party has no financial reason to stay in this state, including whether the party is unemployed, is able to work anywhere, or is financially independent.

(F) Whether a party has engaged in planning activities that would facilitate the removal of a child from the state, including quitting a job, selling his or her primary residence, terminating a lease, closing a bank account, liquidating other assets, hiding or destroying documents, applying for a passport, or applying to obtain a birth certificate or school or medical records.

(G) Whether a party has a history of domestic violence, lack of parental cooperation, or child abuse.

(H) Whether a party has a criminal record.

(2) If the court makes a finding that there is a need for preventative measures after considering the factors listed in paragraph (1), the court shall consider taking one or more of the following measures to prevent the abduction of the child:

(A) Ordering supervised visitation.

(B) Requiring a parent to post a bond in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to offset the cost of recovery of the child in the event there is an abduction.

(C) Restricting the right of the custodial or noncustodial parent to remove the child from the county, the state, or the country.

(D) Restricting the right of the custodial parent to relocate with the child, unless the custodial parent provides advance notice to, and obtains the written agreement of, the noncustodial parent, or obtains the approval of the court, before relocating with the child.

(E) Requiring the surrender of passports and other travel documents.

(F) Prohibiting a parent from applying for a new or replacement passport for the child.

(G) Requiring a parent to notify a relevant foreign consulate or embassy of passport restrictions and to provide the court with proof of that notification.

(H) Requiring a party to register a California order in another state as a prerequisite to allowing a child to travel to that state for visits, or to obtain an order from another country containing terms identical to the custody and visitation order issued in the United States (recognizing that these orders may be modified or enforced pursuant to the laws of the other country), as a prerequisite to allowing a child to travel to that county for visits.

(I) Obtaining assurances that a party will return from foreign visits by requiring the traveling parent to provide the court or the other parent or guardian with any of the following:

(i) The travel itinerary of the child.

(ii) Copies of round trip airline tickets.

(iii) A list of addresses and telephone numbers where the child can be reached at all times.

(iv) An open airline ticket for the left-behind parent in case the child is not returned.

(J) Including provisions in the custody order to facilitate use of the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400)) and the Hague Convention on the Civil Aspects of International Child Abduction (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as identifying California as the home state of the child or otherwise defining the basis for the California court's exercise of jurisdiction under Part 3 (commencing with Section 3400), identifying the United States as the country of habitual residence of the child pursuant to the Hague Convention, defining custody rights pursuant to the Hague Convention, obtaining the express agreement of the parents that the United States is the country of habitual residence of the child, or that California or the United States is the most appropriate forum for addressing custody and visitation orders.

(K) Authorizing the assistance of law enforcement.

(3) If the court imposes any or all of the conditions listed in paragraph (2), those conditions shall be specifically noted on the minute order of the court proceedings.

(4) If the court determines there is a risk of abduction that is sufficient to warrant the application of one or more of the prevention measures authorized by this section, the court shall inform the parties of the telephone number and address of the Child Abduction Unit in the office

of the district attorney in the county where the custody or visitation order is being entered.

(c) The Judicial Council shall make the changes to its child custody order forms that are necessary for the implementation of subdivision (b). This subdivision shall become operative on July 1, 2003.

CHAPTER 857

An act to add Sections 102778 and 103692 to the Health and Safety Code, relating to death registration.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. Section 102778 is added to the Health and Safety Code, to read:

102778. (a) On or before January 1, 2005, the department shall implement an Internet-based electronic death registration system for the creation, storage, and transfer of death registration information.

(b) The electronic death registration system implemented pursuant to this section shall protect the proper use of the death registration information created, stored, and transferred within the system.

(c) The electronic death registration system that is implemented pursuant to this section shall be subject to any limitation placed on the accessibility and release of personally identifying information contained in those death records by any other provision of law or subsequently enacted legislation.

SEC. 2. Section 103692 is added to the Health and Safety Code, to read:

103692. (a) (1) Commencing January 1, 2003, in addition to the fees prescribed by Section 103065 and by Sections 103675 to 103685, inclusive, an applicant for a permit for the disposition of human remains shall pay a fee of six dollars ($6) to the local registrar of births and deaths.

(2) The fee imposed by paragraph (1) shall remain in effect until January 1, 2005, and as of that date, shall be reduced to four dollars ($4).

(3) The fee established by this subdivision shall be exempt from any adjustment made pursuant to Section 100430.

(b) Notwithstanding any other provision of law, the local registrar of births and deaths shall pay to the State Registrar, pursuant to Section 103690, the fees collected pursuant to subdivision (a).

(c) Funds collected pursuant to subdivision (a), upon appropriation by the Legislature, shall be used by the State Registrar to implement and maintain the electronic death registration system required by Section 102778.

SEC. 3. In order to implement this act, the State Department of Health Services may contract, to the extent permitted by Section 19130 of the Government Code, with public or private entities. Any project, contract, or contract amendment to implement this act shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Division 3 (commencing with Section 11000) of Title 2 of the Government Code, or any policy, procedure, or regulation authorized by those provisions.

CHAPTER 858

An act to add Section 11166.01 to the Penal Code, relating to child abuse.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. Section 11166.01 is added to the Penal Code, to read:

11166.01. Any supervisor or administrator who violates paragraph (1) of subdivision (g) of Section 11166 is guilty of an infraction punishable by a fine not to exceed five thousand dollars ($5,000).

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 859

An act to amend Sections 11550, 11552, 12800, and 12803 of, to add Section 12813 to, and to add Part 8.5 (commencing with Section 15550) to Division 3 of Title 2 of, the Government Code, to amend Sections 50

and 1141 of, and to add Sections 18.5 and 19.5 to, the Labor Code, and to amend Section 301 of the Unemployment Insurance Code, relating to governmental reorganization.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. It is in the public interest to create a Labor and Workforce Development Agency, and to appoint a secretary and other officers of this agency, because the creation of this agency, appointment of these officers, and the corresponding reorganization of other agencies, will do all of the following:

(a) Simplify, strengthen, and improve the operation and management of programs that protect and provide services to California's workers and employers.

(b) Eliminate duplication, achieve cost efficiencies, and promote accountability and program access.

(c) Allow the state to marshal its resources to systematically match worker training programs with regional labor market needs to create skilled, middle-class jobs that offer a secure future to Californians.

(d) Create a primary point of accountability for the administration and the Legislature to measure the success and the needs of the workforce investment system.

(e) Ensure that there is a cabinet-level voice for workforce-related issues raised for the Governor's consideration and decision.

(f) More closely coordinate enforcement activities so the Employment Development Department can capture lost revenue from the underground economy while the Department of Industrial Relations protects workers exploited in the underground economy.

(g) Coordinate and manage information and data on the workforce and economy with a partnership between the Department of Industrial Relations Division of Labor Statistics and Research and the Employment Development Department Labor Market Information Division.

(h) Build on the successful One-Stop Taxpayer Service Centers operated by the Employment Development Department, the Franchise Tax Board, and the Board of Equalization by adding services for employers and workers, including information on workers' compensation, labor standards, safe working conditions, and job training opportunities.

(i) Consolidate service points throughout California for the Employment Development Department, Department of Industrial Relations, and the Agricultural Labor Relations Board.

(j) Coordinate the apprenticeship programs in the Department of Industrial Relations with the employment and training programs at the Employment Development Department to meet the growing need and demand for skilled trade and craft workers.

(k) Strengthen protection for sick or injured California workers by closer cooperation between the disability insurance program at the Employment Development Department and the workers' compensation program at the Department of Industrial Relations.

SEC. 2. (a) It is the intent of the Legislature in enacting this act that the reorganization plan provided for in this act does not transfer any functions to or from the Agricultural Labor Relations Board, the California Workforce Investment Board, California Apprenticeship Council, California Occupational Safety and Health Appeals Board, Occupational Safety and Health Standards Board, Commission on Health and Safety and Workers' Compensation, Industrial Medical Council, Industrial Welfare Commission, Workers' Compensation Appeals Board, State Compensation Insurance Fund, Employment Development Department, California Unemployment Insurance Appeals Board, and Employment Training Panel.

(b) It is the intent of the Legislature in enacting this act that, in order to effectuate the reorganization plan provided for in this act, and pursuant to subdivisions (c), (d), and (e) of Section 12080.3 of the Government Code, all of the following related to any governmental entity that become a part of the Labor and Workforce Development Agency as a result of this plan shall be transferred to, and be under the jurisdiction of, the Labor and Workforce Development Agency:

(1) State civil service employees.

(2) Personnel records and property.

(3) Unexpended balances of appropriations and of other funds available for use.

SEC. 3. Section 11550 of the Government Code is amended to read:

11550. Effective January 1, 1988, an annual salary of ninety-one thousand fifty-four dollars ($91,054) shall be paid to each of the following:

(a) Director of Finance.

(b) Secretary of Business, Transportation and Housing.

(c) Secretary of Resources.

(d) Secretary of Health and Human Services.

(e) Secretary of State and Consumer Services.

(f) Commissioner of the California Highway Patrol.

(g) Secretary of the Youth and Adult Correctional Agency.

(h) Secretary of Food and Agriculture.

(i) Secretary of Technology, Trade, and Commerce.

(j) Secretary of Veterans Affairs.

(k) Secretary of Labor and Workforce Development.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 4. Section 11552 of the Government Code is amended to read:

11552. Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(a) Commissioner of Financial Institutions.
(b) Commissioner of Corporations.
(c) Insurance Commissioner.
(d) Director of Transportation.
(e) Real Estate Commissioner.
(f) Director of Social Services.
(g) Director of Water Resources.
(h) Director of Corrections.
(i) Director of General Services.
(j) Director of Motor Vehicles.
(k) Director of the Youth Authority.
(*l*) Executive Officer of the Franchise Tax Board.
(m) Director of Employment Development.
(n) Director of Alcoholic Beverage Control.
(o) Director of Housing and Community Development.
(p) Director of Alcohol and Drug Abuse.
(q) Director of the Office of Statewide Health Planning and Development.
(r) Director of the Department of Personnel Administration.
(s) Chairperson and Member of the Board of Equalization.
(t) Secretary of Technology, Trade, and Commerce.
(u) State Director of Health Services.
(v) Director of Mental Health.
(w) Director of Developmental Services.
(x) State Public Defender.
(y) Director of the California State Lottery.
(z) Director of Fish and Game.
(aa) Director of Parks and Recreation.
(ab) Director of Rehabilitation.
(ac) Director of Veterans Affairs.
(ad) Director of Consumer Affairs.
(ae) Director of Forestry and Fire Protection.
(af) The Inspector General pursuant to Section 6125 of the Penal Code.

(ag) Director of Child Support Services.

(ah) Director of Industrial Relations.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 5. Section 12800 of the Government Code is amended to read:

12800. There are in the state government the following agencies: State and Consumer Services; Business, Transportation and Housing; California Environmental Protection; California Health and Human Services; Labor and Workforce Development; Resources; Technology, Trade, and Commerce; and Youth and Adult Correctional.

Whenever the term ''Agriculture and Services Agency'' appears in any law, it means the ''State and Consumer Services Agency,'' and whenever the term ''Secretary of Agriculture and Services Agency'' appears in any law, it means the ''Secretary of State and Consumer Services.''

Whenever the term ''Business and Transportation Agency'' appears in any law, it means the ''Business, Transportation and Housing Agency,'' and whenever the term ''Secretary of the Business and Transportation Agency'' appears in any law, it means the ''Secretary of Business, Transportation and Housing.''

Whenever the term ''Health and Welfare Agency'' appears in any law, it means the ''California Health and Human Services Agency,'' and whenever the term ''Secretary of the Health and Welfare Agency'' appears in any law, it means the ''Secretary of California Health and Human Services.''

SEC. 6. Section 12803 of the Government Code is amended to read:

12803. (a) The California Health and Human Services Agency consists of the following departments: Health Services; Mental Health; Developmental Services; Social Services; Alcohol and Drug Abuse; Aging; Rehabilitation; and Community Services and Development.

(b) The agency also includes the Office of Statewide Health Planning and Development and the State Council on Developmental Disabilities.

(c) The Department of Child Support Services is hereby created within the agency commencing January 1, 2000, and shall be the single organizational unit designated as the state's Title IV-D agency with the responsibility for administering the state plan and providing services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations as required by Section 654 of Title 42 of the United States Code. State plan functions shall be performed by other agencies as required by law, by delegation of the department, or by cooperative agreements.

SEC. 7. Section 12813 is added to the Government Code, to read:

12813. The Labor and Workforce Development Agency consists of the following:

(a) Office of the Secretary of Labor and Workforce Development.

(b) Agricultural Labor Relations Board.

(c) California Workforce Investment Board.

(d) Department of Industrial Relations, including the California Apprenticeship Council, California Occupational Safety and Health Appeals Board, California Occupational Safety and Health Standards Board, Commission on Health and Safety and Workers' Compensation, Industrial Medical Council, Industrial Welfare Commission, State Compensation Insurance Fund, and Workers' Compensation Appeals Board.

(e) Employment Development Department, including the California Unemployment Insurance Appeals Board, and the Employment Training Panel.

SEC. 8. Part 8.5 (commencing with Section 15550) is added to Division 3 of Title 2 of the Government Code, to read:

PART 8.5. LABOR AND WORKFORCE DEVELOPMENT AGENCY

CHAPTER 1. GENERAL PROVISIONS

15550. As used in this part, ''agency'' and ''secretary'' refer to the Labor and Workforce Development Agency and the Secretary of Labor and Workforce Development, respectively, unless the context otherwise requires.

15551. The Labor and Workforce Development Agency in state government is under the supervision of an executive officer known as the Secretary of Labor and Workforce Development. The secretary shall be appointed by the Governor, subject to confirmation by the Senate, and shall hold office at the pleasure of the Governor.

15552. The Governor may appoint two deputies, subject to confirmation by the Senate, to assist the secretary. These officers shall serve at the pleasure of the secretary.

15553. Any entity within the Labor and Workforce Development Agency may share information for research, enforcement, or training with any other entity in the agency without a confidentiality agreement, except as the secretary may require.

CHAPTER 2. POWERS AND DUTIES

15554. The secretary has the power of general supervision over, and is directly responsible to the Governor for, the operations of each department, office, and unit within the agency. The secretary may issue those orders as the secretary deems appropriate to exercise any power or jurisdiction, or to assume or discharge any responsibility, or to carry out or effect any of the purposes vested by law in any department in the agency. However, except with respect to the Workforce Investment Board, nothing in this part authorizes the secretary to exercise any power or jurisdiction, or assume or discharge any responsibility related to the administration of the state Compensation Insurance Fund, or to investigation, adjudication, rulemaking, or legal representation that is vested by other provisions of law exclusively in any board, commission, council, or other appointive multimember body that is organizationally located within the Labor and Workforce Development Agency or within any of its departments.

15555. The secretary shall advise the Governor on, and assist the Governor in, establishing major policy and program matters affecting each department, office, or other unit within the agency, and shall serve as the principal communication link for the effective transmission of policy problems and decisions between the Governor and each department, office, or other unit.

15556. The secretary shall exercise the authority vested in the Governor in respect to the functions of each department, office, or other unit within the agency, including the adjudication of conflicts between or among the departments, offices, or other units, and shall represent the Governor in coordinating the activities of each department, office, or other unit within the agency with those of other agencies, whether federal, state, or local.

15557. The secretary shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. The secretary shall review and approve the proposed budget of each department, office, or other unit. The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other unit. The secretary shall review the operations and evaluate the performance at appropriate intervals of each department, office, or other unit, and shall seek continually to improve the organizational structure, the operating policies, and the management information systems of each department, office, or other unit.

15558. Other duties of the secretary include, but are not limited to, reviewing personnel management, acting as public advisor and providing public information in connection with all functions of the

agency, overseeing the implementation of the workforce investment system to ensure that it better responds to the employment, training, and education needs of its customers, and consolidating service points and One-Stop Taxpayer Service Centers for employers and workers by adding services that are within the agency's authority.

15559. The secretary shall develop and report to the Governor on legislative, budgetary, and administrative programs to accomplish comprehensive, long-range, coordinated planning and policy formulation in the matters of public interest related to the agency. To accomplish this end, the secretary may hold public hearings, consult with and use the services and cooperation of other state agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work.

15560. For the purpose of administration, the secretary shall organize the agency, subject to the approval of the Governor, in the manner he or she deems necessary to segregate and conduct the work of the agency. The secretary may require any department, office, or unit to assist in enforcing any law within the jurisdiction of the agency, except as provided in Section 15554.

15561. The secretary and any other officer or employee within the agency designated in writing by the secretary shall have the power of a head of a department pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1.

15562. Whenever a power is granted to the secretary, the power may be exercised by an officer or employee within the agency as designated in writing by the secretary.

SEC. 9. Section 18.5 is added to the Labor Code, to read:

18.5. "Agency" means the Labor and Workforce Development Agency.

SEC. 10. Section 19.5 is added to the Labor Code, to read:

19.5. "Secretary" means the Secretary of Labor and Workforce Development.

SEC. 11. Section 50 of the Labor Code is amended to read:

50. There is in the Labor and Workforce Development Agency the Department of Industrial Relations.

SEC. 12. Section 1141 of the Labor Code is amended to read:

1141. (a) There is hereby created in the Labor and Workforce Development Agency the Agricultural Labor Relations Board, which shall consist of five members.

(b) The members of the board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members shall be five years, and the terms shall be staggered at one-year intervals. Upon the initial appointment, one member shall be appointed for a term ending January 1, 1977, one member shall be appointed for

a term ending January 1, 1978, one member shall be appointed for a term ending January 1, 1979, one member shall be appointed for a term ending January 1, 1980, and one member shall be appointed for a term ending January 1, 1981. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired term of the member to whose term he or she is succeeding. The Governor shall designate one member to serve as chairperson of the board. Any member of the board may be removed by the Governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

SEC. 13. Section 301 of the Unemployment Insurance Code is amended to read:

301. There is in the Labor and Workforce Development Agency the Employment Development Department, which is vested with the duties, purposes, responsibilities, and jurisdiction heretofore exercised by the State Department of Benefit Payments or the California Health and Human Services Agency with respect to job creation activities. The Employment Development Department shall be administered by an executive officer known as the Director of Employment Development who is vested with the duties, purposes, responsibilities, and jurisdiction heretofore exercised by the Director of Benefit Payments with respect to the following functions:

(a) Job creation activities.

(b) Making manual computations and making or denying recomputations of the amount and duration of benefits.

(c) Determination of contribution rates and the administration and collection of contributions, penalties and interest, including but not limited to filing and releasing liens.

(d) Establishment, administration, and transfer of reserve accounts.

(e) Making assessments and the administration of credits and refunds.

(f) Approving elections for coverage or for financing unemployment and disability insurance coverage.

SEC. 14. Notwithstanding Section 11552 of the Government Code, as amended by Section 4 of this act, the person appointed and serving as Director of Industrial Relations as of January 1, 2003, shall retain the annual salary prescribed by Section 11550 of the Government Code, for the duration of his or her term of office.

SEC. 15. (a) Funding for the Labor and Workforce Development Agency shall be achieved through reallocation of existing resources currently allocated to the various entities that would form the agency, except that no funds may be provided by the Agricultural Labor Relations Board.

(b) No new General Fund moneys may be appropriated to implement this act.

CHAPTER 860

An act to amend Section 1785.15 of, and to add Section 1785.15.3 to, the Civil Code, relating to consumer credit.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. 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 credit 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 consumer 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 place a ''security alert'' in your credit report, which will warn anyone who receives information in your credit report that your identity may have been used without your consent and that recipients of your credit report are advised, but not required, to verify your identity prior to issuing credit. The security alert may prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that taking advantage of this right may delay or interfere with the timely approval of any

subsequent request or application you make regarding a new loan, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. If you place a security alert on your credit report, you have a right to obtain a free copy of your credit report at the time the 90-day security alert period expires. A security alert may be requested by calling the following toll-free telephone number: (Insert applicable toll-free telephone number).

You have a right to place a ''security freeze'' on your credit report, which will prohibit a consumer credit reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a specific party or period of time after the freeze is in place. To provide that authorization you must contact the consumer credit reporting agency and provide all of the following:

(1) The personal identification number or password.

(2) Proper identification to verify your identity.

(3) The proper information regarding the third party who is to receive the credit report or the period of time for which the report shall be available.

A consumer credit reporting agency must authorize the release of your credit report no later than three business days after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

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.

If you are a victim of identity theft and provide to a consumer credit reporting agency a copy of a valid police report or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status describing your circumstances, the following shall apply:

(1) You have a right to have any information you list on the report as allegedly fraudulent promptly blocked so that the information cannot be reported. The information will be unblocked only if (A) the information you provide is a material misrepresentation of the facts, (B) you agree that the information is blocked in error, or (C) you knowingly obtained possession of goods, services, or moneys as result of the blocked transactions. If blocked information is unblocked you will be promptly notified.

(2) Beginning July 1, 2003, you have a right to receive, free of charge and upon request, one copy of your credit report each month for up to 12 consecutive months.''

SEC. 2. Section 1785.15.3 is added to the Civil Code, to read:

1785.15.3. (a) In addition to any other rights the consumer may have under this title, every consumer credit reporting agency, after being contacted by telephone, mail, or in person by any consumer who has reason to believe he or she may be a victim of identity theft, shall promptly provide to that consumer a statement, written in a clear and conspicuous manner, describing the statutory rights of victims of identity theft under this title.

(b) Every consumer credit reporting agency shall, upon the receipt from a victim of identity theft of a police report prepared pursuant to Section 530.6 of the Penal Code, or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status regarding the public offenses described in Section 530.5 of the Penal Code, provide the victim, free of charge and upon request, with up to 12 copies of his or her file during a consecutive 12-month period, not to exceed one copy per month, following the date of the police report. Notwithstanding any other provision of this title, the maximum number of free reports a victim of identity theft is entitled to obtain under this title is 12 per year, as provided by this subdivision.

(c) Subdivision (a) does not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or agencies and that does not maintain a permanent database of credit information from which new credit reports are produced.

(d) The provisions of this section shall become effective July 1, 2003.

CHAPTER 861

An act to add Section 502.6 to the Penal Code, relating to payment card theft.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. Section 502.6 is added to the Penal Code, to read:

502.6. (a) Any person who knowingly, willfully, and with the intent to defraud, possesses a scanning device, or who knowingly, willfully, and with intent to defraud, uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card is guilty of a misdemeanor, punishable by a term in a county jail not to exceed one year, or a fine of one thousand dollars ($1,000), or both the imprisonment and fine.

(b) Any person who knowingly, willfully, and with the intent to defraud, possesses a reencoder, or who knowingly, willfully, and with intent to defraud, uses a reencoder to place encoded information on the magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur, without the permission of the authorized user of the payment card from which the information is being reencoded is guilty of a misdemeanor, punishable by a term in a county jail not to exceed one year, or a fine of one thousand dollars ($1,000), or both the imprisonment and fine.

(c) Any scanning device or reencoder described in subdivision (e) owned by the defendant and possessed or used in violation of subdivision (a) or (b) may be seized and be destroyed as contraband by the sheriff of the county in which the scanning device or reencoder was seized.

(d) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in this section or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) As used in this section, the following definitions apply:

(1) ''Scanning device'' means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(2) ''Reencoder'' means an electronic device that places encoded information from the magnetic strip or stripe of a payment card on to the magnetic strip or stripe of a different payment card.

(3) ''Payment card'' means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 862

An act to amend Section 1747.05 of the Civil Code, relating to credit cards.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. Section 1747.05 of the Civil Code is amended to read:

1747.05. (a) No credit card shall be issued except:

(1) In response to an oral or written request or application therefor.

(2) As a renewal of, or in substitution for, an accepted credit card whether that card is issued by the same or a successor card issuer.

(b) A credit card issued in substitution for an accepted credit card may be issued only if the card issuer provides an activation process whereby the cardholder is required to contact the card issuer to activate the credit card prior to the first use of the credit card in a credit transaction.

(c) This section does not prohibit the completion of an overdraft protection advance or recurring-charge transaction that a cardholder has previously authorized on an accepted credit card.

CHAPTER 863

An act to amend the heading of Chapter 1.7 (commencing with Section 15364.71) of Part 6.7 of Division 3 of Title 2 of, to add and repeal Section 15364.80 of, and to repeal the heading of Chapter 1.8 (commencing with Section 15364.80) of Part 6.7 of Division 3 of Title 2 of, the Government Code, relating to international trade.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

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

(a) California has established international trade and investment offices charged with developing the state's exports and promoting job-creating industry investment in the state.

(b) While the State of California has international trade and investment offices in most of the industrialized world, including Western Europe, Eastern Asia, and Latin America, it does not have a significant presence in many of the developing regions of the world, including Eastern Europe and Western and Central Asia.

(c) It is important for California to build linkages in developing regions in order to facilitate trade and commerce with Eastern Europe and Western Asia.

(d) Armenia is a small, but strategically important, country located at a crossroads of Europe and Asia, along the ancient Silk Road.

(e) The United States has sent a substantial amount of aid to Armenia and is currently actively engaged in encouraging and developing manufacturing and trade relations.

(f) Over 120 countries have recognized Armenia as an independent state and over 70 countries have established direct diplomatic relations with Armenia. Armenia is also a member of the United Nations and the Organization for Security and Cooperation in Europe, formerly the Conference on Security and Cooperation in Europe.

(g) Therefore, it is the intent of the Legislature in enacting this act to provide for the establishment of an international trade and investment office in the Republic of Armenia to promote mutually beneficial trade

relations on a pilot basis with developing areas of the world that show emerging market potential.

SEC. 2. The heading of Chapter 1.7 (commencing with Section 15364.71) of Part 6.7 of Division 3 of Title 2 of the Government Code is amended to read:

CHAPTER 1.7. INTERNATIONAL TRADE AND INVESTMENT OFFICES

SEC. 3. The heading of Chapter 1.8 (commencing with Section 15364.80) of Part 6.7 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 4. Section 15364.80 is added to the Government Code, to read:

15364.80. (a) The Governor shall instruct the Secretary of Technology, Trade, and Commerce to establish, on a contract basis, an international trade and investment office in Yerevan, in the Republic of Armenia, to serve the region of Eastern Europe and Western Asia.

(b) The secretary shall report to the Legislature on the success of the international trade and investment office in Yerevan no later than March 1, 2005. The report shall include, but not be limited to, all of the following:

(1) The level of investment and tourism directed to California as a direct result of the international trade and investment office.

(2) The level of imports sent to California as a direct result of the international trade and investment office.

(3) The level of California exports sent to the region of Eastern Europe and Western Asia as a direct result of the international trade and investment office.

(4) A cost-benefit analysis of the international trade and investment office.

(5) An analysis of the costs and outcomes of the international trade and investment office compared with those of the other international trade and investment offices.

(c) This section shall be implemented only to the extent that funds are available to the Technology, Trade, and Commerce Agency for this purpose from any source, including, but not limited to, federal funding and private donations authorized pursuant to Section 15364.79. Private donations made pursuant to Section 15364.79 and specified for the international trade and investment office in Yerevan shall be deposited in a separate subaccount within the Economic Development and Trade Promotion Account and may be used only for the operation of this office.

(d) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

CHAPTER 864

An act to amend Section 1524 of, and to add Section 1524.3 to, the Penal Code, relating to search warrants.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 25, 2002.]

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

SECTION 1. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court for determination by the court any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described

in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in such a manner as to permit the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

SEC. 1.2. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be

held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee

shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Section 2018 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

SEC. 1.4. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section

1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, a licensed private investigator as defined in Section 7521 of the Business and Professions Code who has done any work for an attorney or has been appointed by a court to assist a defendant in propria persona, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who

appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

SEC. 1.6. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, a licensed private investigator as defined in Section 7521 of the Business and Professions Code who has done any work for an attorney or has been appointed by a court to assist a defendant in propria persona, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the

special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be

confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Section 2018 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

SEC. 2. Section 1524.3 is added to the Penal Code, to read:

1524.3. (a) A provider of electronic communication service or remote computing service, as used in Chapter 121 (commencing with Section 2701) of Title 18 of the United States Code, shall disclose to a governmental prosecuting or investigating agency the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, and the types of services the subscriber or customer utilized, when the governmental entity is granted

a search warrant pursuant to paragraph (7) of subdivision (a) of Section 1524.

(b) A governmental entity receiving subscriber records or information under this section is not required to provide notice to a subscriber or customer.

(c) A court issuing a search warrant pursuant to paragraph (7) of subdivision (a) of Section 1524, on a motion made promptly by the service provider, may quash or modify the warrant if the information or records requested are unusually voluminous in nature or compliance with the warrant otherwise would cause an undue burden on the provider.

(d) A provider of wire or electronic communication services or a remote computing service, upon the request of a peace officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a search warrant or a request in writing and an affidavit declaring an intent to file a warrant to the provider. Records shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the peace officer.

(e) No cause of action shall be brought against any provider, its officers, employees, or agents for providing information, facilities, or assistance in good faith compliance with a search warrant.

SEC. 3. (a) Section 1.2 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by both this bill and AB 2055. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, and AB 2055 becomes operative first, (2) each bill amends Section 1524 of the Penal Code, (3) SB 1637 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2055, in which case Section 1524 of the Penal Code, as amended by AB 2055, shall remain operative only until the operative date of this bill, at which time Section 1.2 of this bill shall become operative and Sections 1, 1.4, and 1.6 of this bill shall not become operative.

(b) Section 1.4 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by both this bill and SB 1637. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1524 of the Penal Code, (3) AB 2055 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1637, in which case Sections 1, 1.2, and 1.6 of this bill shall not become operative.

(c) Section 1.6 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by this bill, AB 2055, and SB 1637. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 1524 of the Penal Code, and (3) this bill is enacted after AB 2055 and

SB 1637, in which case Section 1524 of the Penal Code, as amended by AB 2055, shall remain operative only until the operative date of this bill, at which time Section 1.6 of this bill shall become operative and Sections 1, 1.2, and 1.4 of this bill shall not become operative.

CHAPTER 865

An act to amend Section 3508 of the Government Code, relating to public employees.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 3508 of the Government Code is amended to read:

3508. (a) The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in these positions or classes of positions to form, join, or participate in employee organizations where it is in the public interest to do so. However, the governing body may not prohibit the right of its employees who are full-time ''peace officers,'' as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of those peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.

(b) (1) This subdivision shall apply only to a county of the seventh class.

(2) For the purposes of this section, no distinction shall be made between a position designated as a peace officer position by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code at the time of the enactment of the 1971 amendments to this section, and a welfare fraud investigator or inspector position designated as a peace officer position by any amendment to that Chapter 4.5 at any time after the enactment of the 1971 amendments to this section.

(3) It is the intent of this subdivision to overrule San Bernardino County Sheriff's Etc. Assn. v. Board of Supervisors (1992) 7 Cal.App.4th 602, 611, with respect to San Bernardino County designating a welfare fraud investigator or inspector as a peace officer under this section.

(c) (1) This subdivision shall apply only to a county of the seventh class and shall not become operative until it is approved by the county board of supervisors by ordinance or resolution.

(2) For the purposes of this section, no distinction shall be made between a position designated as a peace officer position by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code at the time of the enactment of the 1971 amendments to this section, and a probation corrections officer position designated as a peace officer position by any amendment to that Chapter 4.5 at any time after the enactment of the 1971 amendments to this section.

(3) It is the intent of this subdivision to overrule San Bernardino County Sheriff's Etc. Assn. v. Board of Supervisors (1992) 7 Cal.App.4th 602, 611, to the extent that it holds that this section prohibits the County of San Bernardino from designating the classifications of Probation Corrections Officers and Supervising Probation Corrections Officers as peace officers. Those officers shall not be designated as peace officers for purposes of this section unless that action is approved by the county board of supervisors by ordinance or resolution.

(4) Upon approval by the Board of Supervisors of San Bernardino County, this subdivision shall apply to petitions filed in May 2001 by Probation Corrections Officers and Supervising Probation Corrections Officers.

(d) The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section.

SEC. 2. Due to the unique circumstances of the County of San Bernardino because of the court's decision in San Bernardino County Sheriff's Etc. Assn. v. Board of Supervisors (1992) 7 Cal.App.4th 602, 611, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, this legislation is necessarily applicable only to the County of San Bernardino.

CHAPTER 866

An act to amend Sections 78, 123.5, 123.6, 3201.5, 3501, 3742, 4453, 4600.5, 4614, 4702, and 5502 of, and to add Sections 3201.7, 3701.8, 5307.21, and 6354.7 to, the Labor Code, and to amend Section 86 of Chapter 6 of the Statutes of 2002, relating to workers' compensation.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 78 of the Labor Code is amended to read:

78. (a) The commission shall review and approve applications from employers and employee organizations, as well as applications submitted jointly by an employer organization and an employee organization, for grants to assist in establishing effective occupational injury and illness prevention programs. The commission shall establish policies for the evaluation of these applications and shall give priority to applications proposing to target high-risk industries and occupations, including those with high injury or illness rates, and those in which employees are exposed to one or more hazardous substances or conditions or where there is a demonstrated need for research to determine effective strategies for the prevention of occupational illnesses or injuries.

(b) Civil and administrative penalties assessed and collected pursuant to Sections 129.5 and 4628 shall be deposited in the Workers' Compensation Administration Revolving Fund. Moneys in the fund, when appropriated by the Legislature to fund the grants under subdivision (a) and other activities and expenses of the commission set forth in this code, shall be expended by the department, upon approval by the commission.

SEC. 2. Section 123.5 of the Labor Code is amended to read:

123.5. (a) Workers' compensation administrative law judges employed by the administrative director and supervised by the court administrator pursuant to this chapter shall be taken from an eligible list of attorneys licensed to practice law in this state, who have the qualifications prescribed by the State Personnel Board. In establishing eligible lists for this purpose, state civil service examinations shall be conducted in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). Every workers' compensation judge shall maintain membership in the State Bar of California during his or her tenure.

A workers' compensation administrative law judge may not receive his or her salary as a workers' compensation administrative law judge

while any cause before the workers' compensation administrative law judge remains pending and undetermined for 90 days after it has been submitted for decision.

(b) All workers' compensation administrative law judges appointed on or after January 1, 2003, shall be attorneys licensed to practice law in California for five or more years prior to their appointment and shall have experience in workers' compensation law.

SEC. 3. Section 123.6 of the Labor Code, as amended by Chapter 6 of the Statutes of 2002, is amended to read:

123.6. (a) All workers' compensation administrative law judges employed by the administrative director and supervised by the court administrator shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code or to the commentary to the Code of Judicial Ethics made by the California Judges Association.

In consultation with both the court administrator and the Commission on Judicial Performance, the administrative director shall adopt regulations to enforce this section. Existing regulations shall remain in effect until new regulations based on the recommendations of the court administrator and the Commission on Judicial Performance have become effective. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code). The court administrator shall have the authority to enforce the rules adopted by the administrative director.

(b) Honoraria or travel allowed by the court administrator, and not otherwise prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless the court administrator has provided prior approval in writing to the workers' compensation administrative law judge allowing him or her to accept those payments.

SEC. 4. Section 3201.5 of the Labor Code is amended to read:

3201.5. (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics,

surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(2) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(3) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(4) Joint labor management safety committees.

(5) A light-duty, modified job or return-to-work program.

(6) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this subdivision shall be declared null and void.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) or more, or any employer that paid an

annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of two million dollars ($2,000,000) or more.

(3) Employers or groups of employers that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(4) Employers covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of two million dollars ($2,000,000) or more with respect to those employees covered by that wrap-up insurance policy.

(d) Employers and labor representatives who meet the eligibility requirements of this section shall be issued a letter by the administrative director advising each employer and labor representative that, based upon the review of all documents and materials submitted as required by the administrative director, each has met the eligibility requirements of this section.

(e) The premium rate for a policy of insurance issued pursuant to this section shall not be subject to the requirements of Section 11732 or 11732.5 of the Insurance Code.

(f) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the collective bargaining agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a) of Section 3201.5.

(3) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.

(4) The name, address, and telephone number of the contact person of the employer.

(5) Any other information that the administrative director deems necessary to further the purposes of this section.

(g) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(h) Commencing July 1, 1995, and annually thereafter, the Division of Workers' Compensation shall report to the Director of the Department of Industrial Relations the number of collective bargaining agreements received and the number of employees covered by these agreements.

(i) By June 30, 1996, and annually thereafter, the Administrative Director of the Division of Workers' Compensation shall prepare and notify Members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.

(7) Safety history.

(8) The number of workers participating in vocational rehabilitation.

(9) The number of workers participating in light-duty programs.

The division shall have the authority to require those employers and groups of employers listed in subdivision (c) to provide the data listed above.

(j) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (h) and (i) based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis the administrative director shall make available an updated list of

employers and unions entering into collective bargaining agreements containing provisions authorized by this section.

SEC. 5. Section 3201.7 is added to the Labor Code, to read:

3201.7. (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in the aerospace or timber industries and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filled by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeal pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(2) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(3) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(4) Joint labor management safety committees.

(5) A light-duty, modified job or return-to-work program.

(6) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary

disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages of the alternative dispute resolution process. The portion of any agreement that violates this subdivision shall be declared null and void.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) or more, or any employer that paid an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000), in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, which develops or projects annual workers' compensation insurance premiums of two million dollars ($2,000,000) or more.

(3) Employer or groups of employers that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(4) In the aerospace and timber industry, this section shall apply only to an affiliate of a national or international labor organization that has one or more affiliate local unions that negotiated an agreement or agreements pursuant to Section 3201.5 prior to January 1, 2003.

(d) Employers and labor representatives who meet the eligibility requirements of this section shall be issued a letter by the administrative director advising each employer and labor representative that, based upon the review of all documents and materials submitted as required by the administrative director, each has met the eligibility requirements of this section.

(e) The premium rate for a policy of insurance issued pursuant to this section shall not be subject to the requirements of Section 11732 or 11732.5 of the Insurance Code.

(f) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the collective bargaining agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a).

(3) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.

(4) The name, address, and telephone number of the contact person of the employer.

(5) Upon its original application, a plan agreed to between an employer and any affected union prior to the commencement of collective bargaining, that establishes a framework for the implementation of the system to be developed pursuant to paragraph (1) of subdivision (a).

(6) Any other information that the administrative director deems necessary to further the purposes of this section.

(g) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(h) Commencing July 1, 2004, and annually thereafter, the Division of Workers' Compensation shall report to the Director of Industrial Relations the number of collective bargaining agreements received and the number of employees covered by these agreements.

(i) By June 30, 2004, and annually thereafter, the Administrative Director of the Division of Workers' Compensation shall prepare and notify members of the Legislature that a report authorized by this section is available upon request. The report based upon aggregate data shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeals.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.
(7) Safety history.
(8) The number of workers participating in vocational rehabilitation.
(9) The number of workers participating in light-duty programs.
(10) Overall worker satisfaction.

The division shall have the authority to require those employers and groups of employers listed in subdivision (c) to provide the data listed above.

(j) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (h) and (i) based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis, the administrative director shall make available an updated list of employers and unions entering into collective bargaining agreements containing provisions authorized by this section.

SEC. 6. Section 3501 of the Labor Code is amended to read:

3501. (a) A child under the age of 18 years, or a child of any age found by any trier of fact, whether contractual, administrative, regulatory, or judicial, to be physically or mentally incapacitated from earning, shall be conclusively presumed to be wholly dependent for support upon a deceased employee-parent with whom that child is living at the time of injury resulting in death of the parent or for whose maintenance the parent was legally liable at the time of injury resulting in death of the parent, there being no surviving totally dependent parent.

(b) A spouse to whom a deceased employee is married at the time of death shall be conclusively presumed to be wholly dependent for support upon the deceased employee if the surviving spouse earned thirty thousand dollars ($30,000) or less in the twelve months immediately preceding the death.

SEC. 7. Section 3701.8 is added to the Labor Code, to read:

3701.8. (a) As an alternative to each private self-insuring employer securing its own incurred liabilities as provided in Section 3701, the director may provide by regulation for an alternative security system whereby all private self-insureds designated for full participation by the director shall collectively secure their aggregate incurred liabilities through the Self-Insurers' Security Fund. The regulations shall provide for the director to set a total security requirement for these participating self-insured employers based on a review of their annual reports and any other self-insurer information as may be specified by the director. The Self-Insurers' Security Fund shall propose to the director a combination of cash and securities, surety bonds, irrevocable letters of credit, insurance, or other financial instruments or guarantees satisfactory to the

director sufficient to meet the security requirement set by the director. Upon approval by the director and posting by the Self-Insurers' Security Fund on or before the date set by the director, that combination shall be the composite deposit. The noncash elements of the composite deposit may be one-year or multiple-year instruments. If the Self-Insurers' Security Fund fails to post the required composite deposit by the date set by the director, then within 30 days after that date, each private self-insuring employer shall secure its incurred liabilities in the manner required by Section 3701. Self-insured employers not designated for full participation by the director shall meet all requirements as may be set by the director pursuant to subdivision (g).

(b) In order to provide for the composite deposit approved by the director, the Self-Insurers' Security Fund shall assess, in a manner approved by the director, each fully participating private self-insuring employer a deposit assessment payable within 30 days of assessment. The amount of the deposit assessment charged each fully participating self-insured employer shall be set by the Self-Insurers' Security Fund, based on its reasonable consideration of all the following factors:

(1) The total amount needed to provide the composite deposit.

(2) The self-insuring employer's paid or incurred liabilities as reflected in its annual report.

(3) The financial strength and creditworthiness of the self-insured.

(4) Any other reasonable factors as may be authorized by regulation.

(5) In order to make a composite deposit proposal to the director and set the deposit assessment to be charged each fully participating self-insured, the Self-Insurers' Security Fund shall have access to the annual reports and other information submitted by all self-insuring employers to the director, under terms and conditions as may be set by the director, to preserve the confidentiality of the self-insured's financial information.

(c) Upon payment of the deposit assessment and except as provided herein, the self-insuring employer loses all right, title, and interest in the deposit assessment. To the extent that in any one year the deposit assessment paid by self-insurers is not exhausted in the purchase of securities, surety bonds, irrevocable letters of credit, insurance, or other financial instruments to post with the director as part of the composite deposit, the surplus shall remain posted with the director, and the principal and interest earned on that surplus shall remain as part of the composite deposit in subsequent years. In the event that in any one year the Self-Insurers' Security Fund fails to post the required composite deposit by the date set the by the director, and the director requires each private self-insuring employer to secure its incurred liabilities in the manner required by Section 3701, then any deposit assessment paid in

that year shall be refunded to the self-insuring employer that paid the deposit assessment.

(d) If any private self-insuring employer objects to the calculation, posting, or any other aspect of its deposit assessment, upon payment of the assessment in the time provided, the employer shall have the right to appeal the assessment to the director, who shall have exclusive jurisdiction over this dispute. If any private self-insuring employer fails to pay the deposit assessment in the time provided, the director shall order the self-insuring employer to pay a penalty of not less than 10 percent of its deposit assessment, and to post a separate security deposit in the manner provided by Section 3701. The penalty shall be added to the composite deposit held by the director. The director may also revoke the certificate of consent to self-insure of any self-insuring employer who fails to pay the deposit assessment in the time provided.

(e) Upon the posting by the Self-Insurers' Security Fund of the composite deposit with the director, the deposit shall be held until the director determines that a private self-insured employer has failed to pay workers' compensation as required by this division, and the director orders the Self-Insurers' Security Fund to commence payment. Upon ordering the Self-Insurers' Security Fund to commence payment, the director shall make available to the fund that portion of the composite deposit necessary to pay the workers' compensation benefits of the defaulting self-insuring employer. In the event additional funds are needed in subsequent years to pay the workers' compensation benefits of any self-insuring employer who defaulted in earlier years, the director shall make available to the Self-Insurers' Security Fund any portions of the composite deposit as may be needed to pay those benefits. In making the deposit available to the Self-Insurers' Security Fund, the director shall also allow any amounts as may be reasonably necessary to pay for the administrative and other activities of the fund.

(f) The cash portion of the composite deposit shall be segregated from all other funds held by the director, and shall be invested by the director for the sole benefit of the Self-Insurers' Security Fund and the injured workers of private self-insured employers, and may not be used for any other purpose by the state. Alternatively, the director, in his discretion, may allow the Self-Insurers' Security Fund to hold, invest, and draw upon the cash portion of the composite deposit as prescribed by regulation.

(g) Notwithstanding any other provision of this section, the director shall, by regulation, set minimum credit, financial, or other conditions that a private self-insured must meet in order to be a fully participating self-insurer in the alternative security system. In the event any private self-insuring employer is unable to meet the conditions set by the director, or upon application of the Self-Insurers' Security Fund to

exclude an employer for credit or financial reasons, the director shall exclude the self-insuring employer from full participation in the alternative security system. In the event a self-insuring employer is excluded from full participation, the nonfully participating private self-insuring employer shall post a separate security deposit in the manner provided by Section 3701 and pay a deposit assessment set by the director. Alternatively, the director may order that the nonfully participating private self-insuring employer post a separate security deposit to secure a portion of its incurred liabilities and pay a deposit assessment set by the director.

(h) An employer who self-insures through group self-insurance and an employer whose certificate to self-insure has been revoked may fully participate in the alternative security system if both the director and the Self-Insurers' Security Fund approve the participation of the self-insurer. If not approved for full participation, or if an employer is issued a certificate to self-insure after the composite deposit is posted, the employer shall satisfy the requirements of subdivision (g) for nonfully participating private self-insurers.

(i) At all times, a self-insured employer shall have secured its incurred workers' compensation liabilities either in the manner required by Section 3701 or through the alternative security system, and there shall not be any lapse in the security.

SEC. 8. Section 3742 of the Labor Code is amended to read:

3742. (a) The Self-Insurers' Security Fund shall be established as a Nonprofit Mutual Benefit Corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code and this article. If any provision of the Nonprofit Mutual Benefit Corporation Law conflicts with any provision of this article, the provisions of this article shall apply. Each private self-insurer shall participate as a member in the fund as a condition of maintaining its certificate of consent to self-insure.

(b) The fund shall be governed by a seven member board of trustees. The director shall hold ex officio status, with full powers equal to those of a trustee, except that the director shall not have a vote. The director, or a delegate authorized in writing to act as the director's representative on the board of trustees, shall carry out exclusively the responsibilities set forth in Division 1 (commencing with Section 50) through Division 4 (commencing with Section 3200) and shall not have the obligations of a trustee under the Nonprofit Mutual Benefit Corporation Law. The fund shall adopt bylaws to segregate the director from all matters that may involve fund litigation against the department or fund participation in legal proceedings before the director. Although not voting, the director or a delegate authorized in writing to represent the director, shall be counted toward a quorum of trustees. The remaining six trustees shall be

representatives of private self-insurers. The self-insurer trustees shall be elected by the members of the fund, each member having one vote. Three of the trustees initially elected by the members shall serve two-year terms, and three shall serve four-year terms. Thereafter, trustees shall be elected to four-year terms, and shall serve until their successors are elected and assume office pursuant to the bylaws of the fund.

(c) The fund shall establish bylaws as are necessary to effectuate the purposes of this article and to carry out the responsibilities of the fund, including, but not limited to, any obligations imposed by the director pursuant to Section 3701.8. The fund may carry out its responsibilities directly or by contract, and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees. The fund may receive confidential information concerning the financial condition of self-insured employers whose liabilities to pay compensation may devolve upon it and shall adopt bylaws to prevent dissemination of that information.

(d) The director may also require fund members to subscribe to financial instruments or guarantees to be posted with the director in order to satisfy the security requirements set by the director pursuant to Section 3701.8.

SEC. 9. Section 4453 of the Labor Code is amended to read:

4453. (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at:

(1) Not less than one hundred twenty-six dollars ($126) nor more than two hundred ninety-four dollars ($294), for injuries occurring on or after January 1, 1983.

(2) Not less than one hundred sixty-eight dollars ($168) nor more than three hundred thirty-six dollars ($336), for injuries occurring on or after January 1, 1984.

(3) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and, for temporary disability, not less than the lesser of one hundred sixty-eight dollars ($168) or 1.5 times the employee's average weekly earnings from all employers, but in no event less than one hundred forty-seven dollars ($147), nor more than three hundred ninety-nine dollars ($399), for injuries occurring on or after January 1, 1990.

(4) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than five hundred four dollars ($504), for injuries occurring on or after January 1, 1991.

(5) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than six hundred nine dollars ($609), for injuries occurring on or after July 1, 1994.

(6) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than six hundred seventy-two dollars ($672), for injuries occurring on or after July 1, 1995.

(7) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than seven hundred thirty-five dollars ($735), for injuries occurring on or after July 1, 1996.

(8) Not less than one hundred eighty-nine dollars ($189), nor more than nine hundred three dollars ($903), for injuries occurring on or after January 1, 2003.

(9) Not less than one hundred eighty-nine dollars ($189), nor more than one thousand ninety-two dollars ($1,092), for injuries occurring on or after January 1, 2004.

(10) Not less than one hundred eighty-nine dollars ($189), nor more than one thousand two hundred sixty dollars ($1,260), for injuries occurring on or after January 1, 2005. For injuries occurring on or after January 1, 2006, average weekly earnings shall be taken at not less than one hundred eighty-nine dollars ($189), nor more than one thousand two hundred sixty dollars ($1,260) or 1.5 times the state average weekly wage, whichever is greater. Commencing on January 1, 2007, and each January 1 thereafter, the limits specified in this paragraph shall be increased by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year. For purposes of this paragraph, ''state average weekly wage'' means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12 months ending March 31 of the calendar year preceding the year in which the injury occurred.

(b) In computing average annual earnings for purposes of permanent partial disability indemnity, except as provided in Section 4659, the average weekly earnings shall be taken at:

(1) Not less than seventy-five dollars ($75), nor more than one hundred ninety-five dollars ($195), for injuries occurring on or after January 1, 1983.

(2) Not less than one hundred five dollars ($105), nor more than two hundred ten dollars ($210), for injuries occurring on or after January 1, 1984.

(3) When the final adjusted permanent disability rating of the injured employee is 15 percent or greater, but not more than 24.75 percent: (A) not less than one hundred five dollars ($105), nor more than two hundred twenty-two dollars ($222), for injuries occurring on or after July 1, 1994; (B) not less than one hundred five dollars ($105), nor more than two hundred thirty-one dollars ($231), for injuries occurring on or after July 1, 1995; (C) not less than one hundred five dollars ($105), nor more than two hundred forty dollars ($240), for injuries occurring on or after July 1, 1996.

(4) When the final adjusted permanent disability rating of the injured employee is 25 percent or greater, not less than one hundred five dollars ($105), nor more than two hundred twenty-two dollars ($222), for injuries occurring on or after January 1, 1991.

(5) When the final adjusted permanent disability rating of the injured employee is 25 percent or greater but not more than 69.75 percent: (A) not less than one hundred five dollars ($105), nor more than two hundred thirty-seven dollars ($237), for injuries occurring on or after July 1, 1994; (B) not less than one hundred five dollars ($105), nor more than two hundred forty-six dollars ($246), for injuries occurring on or after July 1, 1995; and (C) not less than one hundred five dollars ($105), nor more than two hundred fifty-five dollars ($255), for injuries occurring on or after July 1, 1996.

(6) When the final adjusted permanent disability rating of the injured employee is less than 70 percent: (A) not less than one hundred fifty dollars ($150), nor more than two hundred seventy-seven dollars and fifty cents ($277.50), for injuries occurring on or after January 1, 2003; (B) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than three hundred dollars ($300), for injuries occurring on or after January 1, 2004; (C) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than three hundred thirty dollars ($330), for injuries occurring on or after January 1, 2005; and (D) not less than one hundred ninety-five dollars ($195), nor more than three hundred forty-five dollars ($345), for injuries occurring on or after January 1, 2006.

(7) When the final adjusted permanent disability rating of the injured employee is 70 percent or greater, but less than 100 percent: (A) not less than one hundred five dollars ($105), nor more than two hundred fifty-two dollars ($252), for injuries occurring on or after July 1, 1994;

(B) not less than one hundred five dollars ($105), nor more than two hundred ninety-seven dollars ($297), for injuries occurring on or after July 1, 1995; (C) not less than one hundred five dollars ($105), nor more than three hundred forty-five dollars ($345), for injuries occurring on or after July 1, 1996; (D) not less than one hundred fifty dollars ($150), nor more than three hundred forty-five dollars ($345), for injuries occurring on or after January 1, 2003; (E) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than three hundred seventy-five dollars ($375), for injuries occurring on or after January 1, 2004; (F) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than four hundred five dollars ($405), for injuries occurring on or after January 1, 2005; and (G) not less than one hundred ninety-five dollars ($195), nor more than four hundred five dollars ($405), for injuries occurring on or after January 1, 2006.

(c) Between the limits specified in subdivisions (a) and (b), the average weekly earnings, except as provided in Sections 4456 to 4459, shall be arrived at as follows:

(1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury.

(2) Where the employee is working for two or more employers at or about the time of the injury, the average weekly earnings shall be taken as the aggregate of these earnings from all employments computed in terms of one week; but the earnings from employments other than the employment in which the injury occurred shall not be taken at a higher rate than the hourly rate paid at the time of the injury.

(3) If the earnings are at an irregular rate, such as piecework, or on a commission basis, or are specified to be by week, month, or other period, then the average weekly earnings mentioned in subdivision (a) shall be taken as the actual weekly earnings averaged for this period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury, due consideration being given to his or her actual earnings from all sources and employments.

(d) Every computation made pursuant to this section beginning January 1, 1990, shall be made only with reference to temporary disability or the permanent disability resulting from an original injury sustained after January 1, 1990. However, all rights existing under this

section on January 1, 1990, shall be continued in force. Except as provided in Section 4661.5, disability indemnity benefits shall be calculated according to the limits in this section in effect on the date of injury and shall remain in effect for the duration of any disability resulting from the injury.

SEC. 10. Section 4600.5 of the Labor Code is amended to read:

4600.5. (a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer licensed by the Department of Insurance, or any entity, including, but not limited to, workers' compensation insurers and third-party administrators authorized by the administrative director under subdivision (e), may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director, sufficient to cover the actual cost of processing the application. A certificate is valid for the period that the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, and has provided the Managed Care Unit of the Division of Workers' Compensation with the necessary documentation to comply with this subdivision, that organization shall be deemed to be a health care organization able to provide health care pursuant to Section 4600.3, without further application duplicating the documentation already filed with the Department of Managed Health Care. These plans shall be required to remain in good standing with the Department of Managed Health Care, and shall meet the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of

Managed Health Care in compliance with the Knox-Keene Health Care Service Plan Act, relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, and is in compliance with subdivision (d) of Sections 10133 and 10133.5 of the Insurance Code, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation insurer, third-party administrator, or any other entity that the administrative director determines meets the requirements of Section 4600.6, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records relating to provider accessibility, peer review, utilization review, quality assurance, advertising, disclosure, medical and financial audits, and grievance systems, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured

employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(7) Complies with the following requirements:

(A) An organization certified by the administrative director under this subdivision may not provide or undertake to arrange for the provision of health care to employees, or to pay for or to reimburse any part of the cost of that health care in return for a prepaid or periodic charge paid by or on behalf of those employees.

(B) Every organization certified under this subdivision shall operate on a fee-for-service basis. As used in this section, fee for service refers to the situation where the amount of reimbursement paid by the employer to the organization or providers of health care is determined by the amount and type of health care rendered by the organization or provider of health care.

(C) An organization certified under this subdivision is prohibited from assuming risk.

(f) (1) A workers' compensation health care provider organization authorized by the Department of Corporations on December 31, 1997, shall be eligible for certification as a health care organization under subdivision (e).

(2) An entity that had, on December 31, 1997, submitted an application with the Commissioner of Corporations under Part 3.2 (commencing with Section 5150) shall be considered an applicant for certification under subdivision (e) and shall be entitled to priority in consideration of its application. The Commissioner of Corporations shall provide complete files for all pending applications to the administrative director on or before January 31, 1998.

(g) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(h) Charges for services arranged for or provided by health care service plans certified by this section and that are paid on a per-enrollee-periodic-charge basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(i) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(j) In consultation with interested parties, including the Department of Corporations and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(k) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Managed Health Care, a workers' compensation health care provider organization authorized by the Department of Corporations, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(*l*) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(m) Individually identifiable medical information on patients submitted to the division shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) (1) When an injured employee requests acupuncture treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of an acupuncturist pursuant to guidelines for acupuncture care established by paragraph (2). Within five working days of the employee's request to see an acupuncturist, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated acupuncturist for work-related injuries that are within the guidelines for acupuncture care established by paragraph (2). Acupuncture care rendered in accordance with guidelines for acupuncture care established pursuant to paragraph (2) shall be provided by duly licensed acupuncturists affiliated with the plan.

(2) The health care organization shall establish guidelines for acupuncture care in consultation with affiliated acupuncturists who are participants in the health care organization's utilization review process for acupuncture care, which may include qualified medical evaluators. The guidelines for acupuncture care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated acupuncturist for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of acupuncture care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for acupuncture care in accordance with the health care organization's guidelines for acupuncture care established by paragraph (2).

Acupuncture utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for acupuncture care. Acupuncturists affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of acupuncture care for work-related injuries, the review shall include review by an acupuncturist affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to acupuncture care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for acupuncture care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

SEC. 11. Section 4614 of the Labor Code is amended to read:

4614. (a) (1) Notwithstanding Section 5307.1, where the employee's individual or organizational provider of health care services rendered under this division and paid on a fee-for-service basis is also the provider of health care services under contract with the employee's health benefit program, and the service or treatment provided is included within the range of benefits of the employee's health benefit program, and paid on a fee-for-service basis, the amount of payment for services provided under this division, for a work-related occurrence or illness, shall be no more than the amount that would have been paid for the same services under the health benefit plan, for a non-work-related occurrence or illness.

(2) A health care service plan that arranges for health care services to be rendered to an employee under this division under a contract, and which is also the employee's organizational provider for nonoccupational injuries and illnesses, with the exception of a nonprofit health care service plan that exclusively contracts with a medical group to provide or arrange for medical services to its enrollees in a designated geographic area, shall be paid by the employer for services rendered under this division only on a capitated basis.

(b) (1) Where the employee's individual or organizational provider of health care services rendered under this division who is not providing services under a contract is not the provider of health care services under contract with the employee's health benefit program or where the services rendered under this division are not within the benefits provided under the employer-sponsored health benefit program, the provider shall receive payment that is no more than the average of the payment that would have been paid by five of the largest preferred provider organizations by geographic region. Physicians, as defined in Section 3209.3, shall be reimbursed at the same averaged rates, regardless of licensure, for the delivery of services under the same procedure code. This subdivision shall not apply to a health care service plan that provides its services on a capitated basis.

(2) The administrative director shall identify the regions and the five largest carriers in each region. The carriers shall provide the necessary information to the administrative director in the form and manner requested by the administrative director. The administrative director

shall make this information available to the affected providers on an annual basis.

(c) Nothing in this section shall prohibit an individual or organizational health care provider from being paid fees different from those set forth in the official medical fee schedule by an employer, insurance carrier, third-party administrator on behalf of employers, or preferred provider organization representing an employer or insurance carrier provided that the administrative director has determined that the alternative negotiated rates between the organizational or individual provider and a payer, a third-party administrator on behalf of employers, or a preferred provider organization will produce greater savings in the aggregate than if each item on billings were to be charged at the scheduled rate.

(d) For the purposes of this section, ''organizational provider'' means an entity that arranges for health care services to be rendered directly by individual caregivers. An organizational provider may be a health care service plan, disability insurer, health care organization, preferred provider organization, or workers' compensation insurer arranging for care through a managed care network or on a fee-for-service basis. An individual provider is either an individual or institution that provides care directly to the injured worker.

SEC. 12. Section 4702 of the Labor Code, as amended by Chapter 6 of the Statutes of 2002, is amended to read:

4702. (a) Except as otherwise provided in this section and Sections 4553, 4554, 4557, and 4558, the death benefit in cases of total dependency shall be as follows:

(1) In the case of two total dependents and regardless of the number of partial dependents, for injuries occurring before January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after January 1, 1991, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1994, one hundred thirty-five thousand dollars ($135,000), for injuries occurring on or after July 1, 1996, one hundred forty-five thousand dollars ($145,000), and for injuries occurring on or after January 1, 2006, two hundred ninety thousand dollars ($290,000).

(2) In the case of one total dependent and one or more partial dependents, for injuries occurring before January 1, 1991, seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars ($125,000), and for injuries occurring on or after January 1, 2006, two hundred fifty thousand dollars ($250,000), plus four times the amount annually devoted to the support of the partial

dependents, but not more than the following: for injuries occurring before January 1, 1991, a total of ninety-five thousand dollars ($95,000), for injuries occurring on or after January 1, 1991, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1994, one hundred twenty-five thousand dollars ($125,000), for injuries occurring on or after July 1, 1996, one hundred forty-five thousand dollars ($145,000), and for injuries occurring on or after January 1, 2006, two hundred ninety thousand dollars ($290,000).

(3) In the case of one total dependent and no partial dependents, for injuries occurring before January 1, 1991, seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars ($125,000), and for injuries occurring on or after January 1, 2006, two hundred fifty thousand dollars ($250,000).

(4) (A) In the case of no total dependents and one or more partial dependents, for injuries occurring before January 1, 1991, four times the amount annually devoted to the support of the partial dependents, but not more than seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, a total of ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), and for injuries occurring on or after July 1, 1996, but before January 1, 2006, one hundred twenty-five thousand dollars ($125,000).

(B) In the case of no total dependents and one or more partial dependents, eight times the amount annually devoted to the support of the partial dependents, for injuries occurring on or after January 1, 2006, but not more than two hundred fifty thousand dollars ($250,000).

(5) In the case of three or more total dependents and regardless of the number of partial dependents, one hundred fifty thousand dollars ($150,000), for injuries occurring on or after July 1, 1994, one hundred sixty thousand dollars ($160,000), for injuries occurring on or after July 1, 1996, and three hundred twenty thousand dollars ($320,000), for injuries occurring on or after January 1, 2006.

(6) For injuries occurring on or after January 1, 2004, in the case of no total dependents and no partial dependents, two hundred fifty thousand dollars ($250,000) to the estate of the deceased employee.

(b) The death benefit in all cases shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee, unless the appeals board otherwise orders. However, no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

(c) Disability indemnity shall not be deducted from the death benefit and shall be paid in addition to the death benefit when the injury resulting in death occurs after September 30, 1949.

(d) All rights under this section existing prior to January 1, 1990, shall be continued in force.

SEC. 13. Section 5307.21 is added to the Labor Code, to read:

5307.21. (a) The administrative director shall have the sole authority to develop an outpatient surgery facility fee schedule for services not performed under contract, provided that the schedule meets all of the following requirements:

(1) The schedule shall include all facility charges for outpatient surgeries performed in any facility authorized by law to perform the surgeries. The schedule may not include the fee of any physician and surgeon providing services in connection with the surgery.

(2) The schedule shall promote payment predictability, minimize administrative costs, and ensure access to outpatient surgery services by injured workers.

(3) The schedule shall be sufficient to cover the costs of each surgical procedure, as well as access to quality care.

(4) The schedule shall include specific provisions for review and revision of related fees no less frequently than biennially.

(5) The schedule shall be adopted after public hearings pursuant to Section 5307.3 and shall be included within the official medical fee schedule.

(b) The process used by the administrative director to develop an outpatient surgery fee schedule shall contain the following elements:

(1) A formal analysis of one year of published data collected pursuant to Section 128737 of the Health and Safety Code, with the assistance of an independent consultant with demonstrated expertise in outpatient surgery service.

(2) Any published data collected from providers of outpatient surgery services.

(3) Payment data including, but not limited to, type of payer and amount charged.

(4) Cost data including, but not limited to, actual expenses for labor, supplies, equipment, implants, anesthesia, overhead, and administration.

(5) Outcome data including, but not limited to, expected level of rehabilitation, expected coverage timeframe, and incidence of infection.

(6) Access data including, but not limited to, date of injury, date of surgery recommendation, and date of procedure.

(7) Other data that is mutually agreed to by the Office of Statewide Health Planning and Development and the administrative director. The administrative director shall consult with the Office of Statewide Health

Planning and Development to ensure that the data collected is comprehensive and relevant to the development of a fee schedule.

(c) The outpatient surgery facility fee schedule shall reflect input from workers' compensation insurance carriers, businesses, organized labor, providers of outpatient surgical services, and patients receiving outpatient surgical services.

(d) At least 90 days prior to commencing the public hearings related to an outpatient surgery fee schedule as prescribed by Section 5307.3, the administrative director shall provide the Assembly Committee on Insurance and the Senate Committee on Labor and Industrial Relations a comprehensive report on the data analysis required by this section and the administrative director's recommendations for an outpatient surgery fee schedule.

SEC. 14. Section 5502 of the Labor Code is amended to read:

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed, on a form prescribed by the court administrator, is filed. If a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, an application for adjudication shall accompany the declaration of readiness to proceed.

(b) The court administrator shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following:

(1) The employee's entitlement to medical treatment pursuant to Section 4600.

(2) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(3) The employee's entitlement to vocational rehabilitation services, or the termination of an employer's liability to provide these services to an employee.

(4) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(5) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.

(c) The court administrator shall establish a priority conference calendar for cases in which the employee is represented by an attorney and the issues in dispute are employment or injury arising out of employment or in the course of employment. The conference shall be conducted by a workers' compensation administrative law judge within

30 days after the declaration of readiness to proceed. If the dispute cannot be resolved at the conference, a trial shall be set as expeditiously as possible, unless good cause is shown why discovery is not complete, in which case status conferences shall be held at regular intervals. The case shall be set for trial when discovery is complete, or when the workers' compensation administrative law judge determines that the parties have had sufficient time in which to complete reasonable discovery. A determination as to the rights of the parties shall be made and filed within 30 days after the trial.

(d) The court administrator shall report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor.

(e) (1) In all cases, a mandatory settlement conference shall be conducted not less than 10 days, and not more than 30 days, after the filing of a declaration of readiness to proceed. If the dispute is not resolved, the regular hearing shall be held within 75 days after the declaration of readiness to proceed is filed.

(2) The settlement conference shall be conducted by a workers' compensation administrative law judge or by a referee who is eligible to be a workers' compensation administrative law judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee or workers' compensation administrative law judge shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial. The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation administrative law judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(f) In cases involving the Director of the Department of Industrial Relations in his or her capacity as administrator of the Uninsured Employers Fund, this section shall not apply unless proof of service, as specified in paragraph (1) of subdivision (d) of Section 3716 has been

filed with the appeals board and provided to the Director of Industrial Relations, valid jurisdiction has been established over the employer, and the fund has been joined.

(g) Except as provided in subdivision (a) and in Section 4065, the provisions of this section shall apply irrespective of the date of injury.

SEC. 15. Section 6354.7 is added to the Labor Code, to read:

6354.7. (a) The Workers' Occupational Safety and Health Education Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended, upon appropriation by the Legislature, by the Commission on Health and Safety and Workers' Compensation for the purpose of establishing and maintaining a worker occupational safety and health training and education program and an insurance loss control services coordinator. The director shall levy and collect fees to fund these purposes from insurers subject to Section 6354.5. However, the fee assessed against any insurer shall not exceed the greater of one hundred dollars ($100) or 0.0286 percent of paid workers' compensation indemnity amounts for claims as reported for the previous calendar year to the designated rating organization for the analysis required under subdivisions (b) and (c) of Section 11759.1 of the Insurance Code. All fees shall be deposited in the fund.

(b) The commission shall establish and maintain a worker safety and health training and education program. The purpose of the worker occupational safety and health training and education program shall be to promote awareness of the need for prevention education programs, to develop and provide injury and illness prevention education programs for employees and their representatives, and to deliver those awareness and training programs through a network of providers throughout the state. The commission may conduct the program directly or by means of contracts or interagency agreements.

(c) The commission shall establish an employer and worker advisory board for the program. The advisory board shall guide the development of curricula, teaching methods, and specific course material about occupational safety and health, and shall assist in providing links to the target audience and broadening the partnerships with worker-based organizations, labor studies programs, and others that are able to reach the target audience.

(d) The program shall include the development and provision of a needed core curriculum addressing competencies for effective participation in workplace injury and illness prevention programs and on joint labor-management health and safety committees. The core curriculum shall include an overview of the requirements related to injury and illness prevention programs and hazard communication.

(e) The program shall include the development and provision of additional training programs for any or all of the following categories:

(1) Industries on the high hazard list.

(2) Hazards that result in significant worker injuries, illnesses, or compensation costs.

(3) Industries or trades in which workers are experiencing numerous or significant injuries or illnesses.

(4) Occupational groups with special needs, such as those who do not speak English as their first language, workers with limited literacy, young workers, and other traditionally underserved industries or groups of workers. Priority shall be given to training workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those workers serving on a health and safety committee or serving as designated safety representatives.

(f) The program shall operate one or more libraries and distribution systems of occupational safety and health training material, which shall include, but not be limited to, all material developed by the program pursuant to this section.

(g) The advisory board shall annually prepare a written report evaluating the use and impact of programs developed.

(h) The payment of administrative costs incurred by the commission in conducting the program shall be made from the Workers' Occupational Safety and Health Education Fund.

SEC. 16. Section 86 of Chapter 6 of the Statutes of 2002 is amended to read:

Sec. 86. It is the intent of the Legislature that all reimbursement expended by the Administrative Director of the Division of Workers' Compensation for the administration of the workers' compensation Return-to-Work Program established in Section 139.48 of the Labor Code shall be funded from the funds collected in the annual premium tax, collected under Section 12201 of the Revenue and Taxation Code, which is directly attributable to the compensation benefit rates and amounts set forth in Chapter 6 of the Statutes of 2002.

SEC. 17. It is the intent of the Legislature that annual appropriations to the Division of Workers' Compensation be sufficient to enable the division to hire necessary staff and to obtain adequate resources and technology to carry out and complete each of its mandates under Divisions 1 (commencing with Section 50), 4 (commencing with Section 3200), and 4.5 (commencing with Section 6100) of the Labor Code in a timely manner and in a manner consistent with the directives set forth in Section 4 of Article XIV of the California Constitution.

SEC. 18. Sections 3, 12, and 16 of this act shall be effective only if Chapter 6 of the Statutes of 2002 becomes operative.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 867

An act to amend Sections 45103 and 88003 of the Education Code, relating to temporary school employees.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 45103 of the Education Code is amended to read:

45103. (a) The governing board of any school district shall employ persons for positions not requiring certification qualifications. The governing board shall, except where Article 6 (commencing with Section 45240) of this chapter or Section 45318 applies, classify all of these employees and positions. The employees and positions shall be known as the classified service.

(b) (1) Substitute and short-term employees, employed and paid for less than 75 percent of a school year, shall not be a part of the classified service.

(2) Part-time playground positions, apprentices and professional experts employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service.

(3) Full-time students employed part time, and part-time students employed part time in any college work-study program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with Section 51760) of Chapter 5 of Part 28 and that is financed by state or federal funds, shall not be a part of the classified service.

(c) Unless otherwise permitted, a person whose position does not require certification qualifications shall not be employed by a governing board, except as authorized by this section.

(d) As used in this section, the following terms have the following meanings:

(1) ''Substitute employee'' means any person employed to replace any classified employee who is temporarily absent from duty. In

addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

(2) ''Short-term employee'' means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. Before employing a short-term employee, the governing board, at a regularly scheduled board meeting, shall specify the service required to be performed by the employee pursuant to the definition of ''classification'' in subdivision (a) of Section 45101, and shall certify the ending date of the service. The ending date may be shortened or extended by the governing board, but shall not extend beyond 75 percent of a school year.

(3) ''Seventy-five percent of a school year'' means 195 working days, including holidays, sick leave, vacation and other leaves of absences, irrespective of number of hours worked per day.

(e) Employment of either full-time or part-time students in any college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240).

SEC. 1.5. Section 45103 of the Education Code is amended to read:

45103. (a) The governing board of any school district shall employ persons for positions not requiring certification qualifications. The governing board shall, except where Article 6 (commencing with Section 45240) or Section 45318 applies, classify all of these employees and positions. The employees and positions shall be known as the classified service.

(b) (1) Substitute and short-term employees, employed and paid for less than 75 percent of a school year, shall not be a part of the classified service.

(2) Apprentices and professional experts employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service.

(3) Full-time students employed part time, and part-time students employed part time in any college work-study program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with Section 51760) of Chapter 5 of Part 28 and that is financed by state or federal funds, shall not be a part of the classified service.

(4) Part-time playground positions shall not be a part of the classified service, where the employee is not otherwise employed in a classified position. Part-time playground positions shall be considered a part of the classified service when the employee in the position also works in the same school district in a classified position.

(c) Unless otherwise permitted, a person whose position does not require certification qualifications shall not be employed by a governing board, except as authorized by this section.

(d) As used in this section, the following terms have the following meanings:

(1) ''Substitute employee'' means any person employed to replace any classified employee who is temporarily absent from duty. In addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

(2) ''Short-term employee'' means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. Before employing a short-term employee, the governing board, at a regularly scheduled board meeting, shall specify the service required to be performed by the employee pursuant to the definition of ''classification'' in subdivision (a) of Section 45101, and shall certify the ending date of the service. The ending date may be shortened or extended by the governing board, but shall not extend beyond 75 percent of a school year.

(3) ''Seventy-five percent of a school year'' means 195 working days, including holidays, sick leave, vacation and other leaves of absence, irrespective of number of hours worked per day.

(e) Employment of either full-time or part-time students in any college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240).

SEC. 2. Section 88003 of the Education Code is amended to read:

88003. The governing board of any community college district shall employ persons for positions that are not academic positions. The governing board, except where Article 3 (commencing with Section 88060) or Section 88137 applies, shall classify all those employees and positions. The employees and positions shall be known as the classified service. Substitute and short-term employees, employed and paid for

less than 75 percent of a college year, shall not be a part of the classified service. Part-time playground positions, apprentices and professional experts employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service. Full-time students employed part time, and part-time students employed part time in any college work-study program, or in a work experience education program conducted by a community college district and which is financed by state or federal funds, shall not be a part of the classified service. Unless otherwise permitted, a person whose position does not require certification qualifications shall not be employed by a governing board, except as authorized by this section.

''Substitute employee,'' as used in this section, means any person employed to replace any classified employee who is temporarily absent from duty. In addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

''Short-term employee,'' as used in this section, means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. Before employing a short-term employee, the governing board, at a regularly scheduled board meeting, shall specify the service required to be performed by the employee pursuant to the definition of ''classification'' in subdivision (a) of Section 88001, and shall certify the ending date of the service. The ending date may be shortened or extended by the governing board, but shall not extend beyond 75 percent of a school year.

''Seventy-five percent of a college year'' means 195 working days, including holidays, sick leave, vacation and other leaves of absences, irrespective of number of hours worked per day.

Employment of either full-time or part-time students in any college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 45103 of the Education Code proposed by both this bill and AB 2849. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 45103 of the Education Code, and (3) this bill is enacted after AB 2849, in which case Section 1 of this bill shall not become operative.

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 868

An act to add Section 1771.7 to the Labor Code, relating to public works.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. In enacting this act, the Legislature finds and declares all of the following:

(a) Payment of the prevailing rate of per diem wages to workers employed on public works is necessary to attract the most skilled workers for the project and to ensure that work of the highest quality is performed on these projects.

(b) Public works projects should never undermine the wage base in a community and requiring that workers on public works projects be paid the prevailing rate of per diem wages ensures that the wage base is not lowered.

(c) It is a matter of statewide concern that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by those school districts.

(d) Therefore, it is the intent of the Legislature in enacting this act that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by these school districts.

(e) It is the further intent of the Legislature to preserve the constitutional autonomy of the University of California, as described in Section 9 of Article IX of the California Constitution, by providing that this act apply to that university only to the extent that the university chooses to use the funds described in this act.

SEC. 2. Section 1771.7 is added to the Labor Code, to read:

1771.7. (a) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(b) This section shall apply to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the ''awarding body'' is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board may not release the funds described in subdivision (a) to an awarding body that is a school district until the

State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase as soon as feasible, but no later than July 1, 2003, the per pupil grant amounts as described in Sections 17072.10 and 17074.10 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

SEC. 3. This act shall not become operative unless at least one of the following conditions is met:

(a) The Kindergarten-University Public Education Facilities Bond Act of 2002 is approved by the voters at the November 5, 2002, statewide general election.

(b) The Kindergarten-University Public Education Facilities Bond Act of 2004 is approved by the voters at the March 2004, statewide direct primary election.

(c) The Kindergarten-University Public Education Facilities Bond Act of 2004 is approved by the voters at the November 2004, statewide general election.

CHAPTER 869

An act to add Sections 89519.5 and 92611.5 to the Education Code, and to add Section 19991.11 to the Government Code, relating to public employment.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 89519.5 is added to the Education Code, to read:

89519.5. (a) Subject to subdivision (b), the trustees shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence not exceeding 30 days to any employee who is an organ donor in any one-year period, for the purpose of donating his or her organ to another person.

(2) A leave of absence not exceeding five days to any employee who is a bone marrow donor in any one-year period, for the purpose of donating his or her bone marrow to another person.

(b) To receive a leave of absence pursuant to subdivision (a), an employee shall provide written verification to the trustees that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(c) Any period of time during which an employee is required to be absent from his or her position by reason of being an organ or bone marrow donor is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, annual leave, or seniority.

(d) If an employee is unable to return to work beyond the time or period that he or she is granted leave pursuant to this section, he or she shall be paid any vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If, during the period of projection, the employee is able to return to work, he or she shall be returned to his or her former position.

(e) 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. 2. Section 92611.5 is added to the Education Code, to read:

92611.5. (a) If the Regents of the University of California adopt the provisions of this section, by appropriate resolution, and subject to subdivision (b), the regents shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence not exceeding 30 days to any employee who is an organ donor in any one-year period, for the purpose of donating his or her organ to another person.

(2) A leave of absence not exceeding five days to any employee who is a bone marrow donor in any one-year period, for the purpose of donating his or her bone marrow to another person.

(b) To receive a leave of absence pursuant to subdivision (a), an employee shall provide written verification to the regents that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(c) Any period of time during which an employee is required to be absent from his or her position by reason of being an organ or bone marrow donor is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, annual leave, or seniority.

(d) If an employee is unable to return to work beyond the time or period that he or she is granted leave pursuant to this section, he or she shall be paid any vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If, during the period of projection, the employee is able to return to work, he or she shall be returned to his or her former position.

(e) 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 19991.11 is added to the Government Code, to read:

19991.11. (a) Subject to subdivision (b), an appointing power shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence not exceeding 30 days to any employee who is an organ donor in any one-year period, for the purpose of donating his or her organ to another person.

(2) A leave of absence not exceeding five days to any employee who is a bone marrow donor in any one-year period, for the purpose of donating his or her bone marrow to another person.

(b) In order to receive a leave of absence pursuant to subdivision (a), an employee shall provide written verification to the appointing power that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(c) Any period of time during which an employee is required to be absent from his or her position by reason of being an organ or bone marrow donor is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, annual leave, or seniority.

(d) If an employee is unable to return to work beyond the time or period that he or she is granted leave pursuant to this section, he or she shall be paid any vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If, during the period of projection, the employee is able to return to work, he or she shall be returned to his or her former position as defined in Section 18522.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that, if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

CHAPTER 870

An act to add Section 31720.9 to the Government Code, and to add Sections 3211.5 and 3212.85 to the Labor Code, relating to public employees.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 31720.9 is added to the Government Code, to read:

31720.9. (a) If a peace officer member, as defined in Sections 830.1 to 830.5, inclusive, of the Penal Code, or firefighter member, with service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200), or both, or under this retirement system, under the Public Employees' Retirement System, or under a retirement system established under this chapter in another county, becomes ill or dies due to exposure to a biochemical substance, the illness that develops or manifests itself in

those cases shall be presumed to arise out of, and in the course of, employment. The illness that develops or manifests itself in those cases shall in no case be attributed to any illness existing prior to that development or manifestation.

(b) Any peace officer member or firefighter member, as described in subdivision (a), who becomes permanently incapacitated as a result of exposure to a biochemical substance shall receive a service-connected disability retirement.

(c) The presumption described in subdivision (a) is rebuttable by other evidence. Unless rebutted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) For purposes of this section, a peace officer member or firefighter member, as described in subdivision (a), does not include a member whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers.

(e) ''Biochemical substance'' means any biological or chemical agent that may be used as a weapon of mass destruction, including, but not limited to, any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as these terms are defined in Section 11417 of the Penal Code.

SEC. 2. Section 3211.5 is added to the Labor Code, to read:

3211.5. For purposes of this division, whenever the term ''firefighter,'' ''firefighting member,'' and ''member of a fire department'' is used, the term shall include, but shall not be limited to, unless the context expressly provides otherwise, a person engaged in providing firefighting services who is an apprentice, volunteer, or employee on a partly paid or fully paid basis.

SEC. 3. Section 3212.85 is added to the Labor Code, to read:

3212.85. (a) This section applies to peace officers described in Sections 830.1 to 830.5, inclusive, of the Penal Code, and members of a fire department.

(b) The term ''injury,'' as used in this division, includes illness or resulting death due to exposure to a biochemical substance that develops or occurs during a period in which any member described in subdivision (a) is in the service of the department or unit.

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

(d) The injury that develops or manifests 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 other evidence. Unless 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) For purposes of this section, the following definitions apply:

(1) ''Biochemical substance'' means any biological or chemical agent that may be used as a weapon of mass destruction, including, but not limited to, any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as these terms are defined in Section 11417 of the Penal Code.

(2) ''Members of a fire department'' includes, but is not limited to, an apprentice, volunteer, partly paid, or fully paid member of any of the following:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

CHAPTER 871

An act to amend Sections 19867, 21661, 21662, and 21664 of the Government Code, relating to public employee benefits.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19867 of the Government Code is amended to read:

19867. (a) The Legislature finds and declares that the interests of the state would be served by the Department of Personnel Administration meeting and conferring with the exclusive representatives of the various bargaining units to discuss the establishment of long-term care benefits for state employees.

(b) If long-term care insurance plans are not available to state employees within one year following the date on which any long-term care plan is first offered for enrollment by the Board of Administration of the Public Employees' Retirement System, state employees may enroll in the long-term care insurance plans offered by the Board of Administration of the Public Employees' Retirement System.

(c) If subdivision (b) is in conflict with a memorandum of understanding entered into pursuant to Section 3517.5, the memorandum of understanding shall prevail and control without further legislative action, except that if the prevailing provisions of a memorandum of understanding require the expenditure of funds, these provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(d) The Department of Personnel Administration may enter into contracts with the Board of Administration of the Public Employees' Retirement System to allow active eligible state employees, and their spouses and parents to enroll in any long-term care insurance plans offered by the Board of Administration.

SEC. 2. Section 21661 of the Government Code is amended to read:

21661. (a) The board shall contract with carriers offering long-term care insurance plans and enter into health care service plan contracts covering long-term care.

The long-term care insurance plans and health care service plan contracts covering long-term care shall be made available periodically during open enrollment periods determined by the board.

(b) The board shall award contracts to carriers who are qualified to provide long-term care benefits, and may develop and administer self-funded long-term care insurance plans. The board may offer one or more long-term care insurance plans or health care service plan contracts covering long-term care and may offer service or indemnity-type plans.

(c) The long-term care insurance plans and health care service plan contracts covering long-term care shall include home, community, and institutional care and shall, to the extent determined by the board, provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10231) of Part 2 of Division 2 of the Insurance Code, if the carrier has been approved by the Department of Managed Health Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) The classes of persons who shall be eligible to enroll are:

(1) Active and retired members and annuitants of the Public Employees' Retirement System, and their spouses, parents, siblings, and spouses' parents.

(2) Active and retired members and annuitants of any county or district subject to the County Employees Retirement Law of 1937, and their spouses, parents, siblings, and spouses' parents.

(3) Active and retired members and annuitants of the State Teachers' Retirement Plan, and their spouses, parents, siblings, and spouses' parents.

(4) Active employees and retirees and annuitants of any public agency that is a contracting agency under this part or Part 5 (commencing with Section 22751), and their spouses, parents, siblings, and spouses' parents.

(5) Active and retired members and annuitants of the Judges' Retirement System, and their spouses, parents, siblings, and spouses' parents.

(6) Active and retired members and annuitants of the Judges' Retirement System II, and their spouses, parents, siblings, and spouses' parents.

(7) Active and retired members and annuitants of the Legislators' Retirement System, and their spouses, parents, siblings, and spouses' parents.

(8) Members of the California Assembly and Senate and their spouses, parents, siblings, and spouses' parents.

(9) Active and retired members and annuitants, and other classes of employees of other public employee retirement systems or public employers as the board determines may be eligible under the standards the board may prescribe, and their spouses, parents, siblings, and spouses' parents.

(10) Active employees and retirees and annuitants of any agency specified in paragraphs (1) through (9) who reside in the United States, its territories and possessions, or in a country in which a provider network can be established comparable in quality and effectiveness to those established in the United States.

(e) Any California public agency or retirement system may contract with the board to extend the provisions of this article to its active and retired employees and annuitants.

(f) Irrespective of paragraphs (1) through (10) of subdivision (d), no person may be enrolled unless he or she meets the eligibility and underwriting criteria established by the board.

(g) Irrespective of paragraphs (1) through (10) of subdivision (d), enrollment of active employees of the State of California shall be subject to Section 19867.

(h) The board shall establish eligibility criteria for enrollment, establish appropriate underwriting criteria for potential enrollees, define the scope of covered benefits, define the criteria to receive benefits, and

set any other standards as needed. As used in this section, ''sibling'' shall mean a sibling who is at least 18 years of age.

(i) The long-term care insurance plans and health care service plan contracts covering long-term care may not become part of, or subject to, the retirement or health benefits programs administered by the system.

(j) For any self-funded long-term care plan developed by the board, the premiums shall be deposited in the Public Employees' Long-term Care Fund.

SEC. 3. Section 21662 of the Government Code is amended to read:

21662. The board shall consult with employer and employee representatives of the state and local government entities for whom the board administers retirement benefits. The board and each employer is authorized to recover the administrative costs of the long-term care insurance program from insurance carriers and premiums. Costs recovered by the board from insurance carriers and premiums shall be deposited in the Public Employees' Long-Term Care Fund.

SEC. 4. Section 21664 of the Government Code is amended to read:

21664. (a) The Public Employees' Long-term Care Fund is established for the purpose of administering any self-funded long-term care plan developed by the board and for recovering the administrative costs of the long-term care program from insurance carriers and premiums. Notwithstanding Section 13340, the Public Employees' Long-term Care Fund is continuously appropriated, without regard to fiscal years, to the board to carry out the purposes of this article, consistent with its fiduciary duty. Funding for the board's administrative costs is subject to appropriation by the Legislature and shall be paid out of the Public Employees' Long-term Care Fund.

(b) The board may set the premiums for any self-funded long-term care plan and assess charges against carriers and the premiums to recover the administrative costs of the long-term care program.

(c) The board shall have the exclusive control of the administration and investment of the Public Employees' Long-term Care Fund. The board may invest funds in the Public Employees' Long-term Care Fund pursuant to the law governing its investment of the retirement fund. The board may authorize its investment staff, or may contract with independent investment managers, to manage the investments of the Public Employees' Long-term Care Fund.

(d) Income, of whatever nature, earned on the Public Employees' Long-term Care Fund during any fiscal year, shall be credited to the fund.

(e) The Legislature finds and declares that the Public Employees' Long-term Care Fund is a trust fund held for the exclusive benefit of enrollees in the long-term care plans offered pursuant to this article.

(f) It is the intent of the Legislature to provide, in the future, appropriate resources to properly administer the long-term care program.

CHAPTER 872

An act to amend Sections 19540 and 19701 of, and to add Section 19605.52 to, the Business and Professions Code, relating to horse racing, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19540 of the Business and Professions Code is amended to read:

19540. In order to encourage and develop the racing of all horses in California, regardless of breed, whenever a fair conducts a program of horse races on which there is parimutuel wagering, the fair, so far as practicable, shall provide a program of racing that includes thoroughbred racing, quarter horse racing, Arabian racing, and Appaloosa racing, if a sufficient number of horses are available to provide competition in one or more races.

SEC. 2. Section 19605.52 is added to the Business and Professions Code, to read:

19605.52. Notwithstanding subdivision (a) of Section 19605, and Section 19605.1, any fair in Shasta County may, with the approval of the Department of Food and Agriculture and the authorization of the board, subject to the conditions specified in Section 19605.3, operate one satellite wagering facility within the boundaries of that fair.

SEC. 3. Section 19701 of the Business and Professions Code is amended to read:

19701. Notwithstanding any other provision of law, a mule racing meeting or mule races may be conducted by any fair.

CHAPTER 873

An act to amend Sections 739, 11732, 11733, 11735, 11737, and 11753.1 of the Insurance Code, relating to workers' compensation insurance.

[Approved by Governor September 25, 2002. Filed with
Secretary of State September 26, 2002.]

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

SECTION 1. Section 739 of the Insurance Code is amended to read:

739. As used in this article, these terms shall have the following meanings:

(a) ''Adjusted RBC Report'' means a Risk-Based Capital (RBC) report that has been adjusted by the commissioner in accordance with subdivision (c) of Section 739.2.

(b) ''Corrective Order'' means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(c) ''Domestic insurer'' means any life or health insurer or property and casualty insurer organized in this state.

(d) ''Foreign insurer'' means any life or health insurer or property and casualty insurer that is licensed to do business in this state but is not domiciled in this state.

(e) ''Life or health insurer'' means any admitted insurer issuing insurance subject to Part 2 (commencing with Section 10110) of Division 2, or a licensed property and casualty insurer writing only disability insurance.

(f) ''NAIC'' means the National Association of Insurance Commissioners.

(g) ''Negative trend'' means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the ''Trend Test Calculation'' included in the RBC Instructions defined in subdivision (i).

(h) ''Property and casualty insurer'' means any admitted insurer writing insurance as described in Section 102, 103, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119.5, 119.6, or 120, but does not include monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers.

(i) ''RBC Instructions'' means the RBC Report, including risk-based capital instructions adopted by the NAIC, and as the RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(j) ''RBC Level'' means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(1) ''Company Action Level RBC'' means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC.

(2) ''Regulatory Action Level RBC'' means the product of 1.5 and its Authorized Control Level RBC.

(3) ''Authorized Control Level RBC'' means the number determined under the risk-based capital formula in accordance with the RBC Instructions.

(4) ''Mandatory Control Level RBC'' means the product of .70 and the Authorized Control Level RBC.

(k) ''RBC Plan'' means a comprehensive financial plan containing the elements specified in subdivision (b) of Section 739.3. If the commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the ''Revised RBC Plan.''

(*l*) ''RBC Report'' means the report required in Section 739.2.

(m) ''Total Adjusted Capital'' means the sum of:

(1) An insurer's statutory capital and surplus.

(2) Other items, if any, that the RBC Instructions may provide.

SEC. 2. Section 11732 of the Insurance Code is amended to read:

11732. Rates shall be adequate to cover an insurer's losses and expenses. Rates shall not tend to create a monopoly in the market. For the purpose of this section, the rates of any individual insurer, other than the State Compensation Insurance Fund, are presumed to create a monopoly in the market if the insurer has a market share, based on a percentage of statewide workers' compensation premium, equivalent to 20 percent or more of the premium written by all insurers other than the State Compensation Insurance Fund.

SEC. 3. Section 11733 of the Insurance Code is amended to read:

11733. In determining whether rates comply with Section 11732, the following criteria shall apply:

(a) Due consideration may be given to past and prospective loss and expenses experience within this state, to catastrophe hazards and contingencies, to events or trends within this state, to loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors, including judgment.

(b) The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as is credible, its own actual and anticipated expense experience.

(c) The rates may contain a provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums.

SEC. 4. Section 11735 of the Insurance Code is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date. Upon application by the filer, the commissioner may authorize an earlier effective date. To the extent possible, rates and supplementary rate information shall be based upon supporting information derived from the experience or data of the insurer, rating organization, advisory organization, or other insurers. For the purposes of this subdivision, ''rating organization'' shall have the same meaning as set forth in subdivision (b) of Section 11750.1, and ''advisory organization'' shall have the same meaning as set forth in subdivision (e) of that section.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary rate information, and any supporting information for rates filed under this article, as soon as filed, shall be open to public inspection at any reasonable time. Copies may be obtained by any person upon request and the payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue, nor may any insurer use, any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

(e) Notwithstanding Sections 11657 to 11660, inclusive, supplementary rate information filed with the commissioner for purposes of offering deductibles to policyholders for all or part of benefits payable under the policy shall be deemed complete if the filing contains all of the following:

(1) A copy of the deductible endorsement that is to be attached to the policy to effectuate deductible coverage.

(2) Endorsement language that protects the rights of injured workers and ensures that benefits are paid by the insurer without regard to any deductible. The endorsement shall specify that the nonpayment of deductible amounts by the policyholder shall not relieve the insurer from the payment of compensation for injuries sustained by the employee during the period of time the endorsed policy was in effect. The endorsement shall provide that deductible policies for workers' compensation insurance coverage shall not be terminated retroactively for the nonpayment of deductible amounts.

(3) The endorsement shall provide that notwithstanding the deductible, the insurer shall pay all of the obligations of the employer for

workers' compensation benefits for injuries occurring during the policy period. Payment by the insurer of any amounts within the deductible shall be treated as an advancement of funds by the insurer to the employer and shall create a legal obligation for reimbursements, and may be secured by appropriate security.

(4) The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

(5) An explanation of premium reductions reflecting the type and level of the deductible shall be clearly set forth for the policyholder.

(6) The filing shall provide that premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount, and the premium reductions reflect the type and level of deductible consistent with accepted actuarial standards.

(7) The filing shall provide that the nonpayment of deductible amounts by the insured employer to its insurer, or the failure to comply with any security-related terms of the policy, shall be treated under the policy in the same manner as the payment or nonpayment of the premium pursuant to paragraph (1) of subdivision (b) of Section 676.8.

(f) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of an experience rating plan on the same basis as losses under policies providing first dollar coverage.

SEC. 5. Section 11737 of the Insurance Code, as amended by Chapter 6 of the Statutes of 2002, is amended to read:

11737. (a) The commissioner may disapprove a rate if the insurer fails to comply with the filing requirements under Section 11735.

(b) The commissioner may disapprove rates if the commissioner determines that premiums charged, in the aggregate, resulting from the use of the rates or the rates as modified by any supplementary rate information, would be inadequate to cover an insurer's losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market pursuant to Section 11732, 11732.5, or 11733.

(c) The commissioner shall disapprove rates if the commissioner determines that premiums charged, in the aggregate, resulting from the use of the rates or the rates as modified by any supplementary rate information would, if continued in use, tend to impair or threaten the solvency of an insurer. In determining whether the premium charged in the aggregate would, if continued in use, tend to impair or threaten the solvency of the insurer, the commissioner shall consider the insurer's experience in other states.

(d) If the commissioner intends to disapprove rates pursuant to subdivision (a) or (b), the commissioner shall serve notice on the insurer

of the intent to disapprove and shall schedule a hearing to commence within 60 days of the date of the notice.

(e) If the commissioner disapproves rates pursuant to subdivision (c), the commissioner shall immediately serve notice on the insurer of the disapproval. An insurer whose rates have been disapproved pursuant to that subdivision may, within 20 days of the date of the notice of disapproval, request a hearing, and the commissioner shall hold a hearing within 60 days of the date of the notice of disapproval.

(f) Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. If the insurer or rating organization fails to grant or reject the request within 30 days, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the insurer or rating organization on the request may appeal, within 30 days after written notice of the action, to the commissioner who, after a hearing held within 60 days from the date on which the party requests the appeal, or longer upon agreement of the parties and not less than 10 days' written notice to the appellant and to the insurer or rating organization, may affirm, modify, or reverse that action. If the commissioner has information on the subject from which the appeal is taken and believes that a reasonable basis for the appeal does not exist or that the appeal is not made in good faith, the commissioner may deny the appeal without a hearing. The denial shall be in writing, set forth the basis for the denial, and be served on all parties.

(g) If the commissioner disapproves a rate, the commissioner shall issue an order specifying in what respects the rate fails to meet the requirements of this article and stating when, within a reasonable period thereafter, that rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued within 20 days after the notice prescribed in subdivision (e) is served. If a hearing is held pursuant to subdivision (d) or (e), the order shall be issued, instead, within 30 days after the close of the hearing. The order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on that date.

(h) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall specify interim rates for the insurer that protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except

that refunds of less than ten dollars ($10) per policyholder shall not be required. However, if the commissioner has disapproved rates pursuant to subdivision (c), the commissioner shall order the insurer in the interim to use, at a minimum, the approved advisory pure premium rates pursuant to subdivision (b) of Section 11750, as modified by the uniform experience rating plan established pursuant to subdivision (c) of Section 11734, without any deviations on account of any supplementary rate information and reflecting the actual expenses of the insurer, until the time that a final determination of rates is adjudicated and ordered through a hearing.

(i) Notwithstanding any other provision of law, an insurer may increase rates on policies with inception dates prior to January 1, 2003, in an amount no greater than the pure premium rate increase approved by the commissioner reflecting the cost of the change in benefit levels authorized by the act adding this subdivision.

SEC. 6. Section 11753.1 of the Insurance Code is amended to read:

11753.1. (a) Any person aggrieved by any decision, action, or omission to act of a rating organization may request that the rating organization reconsider the decision, action, or omission. If the request for reconsideration is rejected or is not acted upon within 30 days by the rating organization, the person requesting reconsideration may, within a reasonable time, appeal from the decision, action, or omission of the rating organization. The appeal shall be made to the commissioner by filing a written complaint and request for a hearing specifying the grounds relied upon. If the commissioner has information on the subject appealed from and believes that probable cause for the appeal does not exist or that the appeal is not made in good faith, the commissioner may deny the appeal without a hearing. The commissioner shall otherwise hold a hearing to consider and determine the matter presented by the appeal.

(b) Any insurer adopting a change in the classification assignment of an employer that results in an increased premium shall notify the employer in writing, or if the insurance was transacted through an insurance agent or broker, the insurer shall notify the agent or broker who shall notify the employer in writing of the change and the reasons for the change. Any employer receiving this notice shall have the right to request reconsideration and appeal the reclassification pursuant to this section. The notice required by this section shall inform the employer of his or her rights pursuant to this section. No notification shall be required when the change is a result of a regulation adopted by the Department of Insurance or other action by or under the authority of the commissioner.

An insurer shall provide written notification of the revised classification assignment to an employer within 30 days after adoption.

CHAPTER 874

An act to amend Section 19604 of, and to add Sections 19549.15 and 19605.55 to, the Business and Professions Code, relating to horse racing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19549.15 is added to the Business and Professions Code, to read:

19549.15. (a) Notwithstanding Section 19489 or any other provision of this chapter, the board may permit the Solano County Fair to conduct live racing meetings at another site within or outside Solano County, if the site of its 2002 racing meeting is no longer available for horse racing in any subsequent year. Further, subject to the approval of the board, the Solano County Fair may conduct its racing dates at a facility operated by a thoroughbred racing association or fair licensed to conduct a racing meeting in the northern zone.

(b) Any racing meeting licensed to the fair pursuant to subdivision (a) may be operated by the fair or the fair may contract for the operation and management of the racing meeting with an individual thoroughbred racing association or fair, or a partnership, joint venture, or other affiliation of one or more thoroughbred racing associations or fairs.

SEC. 2. Section 19604 of the Business and Professions Code is amended to read:

19604. Notwithstanding any other provision of law, in addition to parimutuel wagering otherwise authorized by this chapter, advance deposit wagering may be conducted upon approval of the board. The board may authorize any racing association or fair, during the calendar period it is licensed by the board to conduct a live racing meeting in accordance with the provisions of Article 4 (commencing with Section 19480), to accept advance deposit wagers or to allow these wagers through a betting system or a multijurisdictional wagering hub in accordance with the following:

(a) Racing associations and racing fairs may form a partnership, joint venture, or any other affiliation in order to further the purposes of this section.

(b) As used in this section, ''advance deposit wagering'' means a form of parimutuel wagering in which a person residing within California or outside of this state establishes an account with a licensee, a board-approved betting system, or a board-approved multijurisdictional wagering hub located within California or outside of this state, and subsequently issues wagering instructions concerning the funds in this account, thereby authorizing the entity holding the account to place wagers on the account owner's behalf. An advance deposit wager may be made only by the entity holding the account pursuant to wagering instructions issued by the owner of the funds communicated by telephone call or through other electronic media. The licensee, a betting system, or a multijurisdictional wagering hub shall ensure the identification of the account's owner by utilizing methods and technologies approved by the board. Further, at the request of the board, any licensee, betting system, or multijurisdictional wagering hub located in California, and any betting system or multijurisdictional wagering hub located outside of this state that accepts wagering instructions concerning races conducted in California or accepts wagering instructions from California residents, shall provide a full accounting and verification of the source of the wagers thereby made, including the zone and breed, in the form of a daily download of parimutuel data to a database designated by the board. Additionally, when the board approves a licensee, a betting system, or a multijurisdictional wagering hub, whether located within California or outside of this state, to accept advance deposit wagering instructions on any race or races from California residents, the licensee, betting system, or multijurisdictional wagering hub may be compensated pursuant to a contractual agreement with a California licensee, in an amount not to exceed 6.5 percent of the amount handled on a race or races conducted in California, and in the case of a race or races conducted in another jurisdiction, may be compensated in an amount not to exceed 6.5 percent, plus a fee to be paid to the host racing association not to exceed 3.5 percent, of the amount handled on that race or races. The amount remaining after the payment of winning wagers and after payment of the contractual compensation and host fee, if any, shall be distributed as a market access fee in accordance with subdivision (g). As used in this section, ''market access fee'' means the contractual fee paid by a betting system or multijurisdictional wagering hub to the California licensee for access to the California market for wagering purposes. As used in this section, ''licensee'' means any racing association or fair, or affiliation thereof authorized in subdivision (a).

(c) (1) The board shall develop and adopt rules to license and regulate all phases of operation of advance deposit wagering for licensees, betting systems, and multijurisdictional wagering hubs located in California. Betting systems and multijurisdictional wagering hubs located and operating in California shall be approved by the board prior to establishing advance deposit wagering accounts or accepting wagering instructions concerning those accounts and shall enter into a written contractual agreement with the bona fide labor organization that has historically represented the same or similar classifications of employees at the nearest horse racing meeting. Permanent state or county employees and nonprofit organizations that have historically performed certain services at county, state, or district fairs may continue to provide those services, notwithstanding this requirement.

(2) The board shall develop and adopt rules and regulations requiring betting systems and multijurisdictional wagering hubs to establish security access policies and safeguards, including, but not limited to, the following:

(A) The betting system or wagering hub shall utilize the services of a board-approved independent third party to perform identity, residence, and age verification services with respect to persons establishing an advance deposit wagering account.

(B) The betting system or wagering hub shall utilize personal identification numbers (PINs) and other technologies to assure that only the accountholder has access to the advance deposit wagering account.

(C) The betting system or wagering hub shall provide for withdrawals from the wagering account only by means of a check made payable to the accountholder and sent to the address of the accountholder or by means of an electronic transfer to an account held by the verified accountholder or the accountholder may withdraw funds from the wagering account at a facility approved by the board by presenting verifiable personal and account identification information.

(D) The betting system or wagering hub shall allow the board access to its premises to visit, investigate, and place expert accountants and other persons it deems necessary for the purpose of ensuring that its rules and regulations concerning credit authorization, account access, and other security provisions are strictly complied with.

(3) The board shall prohibit advance deposit wagering advertising that it determines to be deceptive to the public. The board shall also require, by regulation, that every form of advertising contain a statement that minors are not allowed to open or have access to advance deposit wagering accounts.

(d) As used in this section, a ''multijurisdictional wagering hub'' is a business conducted in more than one jurisdiction that facilitates

parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(e) As used in this section, a ''betting system'' is a business conducted exclusively in this state that facilitates parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(f) In order for a licensee, betting system, or multijurisdictional wagering hub to be approved by the board to conduct advance deposit wagering, it shall meet both of the following requirements:

(1) All wagers thereby made shall be included in the appropriate parimutuel pool of the host racing association or fair under a contractual agreement with the applicable California licensee, in accordance with the provisions of this chapter.

(2) The amounts deducted from advance deposit wagers shall be in accordance with the provisions of this chapter.

(g) The amount received as a market access fee from advance deposit wagers, which shall not be considered for purposes of Section 19616.51, shall be distributed as follows:

(1) An amount equal to 0.0011 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the Center for Equine Health to establish the Kenneth L. Maddy Fund for the benefit of the School of Veterinary Medicine at the University of California at Davis.

(2) An amount equal to 0.0003 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the Department of Industrial Relations to cover costs associated with audits conducted pursuant to Section 19526 and for the purposes of reimbursing the State Mediation and Conciliation Service for costs incurred pursuant to this bill. However, if that amount would exceed the costs of the Department of Industrial Relations, the amount distributed to the department shall be reduced, and that reduction shall be forwarded to an organization designated by the racing association or fair described in subdivision (a) for the purpose of augmenting a compulsive gambling prevention program specifically addressing that problem.

(3) An amount equal to 0.00165 multiplied by the amount handled on advance deposit wagers that originate in California for each racing meeting shall be distributed as follows:

(A) One-half of the amount shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) One-half of the amount shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel

pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(4) With respect to wagers on each breed of racing that originate in California, an amount equal to 2 percent of the first two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to 1.5 percent of the next two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, and an amount equal to 1 percent of handle from all advance deposit wagers originating from within California in excess of five hundred million dollars ($500,000,000) annually, shall be distributed as satellite wagering commissions. The satellite wagering facility commissions calculated in accordance with this subdivision shall be distributed to each satellite wagering facility and racing association or fair in the zone in which the wager originated in the same relative proportions that the satellite wagering facility or the racing association or fair generated satellite commissions during the previous calendar year. For purposes of this section, the purse funds distributed pursuant to Section 19605.72 shall be considered to be satellite wagering facility commissions attributable to thoroughbred races at the locations described in that section.

(5) With respect to wagers on each breed of racing that originate in California for each racing meeting, after the payment of contractual obligations to the licensee, the betting system, or the multijurisdictional wagering hub, and the distribution of the amounts set forth in paragraphs (1) through (4), inclusive, the amount remaining shall be distributed to the racing association or fair that is conducting live racing on that breed during the calendar period in the zone in which the wager originated, and this amount shall be allocated to that racing association or fair as commissions, to horsemen participating in that racing meeting in the form of purses, and as incentive awards, in the same relative proportion as they were generated or earned during the prior calendar year at that racing association or fair on races conducted or imported by that racing association or fair after making all deductions required by applicable law. Purse funds generated pursuant to this section may be utilized to pay 50 percent of the total costs and fees incurred due to the implementation of advance deposit wagering. ''Incentive awards'' shall be those payments provided for in Sections 19617.2, 19617.7, 19617.8, 19617.9, and 19619. The amount determined to be payable for incentive awards shall be payable to the applicable official registering agency and thereafter distributed as provided in this chapter. If the provisions of Section 19601.2 apply, then the amount distributed to the applicable

racing associations or fairs from advance deposit wagering shall first be divided between those racing associations or fairs in direct proportion to the total amount wagered in the applicable zone on the live races conducted by the respective association or fair. Notwithstanding this requirement, when the provisions of subdivision (b) of Section 19607.5 apply to the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento, then the total amount distributed to the applicable racing associations or fairs shall first be divided equally, with 50 percent distributed to applicable fairs and 50 percent distributed to applicable associations. For purposes of this subdivision, the zones of the state shall be as defined in Section 19530.5, except as modified by the provisions of subdivision (f) of Section 19601, and the combined central and southern zones shall be considered one zone.

Notwithstanding any provision of this section to the contrary, the distribution of the market access fee, other than the distributions specified in paragraph (1) or (2), may be altered upon the approval of the board, in accordance with an agreement signed by all parties receiving a distribution under paragraphs (4) and (5).

(h) Notwithstanding any provisions of this section to the contrary, all funds derived from advance deposit wagering that originate from California for each racing meeting on out-of-state and out-of-country thoroughbred races conducted after 6 p.m., Pacific time, shall be distributed in accordance with this subdivision. With respect to these wagers, 50 percent of the amount remaining after the payment of contractual obligations to the multijurisdictional wagering hub, betting system, or licensee and the amounts set forth in paragraphs (1) through (5), inclusive, of subdivision (g) shall be distributed as commissions to thoroughbred associations and racing fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subdivision (g), and the remaining 50 percent, together with all funds derived for each racing meeting from advance deposit wagering originating from California out-of-state and out-of-country harness and quarter horse races conducted after 6 p.m., Pacific time, shall be distributed as commissions on a pro rata basis to the applicable licensed quarter horse association and the applicable licensed harness association, based upon the amount handled instate, both on- and off-track, on each breed's own live races in the previous year by that association, or it's predecessor association. One-half of the amount thereby received by each association shall be retained by that association as a commission, and the other half of the money received shall be distributed as purses to the horsemen participating in its current or next scheduled licensed racing meeting.

(i) Notwithstanding any provisions of this section to the contrary, all funds derived from advance deposit wagering which originate from

California for each racing meeting on out-of-state and out-of-country nonthoroughbred races conducted before 6 p.m., Pacific time, shall be distributed in accordance with this subdivision. With respect to these wagers, 50 percent of the amount remaining after the payment of contractual obligations to the multijurisdictional wagering hub, betting system, or licensee and the amounts set forth in paragraphs (1) through (5), inclusive, of subdivision (g) shall be distributed as commissions as provided in subdivision (h) for licensed quarter horse and harness associations, and the remaining 50 percent shall be distributed as commissions to the applicable thoroughbred associations or fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subdivision (g).

(j) A racing association, a fair, or a satellite wagering facility may accept and facilitate the placement of any wager from a patron at its facility that a California resident could make through a betting system or multijurisdictional wagering hub duly offering advance deposit wagering in this state, and the facility accepting the wager shall receive a 2-percent commission on that wager in lieu of any distribution for satellite commissions pursuant to subdivision (g).

(k) Any disputes concerning the interpretation or application of this section shall be resolved by the board.

This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. Section 19605.55 is added to the Business and Professions Code, to read:

19605.55. (a) Notwithstanding Section 19605, 19605.1, 19605.35, or any other provision of this chapter, if the Solano County Fair ceases to conduct live horse racing at the site of its 2002 racing meeting in any subsequent year, the board may authorize satellite wagering in Solano County as provided in this section:

(1) The board may authorize a satellite wagering facility to replace its existing facility to be located on the fairgrounds of the Solano County Fair or on leased premises within the county, at the option of the fair. The facility may be operated by the fair or the fair may contract for the operation and management of the satellite wagering facility with an individual thoroughbred racing association or fair, or a partnership, joint venture, or other affiliation of one or more thoroughbred racing associations or fairs. The board may license a facility to the Solano County Fair pursuant to this section notwithstanding the mileage restrictions contained in Section 19605 or any other provision of this chapter to the contrary.

(2) A satellite wagering facility licensed to the fair pursuant to this section is subject to the provisions of subdivisions (a) to (e), inclusive,

of Section 19605.3, except that such a facility shall not be subject to the provisions of paragraph (3) of subdivision (a) of Section 19605.3 or any other impact fee or charge.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to apply to the 2002 racing season, it is necessary that this act take effect immediately.

CHAPTER 875

An act to amend Sections 31760.2, 31785.1, and 31786.1 of the Government Code, relating to county employees' retirement.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 31760.2 of the Government Code is amended to read:

31760.2. (a) Notwithstanding Section 31481 or 31760.1, upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued to his or her surviving spouse for life. If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of the deceased member attains the age of 18 years, then the allowance that the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 years if the children remain unmarried and

are regularly enrolled as full-time students in an accredited school, as determined by the board.

(d) If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section and the total retirement allowance income received by the retired member during his or her lifetime did not equal or exceed his or her accumulated normal contributions, the retired member's designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

(e) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31760.1.

(f) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(g) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The board's resolution may designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

SEC. 2. Section 31785.1 of the Government Code is amended to read:

31785.1. (a) Notwithstanding Section 31481 or 31785, upon the death of any safety member, after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued to his or her surviving spouse for life. If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of the deceased safety member attains the age of 18 years, then the allowance that the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age, collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless he or she was married to the safety member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 years if the children remain unmarried and

are regularly enrolled as full-time students in an accredited school as determined by the board.

(d) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31785.

(e) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(f) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The board's resolution may designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

SEC. 3. Section 31786.1 of the Government Code is amended to read:

31786.1. (a) Notwithstanding Section 31481 or 31786, upon the death of any member after retirement for service-connected disability, his or her retirement allowance as it was at his or her death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued to his or her surviving spouse for life. If there is no surviving spouse entitled to an allowance under this section or if he or she dies before every child of the deceased member attains the age of 18 years, then the allowance that the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age, collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(d) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31786.

(e) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(f) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section

applicable in the county. The board's resolution may designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

CHAPTER 876

An act to add Section 3212.12 to the Labor Code, relating to workers' compensation.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 3212.12 is added to the Labor Code, to read:

3212.12. (a) This section applies to peace officers, as defined in subdivision (b) of Section 830.1 of the Penal Code, subdivisions (e), (f), and (g) of Section 830.2 of the Penal Code, and corpsmembers, as defined by Section 14302 of the Public Resources Code, and other employees at the California Conservation Corps classified as any of the following:

Title	Class
Backcounty Trails Camp Supervisor, California Conservation Corps	1030
Conservationist I, California Conservation Corps	1029
Conservationist II, California Conservation Corps	1003
Conservationist II, Nursery California Conservation Corps	7370

(b) The term "injury," as used in this division, includes Lyme disease that develops or manifests itself during a period in which any person described in subdivision (a) is in the service of the department.

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

(d) Lyme disease 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 Lyme disease is not reasonably linked to the work performance.

Unless so controverted, the appeals board shall find in accordance with the presumption. This presumption shall be extended to a person described in subdivision (a) 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.

CHAPTER 877

An act to amend Section 21419 of, and to add Section 31897.6 to, the Government Code, and to amend Section 4850.4 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 21419 of the Government Code is amended to read:

21419. This system shall deduct the amount of advanced disability pension payments made to a local safety member pursuant to Section 4850.3 or 4850.4 of the Labor Code from the member's retroactive disability allowance, and reimburse the local agency that has made the advanced disability pension payments. If the retroactive disability allowance is not sufficient to reimburse the total advanced disability pension payments, an amount no greater than 10 percent of the member's monthly disability allowance shall be deducted and reimbursed to the local agency until the total advanced disability pension payments have been repaid. The local safety member and this system may agree to any other arrangement or schedule for the member to repay the advanced disability pension payments.

SEC. 2. Section 31897.6 is added to the Government Code, to read:

31897.6. The board shall deduct the amount of advanced disability pension payments made to a local safety member pursuant to Section 4850.3 or 4850.4 of the Labor Code from the member's retroactive disability pension payments. If the retroactive disability allowance is not sufficient to reimburse the total advanced disability pension payments, an amount no greater than 10 percent of the member's monthly disability allowance shall be deducted and reimbursed to the local agency until the total advanced disability pension payments have been repaid. The local safety member and this system may agree to any other arrangement or

schedule for the member to repay the advanced disability pension payments.

SEC. 3. Section 4850.4 of the Labor Code, as added by Chapter 189 of the Statutes of 2002, is amended to read:

4850.4. (a) 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 Systems, shall make advanced disability pension payments in accordance with Section 4850.3 unless any of the following is applicable:

(1) After an examination of the employee by a physician, the physician determines that there is no discernable injury to, or illness of, the employee.

(2) The employee was incontrovertibly outside the course of his or her employment duties when the injury occurred.

(3) There is proof of fraud associated with the filing of the employee's claim.

(b) Any employer described in subdivision (a) who is required to make advanced disability pension payments, shall make the payments commencing no later than 30 days from the date of issuance of the last disbursed of the following:

(1) The employee's last regular payment of wages or salary.

(2) The employee's last payment of benefits under Section 4850.

(3) The employee's last payment for sick leave.

(c) The advanced disability payments shall continue until the claimant is approved or disapproved for a disability allowance pursuant to final adjudication as provided by law.

(d) An employer described in subdivision (a) shall be required to make advanced disability pension payments only if the employee does all of the following:

(1) Files an application for disability retirement at least 60 days prior to the payment of benefits pursuant to subdivision (a).

(2) Fully cooperates in providing the employer with medical information and in attending all statutorily required medical examinations and evaluations set by the employer.

(3) Fully cooperates with the evaluation process established by the retirement plan.

(e) The 30-day period for the commencement of payments pursuant to subdivision (b) shall be tolled by whatever period of time is directly related to the employee's failure to comply with the provisions of subdivision (d).

(f) After final adjudication, if an employee's disability application is denied, the local agency and the employee shall arrange for the employee to repay any advanced disability pension payments received by the

employee pursuant to this subdivision. The repayment plan shall take into account the employee's ability to repay the advanced disability payments received. Absent an agreement on repayment, the matter shall be submitted for a local agency administrative appeals remedy that includes an independent level of resolution to determine a reasonable repayment plan. If repayment is not made according to the repayment plan, the local agency may take reasonable steps, including litigation, to recover the payments advanced.

SEC. 4. Sections 1 and 2 of this act shall become operative only if Assembly Bill 1982, Chapter 189 of the Statutes of 2002, becomes operative and adds Section 4850.4 to the Labor Code.

CHAPTER 878

An act to add Sections 710.7 and 710.8 to the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 710.7 is added to the Unemployment Insurance Code, to read:

710.7. (a) The State of California, as defined as an employer in Section 3513 of the Government Code, may elect to become an employer subject to Part 2 (commencing with Section 2601) with respect to all employees who are part of an appropriate unit established pursuant to Chapter 10 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code, provided the election is the result of a negotiated agreement between the State of California and the recognized employee organization, as those terms are defined in Section 3513 of the Government Code. The State of California may elect to provide coverage to its management and confidential employees and to its employees who are not part of an appropriate unit, provided that the election is not contingent upon coverage of other employees of the State of California.

(b) Upon filing of the election, the filing entity shall, upon approval by the director, become an employer subject to Part 2 (commencing with Section 2601) to the same extent as other employers, and services performed by its employees including those with civil service or tenure

positions who are subject to an election under this section shall constitute employment subject to that part.

(c) Sections 986 and 2903 apply to an employer making an election pursuant to this section.

SEC. 2. Section 710.8 is added to the Unemployment Insurance Code, to read:

710.8. (a) The Trustees of the California State University, as defined as an employer in Section 3562 of the Government Code, may elect to become an employer subject to Part 2 (commencing with Section 2601) with respect to all employees who are part of an appropriate unit established pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, provided the election is the result of a negotiated agreement between the Trustees of the California State University and the recognized employee organization, as those terms are defined in Section 3562 of the Government Code. The California State University Trustees may elect to provide coverage to its management and confidential employees and to its employees who are not a part of an appropriate unit, provided that the election is not contingent upon coverage of other employees of the California State University Trustees.

(b) Upon filing of the election, the filing entity shall, upon approval by the director, become an employer subject to Part 2 (commencing with Section 2601) to the same extent as other employers, and services performed by its employees, including those with civil service or tenure positions, who are subject to an election under this section shall constitute employment subject to that part.

(c) Sections 986 and 2903 apply to an employer making an election pursuant to this section.

CHAPTER 879

An act to amend Section 11752.7 of the Insurance Code, relating to workers' compensation insurance.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. The Legislature finds and declares that it is the intent of the State of California to foster a competitive marketplace for workers' compensation insurance to serve employers and their injured employees. In order to achieve this goal, the Legislature finds and

declares that it is important for insurers, agents, and brokers to have access to and share information developed by insurers and reported to insurance advisory and rating organizations, as required by law, that is necessary to underwrite insurance and facilitate the transaction of workers' compensation insurance in this state. The provisions of this act are intended to further the Legislature's intent.

SEC. 2. Section 11752.7 of the Insurance Code is amended to read:

11752.7. (a) A licensed rating organization may make available experience rating information contained in its records to any insurer admitted to transact workers' compensation insurance in this state or to any insurance agent or broker that is licensed to transact workers' compensation insurance in this state, if the insurer, agent, or broker submits a written request to the licensed rating organization stating all of the following:

(1) The requesting insurer is admitted to transact workers' compensation insurance in this state or that the requesting agent or broker is licensed to transact workers' compensation insurance in this state.

(2) The information requested.

(3) The information requested will be used to facilitate the transaction of workers' compensation insurance by the insurer, agent, or broker.

(4) The information received will not be released by the agent or broker to others, except to facilitate the transaction of workers' compensation insurance by the requesting agent or broker.

(b) The licensed rating organization may, but shall not be required to, verify that an insurer requesting information under this section is admitted to transact workers' compensation insurance in this state or that an insurance agent or broker requesting information under this section is licensed to transact workers' compensation insurance in this state.

(c) For purposes of this section:

(1) ''Experience rating information'' means information released on microfiche, at an Internet Web site or other electronic format, or in other forms or media by a licensed rating organization that identifies all experience-rated employers, and the experience ratings and classifications or experience modifications that apply or applied to those employers.

(2) ''Transaction,'' as applied to workers' compensation insurance, includes any of the following:

(A) Solicitation.

(B) Negotiations preliminary to execution of a contract of insurance.

(C) Execution of a contract of insurance.

(D) Resolution of matters arising out of the contract and subsequent to its execution.

(d) Experience rating information made available pursuant to this section shall be confidential and shall not be used for any purpose other than to facilitate the transaction of workers' compensation insurance by the insurer, agent, or broker receiving the information pursuant to this section.

(e) Notwithstanding any other provision of law, including this section, a licensed rating organization may not enter into a contract or other agreement, including its constitution, articles of incorporation, or bylaws that prohibits information services companies in the business of publishing or providing experience rating information immediately prior to September 15, 1989, from continuing on or after September 15, 1989, to receive and provide to others experience rating information from whatever sources and in whatever forms or media.

(f) No licensed rating organization, member of a licensed rating organization, member of a committee of a licensed rating organization when acting in its capacity as a member of the committee, or officer or employee of a licensed rating organization when acting within the scope of his or her employment, shall be liable to any person for injury, personal or otherwise, or damages caused or alleged to have been caused, either directly or indirectly, by the disclosure of information pursuant to this section, or to the members of those organizations, or for the accuracy or completeness of the information disclosed.

(g) This section shall not be construed as implying the existence of liability in circumstances not defined in this section, nor as implying a legislative recognition that, except for the enactment of this section, a liability has existed or would exist in the circumstances stated in this section.

(h) This section shall not be construed as limiting any authority of a licensed rating organization to disclose information contained in its records to others.

CHAPTER 880

An act to amend, repeal, and add Section 1373.4 of the Health and Safety Code, and to amend, repeal, and add Section 10119.5 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. This act shall be known and may be cited as the Maternity Parity Act.

SEC. 2. Section 1373.4 of the Health and Safety Code is amended to read:

1373.4. (a) No health care service plan which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after July 1, 1976, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions as to involuntary complications of pregnancy, unless the provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in the plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan.

(b) Where a plan which provides or arranges direct health care services for its members contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from prenatal care and delivery. However, expenses resulting from any delivery in excess of the deductible amount shall be treated as expenses for any other illness under the plan. If the pregnancy is interrupted, the maternity deductible charged for prenatal care and delivery shall be based on the value of the medical services received, providing that it is never more than two-thirds of the plan's maternity deductible.

(c) This section shall apply to all health care service plans except any group health service plan made subject to an applicable collective-bargaining agreement in effect before July 1, 1976.

(d) For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

(e) All health care service plans subject to this section and issued, amended, delivered, or renewed in this state on or after July 1, 1976, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

(f) This section shall remain in effect only until July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which is enacted on or before July 1, 2003, deletes or extends those dates.

SEC. 3. Section 1373.4 is added to the Health and Safety Code, to read:

1373.4. (a) No health care service plan contract that is issued, amended, renewed, or delivered on or after July 1, 2003, that provides maternity coverage shall do either of the following:

(1) Contain a copayment or deductible for inpatient hospital maternity services that exceeds the most common amount of the copayment or deductible contained in the contract for inpatient services provided for other covered medical conditions.

(2) Contain a copayment or deductible for ambulatory care maternity services that exceeds the most common amount of the copayment or deductible contained in the contract for ambulatory care services provided for other covered medical conditions.

(b) No health care service plan that provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions as to involuntary complications of pregnancy, unless the provisions apply generally to all benefits paid under the plan.

(c) If the pregnancy is interrupted, the maternity deductible charged for prenatal care and delivery shall be based on the value of the medical services received, providing it is never more than two-thirds of the plan's maternity deductible.

(d) For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

(e) This section shall not permit copayments or deductibles in the Medi-Cal program that are not otherwise authorized under state or federal law.

(f) This section shall become operative on July 1, 2003.

SEC. 4. Section 10119.5 of the Insurance Code is amended to read:

10119.5. (a) No group or blanket policy of disability insurance which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after July 1, 1976, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless the provisions apply generally to all benefits paid under the policy. If a fixed amount is specified in the policy for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of

comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the policy. Where the policy contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the policy. This section shall apply to all group or blanket disability policies except any group disability policy made subject to an applicable collective-bargaining agreement in effect before July 1, 1976.

(b) For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

(c) All policies subject to this section and issued, amended, delivered, or renewed in this state on or after July 1, 1976, shall be construed to be in compliance with this section, and any provision in any such policy which is in conflict with this section shall be of no force or effect.

(d) This section shall remain in effect only until July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which is enacted on or before July 1, 2003, deletes or extends those dates.

SEC. 5. Section 10119.5 is added to the Insurance Code, to read:

10119.5. (a) No individual or group policy of health insurance that is issued, amended, renewed, or delivered on or after July 1, 2003, that provides maternity coverage shall contain a copayment or deductible for inpatient hospital maternity services that exceeds the most common amount of the copayment or deductible contained in the policy for inpatient services provided for other covered medical conditions or contain a copayment or deductible for ambulatory care maternity services that exceeds the most common amount of the copayment or deductible contained in the policy for ambulatory care services provided for other covered medical conditions.

(b) No group or blanket policy of health insurance that provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless the provisions apply generally to all benefits paid under the policy.

(c) For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

(d) This section shall not apply to Medicare supplement, vision-only, or Champus-supplement insurance, or to hospital indemnity,

accident-only, and specified disease insurance that does not pay benefits on a fixed benefit, cash payment only basis.

(e) This section shall not permit copayments or deductibles in the Medi-Cal program that are not otherwise authorized under state or federal law.

(f) This section shall become operative on July 1, 2003.

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 881

An act to amend, repeal, and add Section 30162 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 30162 of the Revenue and Taxation Code is amended to read:

30162. (a) Stamps and meter impressions shall be of the designs, specifications and denominations as may be prescribed by the board. The board shall prescribe by regulation the method and manner in which stamps or meter impressions are to be affixed to packages of cigarettes and may provide for the cancellation of stamps or meter impressions.

(b) This section shall remain in effect until January 1, 2005, and as of that date is repealed.

SEC. 2. Section 30162 is added to the Revenue and Taxation Code, to read:

30162. (a) Stamps and meter impressions shall be of the designs, specifications, and denominations as may be prescribed by the board. Stamps and meter impressions shall be generated by a technology capable of being read by a scanning or similar device and shall be encrypted with, at a minimum, the following information:

(1) The name and address of the distributor affixing the stamp or meter impression.

(2) The date the stamp or meter impression was affixed.
(3) The denominated value of the stamp or meter impression.
(b) The board shall prescribe by regulation the method and manner in which stamps or meter impressions are to be affixed to packages of cigarettes and may provide for the cancellation of stamps or meter impressions.
(c) This section shall become operative on January 1, 2005.

CHAPTER 882

An act to amend Section 53216.2 of the Government Code, relating to public employees.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 53216.2 of the Government Code is amended to read:
53216.2. A county that has established a pension trust pursuant to this article may contract with the courts within the county, and with other local agencies within the county, to permit the officers and employees of those courts and local agencies to participate in any plan under the county's pension trust.

CHAPTER 883

An act to amend Section 45309 of, and to add Sections 31629.5, 31831.3, 45310.6, 45310.7, 53216.8, and 53217.10 to, the Government Code, relating to public employees' retirement.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:
(a) As a matter of statewide importance, the safety and welfare of the people of California require that California's current and former local public safety officers are granted redeposit rights for retirement purposes to ensure that the highest quality police officers and firefighters are

attracted to, and retained in, positions of public service, and in order to ensure that the administration of these duties is of the highest caliber and integrity.

(b) There is a public obligation to provide retirement compensation to public safety officers who selflessly risk their lives on a daily basis to ensure the safety and the well-being of the public.

(c) As a matter of statewide importance, it is necessary to ensure that local public safety officers who are incapacitated in the performance of their duties or by age, be replaced by the most qualified public safety officers, and it is necessary to recognize that retirement benefits impact this endeavor.

(d) Furthermore, due to the state's compelling interest in ensuring that the state's public agencies recruit and retain the highest caliber of public employees, it is essential that employees who take breaks from public employment to gain valuable experience in the private sector or to increase their skills and abilities by increasing their education level are not required to forfeit retirement benefits to do so, but are allowed to retain the service credit they earn as public employees in order to encourage them to return to public employment and continue to serve the public.

(e) To these ends, it is the intent of the Legislature in enacting this act to enable current and former local public safety officers to redeposit formerly withdrawn contributions for past public service in order to obtain a retirement benefit for that service and to ensure that local public employees have the ability to retain retirement contributions on deposit.

SEC. 2. Section 31629.5 is added to the Government Code, to read:

31629.5. (a) Notwithstanding Sections 31628 and 31629, on or after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the retirement fund. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund.

(b) An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time except: (1) while the member is employed in county service in a position in which the member is not excluded from membership in this system with respect to that service; (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service, entered within six months after discontinuing county service, as a member of a reciprocal retirement system. All accumulated contributions contributed up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements that apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) Notwithstanding Section 31467, for purposes of this section, ''accumulated contributions'' means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

SEC. 3. Section 31831.3 is added to the Government Code, to read:

31831.3. (a) Notwithstanding Sections 31831.1 and 31831.2, any former member who left county or district service and became a member of a retirement system established under this chapter in another county or district, or a reciprocal retirement system, or a retirement system established under the Public Employees' Retirement Law, and who did not elect to, or was not eligible to, leave his or her contributions on deposit pursuant to Article 9 (commencing with Section 31700), may elect to redeposit those contributions if he or she is an active member of a county retirement system, the Public Employees' Retirement System, or another reciprocal retirement system at the time of redeposit. A former member may exercise this right by redepositing in the retirement fund of the county or district he or she left, the amount of accumulated contributions and interest that he or she withdrew from that retirement fund plus regular interest thereon from the date of separation.

(b) A former member who redeposits under this section shall have the same rights as a member who elected to leave his or her accumulated contributions on deposit in the fund. The deferred retirement allowance of the member shall be determined in accordance with the provisions of this chapter applicable to a member retiring directly from county employment on the date of his or her retirement.

(c) A former member who redeposits under this section shall be entitled to a reduced age at entry, commencing with contributions payable the first day of the month following the date the association receives notice of the redeposit, only to the extent provided in Section 31833.

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

(1) A member or former member who is retired.

(2) A former member who is not in the service of an employer making him or her a member of a retirement system established under this chapter in another county or district, a retirement system established under the Public Employees' Retirement Law, or another reciprocal retirement system.

(e) This section shall only apply to either of the following:

(1) A former member who is in the service of an employer as an officer or employee of a law enforcement agency or fire department whose principal duties consist of active law enforcement or firefighting and prevention service, but excluding one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(2) A former member who is in the service of an employer and seeks to redeposit contributions for past employment as an officer or employee of a law enforcement agency or fire department in this system whose principal duties consisted of active law enforcement or firefighting and prevention service, but excluding one whose principal duties were those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions did not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee was subject to occasional call, or was occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(f) For purposes of this section, a ''former member'' is a member who left county or district service and who did not elect to, or was not eligible to, leave his or her contributions on deposit pursuant to Article 9 (commencing with Section 31700).

(g) Each retirement system shall establish criteria to determine the eligibility of a former member to redeposit contributions, and the amount of contributions that may be redeposited, pursuant to this section in those cases in which the system no longer maintains complete records with respect to the former member.

SEC. 4. Section 45309 of the Government Code is amended to read:

45309. Among other matters, the ordinance establishing the system shall provide for:

(a) The amount of benefits to be paid to any officers or employees, or their beneficiaries, and the terms and conditions upon which the benefits will be paid.

(b) The contribution to be paid by the officers or employees to the pension and retirement fund.

(c) The contribution to be paid by the city to the pension and retirement fund, which, exclusive of contributions paid on account of service rendered prior to the effective date of the ordinance, shall not exceed the total contribution paid to the pension and retirement fund by the officers and employees.

(d) The personnel of the retirement board, which shall consist of not less than five members, at least two of whom shall be elected by the officers and employees who are included in the retirement system.

(e) The adoption of regulations for the administration of the system by the retirement board.

(f) The refunding to any officer or employee who withdraws from the system, prior to retirement, of the amount of his or her contribution and the interest credited to his or her contribution upon the officer's or employee's request following withdrawal from the system.

SEC. 5. Section 45310.6 is added to the Government Code, to read:

45310.6. When a city has established a reciprocal retirement system under this chapter, the following shall apply:

(a) Any former member who left service under that system and became a member of a reciprocal retirement system or a retirement system established under the Public Employees' Retirement Law, and who did not elect to, or was not eligible to, leave his or her contributions on deposit, may elect to redeposit those contributions if he or she is an active member of a reciprocal retirement system or the Public Employees' Retirement System at the time of redeposit. A former member may exercise this right by redepositing in the retirement fund of the city he or she left, the amount of accumulated contributions and interest that he or she withdrew from that retirement fund plus regular interest thereon from the date of separation.

(b) A former member who redeposits under this section shall have the same rights as a member who elected to leave his or her accumulated contributions on deposit in the fund. The deferred retirement allowance of the member shall be determined in accordance with provisions applicable to a member retiring directly from city employment on the date of his or her retirement.

(c) A former member who redeposits under this section shall be entitled to a reduced age at entry, commencing with contributions

payable the first day of the month following the date the association receives notice of the redeposit, if applicable.

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

(1) A member or former member who is retired.

(2) A former member who is not in the service of an employer making him or her a member of a retirement system established under the Public Employees' Retirement Law or a reciprocal retirement system.

(e) This section shall only apply to either of the following:

(1) A former member who is in the service of an employer as an officer or employee of a law enforcement agency or fire department whose principal duties consist of active law enforcement or firefighting and prevention service, but excluding one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(2) A former member who is in the service of an employer and seeks to redeposit contributions for past employment as an officer or employee of a law enforcement agency or fire department in the city's retirement system whose principal duties consisted of active law enforcement or firefighting and prevention service, but excluding one whose principal duties were those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions did not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee was subject to occasional call, or was occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(f) For purposes of this section, a ''former member'' is a member who left service under a retirement system established under this chapter and who did not elect to, or was not eligible to, leave his or her contributions on deposit with the system.

(g) Each city retirement system subject to this section shall establish criteria to determine the eligibility of a former member to redeposit contributions, and the amount of contributions that may be redeposited, in those cases in which the system no longer maintains complete records with respect to the former member.

(h) It is the intent of the Legislature in enacting this section to recognize a statewide public obligation to all those whose duties as local public safety officers expose them to more than ordinary risks through their contribution to ensuring public safety and to ensure that those who do serve or have served as local public safety officers shall have the

ability to receive pension benefits for past public service in other jurisdictions within the state.

SEC. 6. Section 45310.7 is added to the Government Code, to read:

45310.7. (a) On or after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the retirement fund of the city's retirement system. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the system's retirement fund.

(b) An election to allow accumulated contributions to remain in the system's retirement fund may be revoked by the member at any time except: (1) while the member is employed in service in a position in which the member is not excluded from membership in the system with respect to that service; (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service in a reciprocal retirement system, entered within six months after discontinuing service in the city's retirement system. All accumulated contributions made up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements as apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) For purposes of this section, "accumulated contributions'' means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

(f) It is the intent of the Legislature in enacting this section to recognize that the state has a compelling interest in ensuring that its public agencies recruit and retain the highest caliber of public employees

by allowing local public employees to retain the service credit that they earned through their service as local public employees in order to encourage them to return to public employment and continue to serve the public.

SEC. 7. Section 53216.8 is added to the Government Code, to read:

53216.8. (a) Any former member who left the service of a local agency with established reciprocity, and who became a member of a county retirement system, a retirement system established under the Public Employees' Retirement Law, or another reciprocal retirement system and who did not elect to, or was not eligible to, leave his or her contributions on deposit, may elect to redeposit those contributions if he or she is an active member of a reciprocal retirement system or the Public Employees' Retirement System at the time of redeposit. A former member may exercise this right by redepositing in the retirement fund of the local agency he or she left, the amount of accumulated contributions and interest that he or she withdrew from that retirement fund plus regular interest thereon from the date of separation.

(b) A former member who redeposits under this section shall have the same rights as a member who elected to leave his or her accumulated contributions on deposit in the local agency's fund. The deferred retirement allowance of the member shall be determined in accordance with provisions applicable to a member retiring directly from local agency employment on the date of his or her retirement.

(c) A former member who redeposits under this section shall be entitled to a reduced age at entry, commencing with contributions payable the first day of the month following the date the local agency receives notice of the redeposit, if applicable.

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

(1) A member or former member who is retired.

(2) A former member who is not in the service of an employer making him or her a member of a county retirement system, a retirement system established under the Public Employees' Retirement Law, or another reciprocal retirement system.

(e) This section shall only apply to either of the following:

(1) A former member who is in the service of an employer as an officer or employee of a law enforcement agency or fire department whose principal duties consist of active law enforcement or firefighting and prevention service, but excluding one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(2) A former member who is in the service of an employer and seeks to redeposit contributions for past employment as an officer or employee of a law enforcement agency or fire department in this system whose principal duties consisted of active law enforcement or firefighting and prevention service, but excluding one whose principal duties were those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions did not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee was subject to occasional call, or was occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(f) For purposes of this section, a ''former member'' is a member who left service under a retirement system established under this chapter and who did not elect to, or was not eligible to, leave his or her contributions on deposit.

(g) Each retirement system subject to this section shall establish criteria to determine the eligibility of a former member to redeposit contributions, and the amount of contributions that may be redeposited, in those cases in which the system no longer maintains complete records with respect to the former member.

(h) It is the intent of the Legislature in enacting this section to recognize a statewide public obligation to all those whose duties as local public safety officers expose them to more than ordinary risks through their contribution to ensuring public safety and to ensure that those who do serve or have served as local public safety officers shall have the ability to receive pension benefits for past public service in other jurisdictions within the state.

SEC. 8. Section 53217.10 is added to the Government Code, to read:

53217.10. (a) On or after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the local agency's retirement fund. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund.

(b) An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time except: (1) while the member is employed in service in a position in which the member is not excluded from membership in the local system retirement fund with respect to that service; (2) while the member is in service as a member of public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service, entered within six months after discontinuing county service, as a member of a reciprocal retirement system. All accumulated contributions contributed up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements as apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) For purposes of this section, "accumulated contributions" means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

(f) It is the intent of the Legislature in enacting this section to recognize that the state has a compelling interest in ensuring that its public agencies recruit and retain the highest caliber of public employees by allowing local public employees to retain the service credit that they earned through their service as local public employees in order to encourage them to return to public employment and continue to serve the public.

CHAPTER 884

An act to amend Section 7581 of, and to add Section 7583.46 to, the Business and Professions Code, relating to private security services.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 7581 of the Business and Professions Code is amended to read:

7581. The director may adopt and enforce reasonable rules, as follows:

(a) Classifying licensees according to the type of business regulated by this chapter in which they are engaged, including, but not limited to, persons employed by any lawful business as security guards or patrolpersons, and armored contract carriers and limiting the field and scope of the operations of a licensee to those in which he or she is classified and qualified to engage.

(b) Fixing the qualifications of licensees and managers, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare.

(c) Carrying out generally the provisions of this chapter, including regulation of the conduct of licensees.

(d) Establishing the qualifications that any person employed by a private patrol operator or any lawful business as a security guard or patrolperson, or employed by an armored contract carrier, must meet as a condition of becoming eligible to carry firearms pursuant to subdivision (d) of Section 12031 of the Penal Code.

(e) Requiring each uniformed employee of a private patrol operator and each armored vehicle guard, as defined in this chapter, and any other person employed and compensated by a private patrol operator or any lawful business as a security guard or patrolperson and who in the course of this employment carries a deadly weapon to be registered with the bureau upon application on a form prescribed by the director accompanied by the registration fee and by two classifiable sets of fingerprints of the applicant or its equivalent as determined by the director and approved by the Department of Justice, establishing the term of the registration for a period of not less than two nor more than four years, and providing for the renewal thereof upon proper application and payment of the renewal fee. The director may, after opportunity for a hearing, refuse this registration to any person who lacks good moral character, and may impose reasonable additional requirements as are necessary to meet local needs that are not inconsistent with the provisions of this chapter.

(f) Establishing procedures whereby the local authorities of any city, county, or city and county may file charges with, or any person in this state, may file a complaint with the director alleging that any licensed private patrol operator, registered security guard, or patrolperson, or anyone who is an applicant for registration or licensure with the bureau, fails to meet standards for registration or licensure, or violates any provision of this chapter, and providing further for the investigation of the charges and a response to the charging or complaining party in the manner described in subdivision (b) of Section 129.

(g) Requiring private patrol operators and any lawful business to maintain detailed records identifying all firearms in their possession or

under their control, and the employees or persons authorized to carry or have access to those firearms.

SEC. 1.5. Section 7581 of the Business and Professions Code is amended to read:

7581. The director may adopt and enforce reasonable rules, as follows:

(a) Classifying licensees according to the type of business regulated by this chapter in which they are engaged, including, but not limited to, persons employed by any lawful business or a public agency as security guards or patrolpersons, and armored contract carriers and limiting the field and scope of the operations of a licensee to those in which he or she is classified and qualified to engage.

(b) Fixing the qualifications of licensees and managers, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare.

(c) Carrying out generally the provisions of this chapter, including regulation of the conduct of licensees.

(d) Establishing the qualifications that any person employed by a private patrol operator, any lawful business, or a public agency as a security guard or patrolperson, or employed by an armored contract carrier, must meet as a condition of becoming eligible to carry firearms pursuant to subdivision (d) of Section 12031 of the Penal Code.

(e) Requiring each employee of a private patrol operator and each armored vehicle guard, as defined in this chapter, and any other person employed and compensated by a private patrol operator, any lawful business, or public agency as a security guard or patrolperson to be registered with the bureau upon application on a form prescribed by the director accompanied by the registration fee and by two classifiable sets of fingerprints of the applicant or its equivalent as determined by the director and approved by the Department of Justice, establishing the term of the registration for a period of not less than two nor more than four years, and providing for the renewal thereof upon proper application and payment of the renewal fee. The director may, after opportunity for a hearing, refuse this registration to any person who lacks good moral character, and may impose reasonable additional requirements as are necessary to meet local needs that are not inconsistent with the provisions of this chapter.

(f) Establishing procedures whereby the local authorities of any city, county, or city and county may file charges with, or any person in this state, may file a complaint with the director alleging that any licensed private patrol operator, registered security guard, or patrolperson, or anyone who is an applicant for registration or licensure with the bureau, fails to meet standards for registration or licensure, or violates any provision of this chapter, and providing further for the investigation of

the charges and a response to the charging or complaining party in the manner described in subdivision (b) of Section 129.

(g) Requiring private patrol operators and any lawful business or public agency to maintain detailed records identifying all firearms in their possession or under their control, and the employees or persons authorized to carry or have access to those firearms.

SEC. 2. Section 7583.46 is added to the Business and Professions Code, to read:

7583.46. (a) (1) It shall be a violation of Section 1102.5 of the Labor Code for a private patrol operator to discharge, demote, threaten, or in any manner discriminate against an employee in the terms and conditions of his or her employment, for disclosing information or causing information to be disclosed, to a government or law enforcement agency, when the information is related to conduct proscribed in this chapter.

(2) A private patrol operator who intentionally violates this subdivision shall be liable in an action for damages brought against him or her by the injured party.

(b) A person who believes that he or she has been discharged, demoted, threatened, or in any other manner discriminated against in the terms and conditions of his or her employment, because that person disclosed or caused information to be disclosed to a government or law enforcement agency, may bring a claim against the private patrol operator within three years of the date of the discharge, demotion, threat, or discrimination.

(c) Neither the bureau nor the department is responsible for resolving claims under this section.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 7581 of the Business and Professions Code proposed by both this bill and AB 248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7581 of the Business and Professions Code, and (3) this bill is enacted after AB 248, in which case Section 1 of this bill shall not become operative.

CHAPTER 885

An act to add Section 102346 to the Health and Safety Code, to amend Sections 6309, 6313, 6315, 6409.1, 6409.2, and 6423 of, and to add Sections 176 and 6356 to, the Labor Code, relating to employment safety.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 102346 is added to the Health and Safety Code, to read:

102346. (a) The local registrar of births and deaths shall transmit each month to the Division of Labor Statistics and Research of the Department of Industrial Relations a copy of each certificate of death for which the death has been marked as work-related and which was accepted for registration by him or her during the preceding month.

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

SEC. 2. Section 176 is added to the Labor Code, to read:

176. (a) The Legislature hereby finds and declares that the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, was enacted in 1973 to provide for the removal of language barriers that prevent the people of this state who are not proficient in English from effectively accessing government services and otherwise communicating with their government.

The Legislature further finds and declares that limited-English-proficient individuals will benefit from increased language-based access to the programs and services of the Division of Occupational Safety and Health.

The Legislature further finds and declares that federal statistics show that from 1996 to 2000, while overall worker fatalities dropped 14 percent, immigrant worker fatalities rose 17 percent. Immigrant workers die on the job at higher rates because they frequently work in more dangerous industries with little or no training. Language barriers compound the problem because training and warning signs are often only in English.

(b) As used in this section, a ''public contact position'' means any position responsible for responding to telephone or in-office inquiries or taking complaints from the general public regarding matters pertaining to occupational safety and health.

(c) As used in the section, an ''investigative position'' means any position responsible for investigating complaints, injuries, or deaths related to occupational safety and health.

(d) As used in this section, ''limited-English-proficient'' refers to persons who speak English less than ''very well,'' in accordance with United States Census data.

(e) The division shall make all efforts to ensure that limited-English-proficient persons can communicate effectively with

the division. Examples of potential measures include, but are not limited to, the hiring of bilingual persons in public contract positions and investigative positions, the use of contract based interpreters, and the use of telephone-based interpretation services. Nothing contained in this section relieves the division of its separate obligations under the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, or any other state or federal laws requiring the provision of its services in languages other than English.

(f) On July 30, 2004, the Division of Occupational Health and Safety shall issue a progress report to the Legislature on the implementation of this section that shall, at a minimum, include all of the following:

(1) The most recent information provided to the California State Personnel Board pursuant to Section 7299.4 of the Government Code.

(2) The number of bilingual employees in public contract and investigative positions in each local office of the division and the languages they speak, other than English.

(3) A description of any centralized system or other resources for providing translation and interpretation services within the division.

(4) A description of any quality control measures or evaluations undertaken by the division to evaluate whether limited-English-proficient persons are able to communicate effectively with the division.

(5) A description of any means, such as contracted interpreters, telephone-based interpretation services, or video conferencing, used by the division to communicate with individuals who are limited-English-proficient in the event that bilingual employees in public contract or investigative positions are not available, and the frequency in which these services were used by the division during the most recent fiscal year.

SEC. 2. Section 6309 of the Labor Code is amended to read:

6309. If the division learns or has reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may, of its own motion, or upon complaint, summarily investigate the same with or without notice or hearings. However, if the division secures a complaint from an employee, the employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or representative of a government agency, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the same as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint

charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to any complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

The division shall keep complete and accurate records of any complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action. The records of the division shall include the dates on which any action was taken on the complaint, or the reasons for not taking any action on the complaint. The division shall, pursuant to authorized regulations, conduct an informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation. The division shall furnish the employee or the representative of employees requesting the review a written statement of the reasons for the division's final disposition of the case.

The name of any person who submits to the division a complaint regarding the unsafeness of an employment or place of employment shall be kept confidential by the division, unless that person requests otherwise.

The requirements of this section do not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times.

SEC. 3. Section 6313 of the Labor Code is amended to read:

6313. (a) The division shall investigate the causes of any employment accident that is fatal to one or more employees or that results in a serious injury or illness, or a serious exposure, unless it determines that an investigation is unnecessary. If the division

determines that an investigation of an accident is unnecessary, it shall summarize the facts indicating that the accident need not be investigated and the means by which the facts were determined. The division shall establish guidelines for determining the circumstances under which an investigation of these accidents and exposures is unnecessary.

(b) The division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any employment or place of employment, or which directly or indirectly arises from or is connected with the maintenance or operation of the employment or place of employment, and shall issue any orders necessary to eliminate the causes and to prevent reoccurrence. The orders may not be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of injury or death caused by the accident or illness.

SEC. 4. Section 6315 of the Labor Code is amended to read:

6315. (a) There is within the division a Bureau of Investigations. The bureau is responsible for directing accident investigations involving violations of standards, orders, or special orders, or Section 25910 of the Health and Safety Code, in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative. The bureau shall review inspection reports involving a serious violation where there have been serious injuries to one to four employees or a serious exposure, and may investigate those cases in which the bureau finds criminal violations may have occurred. The bureau is responsible for preparing cases for prosecution, including evidence and findings.

(b) The division shall provide the bureau with all of the following:

(1) All initial accident reports.

(2) The division's inspection report for any inspection involving a serious violation where there is a fatality, and the reports necessary for the bureau's review required pursuant to subdivision (a).

(3) Any other documents in the possession of the division requested by the bureau for its review or investigation of any case.

(c) The supervisor of the bureau is the administrative chief of the bureau, and must be an attorney.

(d) The bureau shall be staffed by as many attorneys and investigators as are necessary to carry out the purposes of this chapter. To the extent possible, the attorneys and investigators shall be experienced in criminal law.

(e) The supervisor of the bureau and bureau representatives designated by the supervisor have a right of access to all places of employment necessary to the investigation, may collect any evidence or samples they deem necessary to an investigation, and have all of the powers enumerated in Section 6314.

(f) The supervisor of the bureau and bureau representatives designated by the supervisor may serve all processes and notices throughout the state.

(g) In any case where the bureau is required to conduct an investigation, and in which there is a serious injury or death, the results of the investigation shall be referred in a timely manner by the bureau to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the bureau determines that there is legally insufficient evidence of a violation of the law.

(h) The bureau may communicate with the appropriate prosecuting authority at any time the bureau deems appropriate.

(i) Upon the request of a county district attorney, the department may develop a protocol for the referral of cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the bureau. The protocol shall provide for the voluntary acceptance of referrals after a review of the case by the prosecuting authority. In cases accepted for investigation by the prosecuting authority, the protocol must provide for cooperation between the prosecuting authority, the division, and the bureau. Where a referral is declined by the prosecuting authority, the bureau shall comply with subdivisions (a) through (h), inclusive.

SEC. 5. Section 6356 is added to the Labor Code, to read:

6356. (a) There is hereby created, in the General Fund, the Worker Safety Bilingual Investigative Support, Enforcement, and Training Account. The moneys in the account may be expended by the department, upon appropriation by the Legislature, for the purposes of this part.

(b) The department may receive and accept a contribution of funds from an individual or private organization, including the proceeds from a judgment in a state or federal court, if the contribution is made to carry out the purposes of this part. The department shall immediately deposit the contribution in the account established by subdivision (a).

(c) The department may not receive or accept a contribution of funds under this section made from the proceeds of a judgment in a criminal action filed pursuant to Section 6423 or 6425 of the Labor Code.

SEC. 6. Section 6409.1 of the Labor Code is amended to read:

6409.1. (a) Every employer shall file a complete report of every occupational injury or occupational illness, as defined in subdivision (b) of Section 6409, to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid, with the Department of Industrial Relations, through its Division of Labor Statistics and Research or, if an insured employer, with the insurer, on a form prescribed for that purpose by the Division of Labor Statistics and Research. A report shall be filed concerning each

injury and illness which has, or is alleged to have, arisen out of and in the course of employment, within five days after the employer obtains knowledge of the injury or illness. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. In the case of an insured employer, the insurer shall file with the division immediately upon receipt, a copy of the employer's report, which has been received from the insured employer. In the event an employer has filed a report of injury or illness pursuant to this subdivision and the employee subsequently dies as a result of the reported injury or illness, the employer shall file an amended report indicating the death with the Department of Industrial Relations, through its Division of Labor Statistics and Research or, if an insured employer, with the insurer, within five days after the employer is notified or learns of the death. A copy of any amended reports received by the insurer shall be filed with the division immediately upon receipt.

(b) In every case involving a serious injury or illness, or death, in addition to the report required by subdivision (a), a report shall be made immediately by the employer to the Division of Occupational Safety and Health by telephone or telegraph. An employer who violates this subdivision may be assessed a civil penalty of not less than five thousand dollars ($5,000). Nothing in this subdivision shall be construed to increase the maximum civil penalty, pursuant to Sections 6427 to 6430, inclusive, that may be imposed for a violation of this section.

SEC. 7. Section 6409.2 of the Labor Code is amended to read:

6409.2. Whenever a state, county, or local fire or police agency is called to an accident involving an employee covered by this part in which a serious injury or illness, or death occurs, the responding agency shall immediately notify the nearest office of the Division of Occupational Safety and Health by telephone. Thereafter, the division shall immediately notify the appropriate prosecuting authority of the accident.

SEC. 8. Section 6423 of the Labor Code is amended to read:

6423. (a) Except where another penalty is specifically provided, every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who does any of the following is guilty of a misdemeanor:

(1) Knowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in, or authorized by, this part the violation of which is deemed to be a serious violation pursuant to Section 6432.

(2) Repeatedly violates any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this

part, which repeated violation creates a real and apparent hazard to employees.

(3) Knowingly fails to report to the division a death, as required by subdivision (b) of Section 6409.1.

(4) Fails or refuses to comply, after notification and expiration of any abatement period, with any such standard, order, special order, or provision of this division, or any part thereof, which failure or refusal creates a real and apparent hazard to employees.

(5) Directly or indirectly, knowingly induces another to commit any of the acts in paragraph (1), (2), (3), or (4) of subdivision (a).

(b) Any violation of paragraph (1) of subdivision (a) is punishable by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(c) Any violation of paragraph (3) of subdivision (a) is punishable by imprisonment in county jail for up to one year, or by a fine not to exceed fifteen thousand dollars ($15,000), or by both that imprisonment and fine. If the violator is a corporation or a limited liability company, the fine prescribed by this subdivision may not exceed one hundred fifty thousand dollars ($150,000).

(d) Any violation of paragraph (2), (4), or (5) of subdivision (a) is punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that imprisonment and fine. If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars ($150,000).

(e) In determining the amount of fine to impose under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require.

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 886

An act to amend Sections 7583.2, 7583.20, 7587.1, and 7588 of, to amend, repeal, and add Sections 7583.6 and 7583.7 of, and to add Section 7588.5 to, the Business and Professions Code, relating to private security services, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. No person licensed as a private patrol operator shall do any of the following:

(a) Fail to properly maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee or of any employee while on duty. Within seven days after a licensee or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or in any other way missing, the licensee or his or her manager shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Fail to properly maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Fail to properly maintain an accurate and current record of proof of completion by each employee of the licensee of the course of training in the exercise of the power to arrest as required by Section 7583.5, the security officer skills training required by subdivision (b) of Section 7583.6, and the annual practice and review required by subdivision (f) of Section 7583.6.

(d) Fail to certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Fail to certify proof of current and valid registration for each employee who is subject to registration or fail to comply with the provisions of Section 7583.11 if employing an individual who does not possess a current and valid registration from the bureau.

(f) Fail to certify within three business days after assigning an employee to work with a temporary registration card that the employee has submitted fingerprint cards as required by Section 7583.9.

(g) Permit any employee to carry a firearm or other deadly weapon without first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(h) Fail to deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(i) Fail to notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

(j) Fail to administer to each registered employee of the licensee, the review or practice training required by subdivision (f) of Section 7583.6.

SEC. 1.3. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. A licensed private patrol operator, lawful business, or public agency that employs a security guard registered pursuant to this chapter shall do the following:

(a) Maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee, lawful business, public agency, or of any employee while on duty. Within seven days after a licensee, lawful business, or public agency or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or in any

other way missing, the licensee or his or her manager, lawful business, public agency shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Maintain an accurate and current record of proof of completion by each employee of the licensee, lawful business, or public agency of the course of training in the exercise of the power to arrest as required by Section 7583.5, the security officer skills training required by subdivision (b) of Section 7583.6, and the annual practice and review required by subdivision (f) of Section 7583.6.

(d) Certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Certify proof of current and valid registration for each employee who is subject to registration or fail to comply with the provisions of Section 7583.11 if employing an individual who does not possess a current and valid registration from the bureau.

(f) Certify within three business days after assigning an employee to work with a temporary registration card that the employee has submitted fingerprint cards as required by Section 7583.9.

(g) Prohibit an employee from carrying a firearm or other deadly weapon until first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(h) Deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee, lawful business, or public agency while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the

part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(i) (1) Notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

(2) This subdivision shall not apply to any lawful business or public agency that employs registered security guards.

(j) Fail to administer to each registered employee of the licensee, the review or practice training required by subdivision (f) of Section 7583.6.

SEC. 1.5. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. No person licensed as a private patrol operator shall do any of the following:

(a) Fail to properly maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee or of any employee while on duty. Within seven days after a licensee or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or is in any other way missing, the licensee or his or her manager shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Fail to properly maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Fail to properly maintain an accurate and current record of proof of completion by each employee of the licensee of the course of training in the exercise of the power to arrest as required by Section 7583.5, the security officer skills training required by subdivision (b) of Section 7583.6, and the annual practice and review required by subdivision (f) of Section 7583.6.

(d) Fail to certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Fail to certify proof of current and valid registration for each employee who is subject to registration.

(f) Permit any employee to carry a firearm or other deadly weapon without first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(g) Fail to deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) Fail to notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

(i) Fail to administer to each registered employee of the licensee, the review or practice training required by subdivision (f) of Section 7583.6.

SEC. 1.7. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. A licensed private patrol operator, lawful business, or public agency that employs a security guard registered pursuant to this chapter shall do the following:

(a) Maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee, lawful business, public agency, or of any employee while on duty. Within seven days after a licensee, lawful business, public agency, or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or is in any other way missing, the licensee or his or her manager, lawful business, or public agency, shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident.

The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Maintain an accurate and current record of proof of completion by each employee of the licensee, lawful business, or public agency, of the course of training in the exercise of the power to arrest as required by Section 7583.5, the security officer skills training required by subdivision (b) of Section 7583.6, and the annual practice and review required by subdivision (f) of Section 7583.6.

(d) Certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Certify proof of current and valid registration for each employee who is subject to registration.

(f) Prohibit an employee from carrying a firearm or other deadly weapon until first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(g) Deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee, lawful business, or public agency, while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) (1) Notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

(2) This subdivision shall not apply to any lawful business or public agency that employs registered security guards.

(i) Fail to administer to each registered employee of the licensee, the review or practice training required by subdivision (f) of Section 7583.6.

SEC. 2. Section 7583.6 of the Business and Professions Code is amended to read:

7583.6. (a) A person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

(b) This section shall not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the exercise of the power to arrest.

(c) The department shall develop and approve by regulation a standard course and curriculum for security officer skills training, as will be required on and after July 1, 2004, to promote and protect the safety of persons and the security of property. For this purpose, the department shall consult with consumers, labor organizations representing private security officers, private patrol operators, educators, and subject matter experts.

(d) This section shall remain in effect only until July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends those dates.

SEC. 2.5. Section 7583.6 of the Business and Professions Code is amended to read:

7583.6. (a) A person entering the employ of a licensee, any lawful business, or a public agency to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

(b) This section shall not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the exercise of the power to arrest.

(c) The department shall develop and approve by regulation a standard course and curriculum for security officer skills training, as will be required on and after July 1, 2004, to promote and protect the safety of persons and the security of property. For this purpose, the department shall consult with consumers, labor organizations representing private security officers, private patrol operators, educators, and subject matter experts.

(d) This section shall remain in effect only until July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends those dates.

SEC. 3. Section 7583.6 is added to the Business and Professions Code, to read:

7583.6. (a) A person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

(b) Except for a registrant who has completed the course of training required by Section 7583.45, a person registered pursuant to this chapter shall complete not less than 32 hours of training in security officer skills within six months from the day the registration card is issued. Sixteen of the 32 hours must be completed within 30 days from the day the registration card is issued.

(c) A course provider shall issue a certificate to a security guard upon satisfactory completion of a required course, conducted in accordance with the department's requirements. A private patrol operator may provide training programs and courses in addition to the training required in this section.

(d) The department shall develop and approve by regulation a standard course and curriculum for the skills training required by subdivision (b) to promote and protect the safety of persons and the security of property. For this purpose, the department shall consult with consumers, labor organizations representing private security officers, private patrol operators, educators, and subject matter experts.

(e) The course of training required by subdivision (b) may be administered, tested, and certified by any licensee, or by any organization or school approved by the department. The department may approve any person or school to teach the course.

(f) (1) On and after January 1, 2005, a licensee shall annually provide each employee registered pursuant to this chapter with eight hours of specifically dedicated review or practice of security officer skills prescribed in either course required in Section 7583.6 or 7583.7.

(2) A licensee shall maintain at the principal place of business or branch office a record verifying completion of the review or practice training for a period of not less than two years. The records shall be available for inspection by the bureau upon request.

(g) This section shall not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the exercise of the power to arrest approved by the Commission on Peace Officer Standards and Training.

(h) This section shall become operative on July 1, 2004.

SEC. 3.5. Section 7583.6 is added to the Business and Professions Code, to read:

7583.6. (a) A person entering the employ of a licensee, any lawful business, or a public agency to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

(b) Except for a registrant who has completed the course of training required by Section 7583.45, a person registered pursuant to this chapter shall complete not less than 32 hours of training in security officer skills within six months from the day the registration card is issued. Sixteen of the 32 hours must be completed within 30 days from the day the registration card is issued.

(c) A course provider shall issue a certificate to a security guard upon satisfactory completion of a required course, conducted in accordance with the department's requirements. A private patrol operator may provide training programs and courses in addition to the training required in this section.

(d) The department shall develop and approve by regulation a standard course and curriculum for the skills training required by subdivision (b) to promote and protect the safety of persons and the security of property. For this purpose, the department shall consult with consumers, labor organizations representing private security officers, private patrol operators, educators, and subject matter experts.

(e) The course of training required by subdivision (b) may be administered, tested, and certified by any licensee, or by any organization or school approved by the department. The department may approve any person or school to teach the course.

(f) (1) On and after January 1, 2005, a licensee shall annually provide each employee registered pursuant to this chapter with eight hours of specifically dedicated review or practice of security officer skills prescribed in either course required in Section 7583.6 or 7583.7.

(2) A licensee shall maintain at the principal place of business or branch office a record verifying completion of the review or practice training for a period of not less than two years. The records shall be available for inspection by the bureau upon request.

(g) This section shall not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the exercise of the power to arrest approved by the Commission on Peace Officer Standards and Training.

(h) This section shall become operative on July 1, 2004.

SEC. 4. Section 7583.7 of the Business and Professions Code is amended to read:

7583.7. (a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee or by any organization or school approved by the department. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately three hours in length and shall cover the following topics:

(1) Responsibilities and ethics in citizen arrest.

(2) Relationship between a security guard and a peace officer in making an arrest.

(3) Limitations on security guard power to arrest.

(4) Restrictions on searches and seizures.

(5) Criminal and civil liabilities.

(A) Personal liability.

(B) Employer liability.

(6) Any other topic deemed appropriate by the bureau.

(b) The majority of the course shall be taught by means of verbal instruction. This instruction may include the use of a video presentation.

(c) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

(d) Private patrol operators shall provide a copy of the guidebook described in subdivision (c) to each person that they currently employ as a security guard and to each individual that they intend to hire as a security guard. The private patrol operator shall provide the guidebook to each person he or she intends to hire as a security guard a reasonable time prior to the time the person begins the course in the exercise of the power to arrest.

(e) The bureau may inspect, supervise, or view the administration of the test at any time and without any prior notification. Any impropriety in the administration of the course or the test shall constitute grounds for disciplinary action.

(f) This section shall remain in effect only until July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends those dates.

SEC. 4.5. Section 7583.7 of the Business and Professions Code is amended to read:

7583.7. (a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee or by any organization or school approved by the department. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately three hours in length and shall cover the following topics:

(1) Responsibilities and ethics in citizen arrest.

(2) Relationship between a security guard and a peace officer in making an arrest.

(3) Limitations on security guard power to arrest.

(4) Restrictions on searches and seizures.

(5) Criminal and civil liabilities.

(A) Personal liability.

(B) Employer liability.

(6) Any other topic deemed appropriate by the bureau.

(b) The majority of the course shall be taught by means of verbal instruction. This instruction may include the use of a video presentation.

(c) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

(d) Private patrol operators, or any lawful business or public agency that employs a security guard registered pursuant to this chapter shall provide a copy of the guidebook described in subdivision (c) to each person that they currently employ as a security guard and to each individual that they intend to hire as a security guard. The private patrol operator, lawful business, or public agency shall provide the guidebook to each person he or she intends to hire as a security guard a reasonable time prior to the time the person begins the course in the exercise of the power to arrest.

(e) The bureau may inspect, supervise, or view the administration of the test at any time and without any prior notification. Any impropriety in the administration of the course or the test shall constitute grounds for disciplinary action.

(f) This section shall remain in effect only until July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends those dates.

SEC. 5. Section 7583.7 is added to the Business and Professions Code, to read:

7583.7. (a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee or by any organization or school approved by the department. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately eight hours in length and shall cover the following topics:

(1) Responsibilities and ethics in citizen arrest.

(2) Relationship between a security guard and a peace officer in making an arrest.

(3) Limitations on security guard power to arrest.

(4) Restrictions on searches and seizures.

(5) Criminal and civil liabilities.

(A) Personal liability.
(B) Employer liability.
(6) Trespass law.
(7) Ethics and communications.
(8) Emergency situation response, including response to medical emergencies.
(9) Security officer safety.
(10) Any other topic deemed appropriate by the bureau.

(b) The majority of the course shall be taught by means of verbal instruction. This instruction may include the use of a video presentation.

(c) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

(d) Private patrol operators shall provide a copy of the guidebook described in subdivision (c) to each person that they currently employ as a security guard and to each individual that they intend to hire as a security guard. The private patrol operator shall provide the guidebook to each person he or she intends to hire as a security guard a reasonable time prior to the time the person begins the course in the exercise of the power to arrest.

(e) The bureau may inspect, supervise, or view the administration of the test at any time and without any prior notification. Any impropriety in the administration of the course or the test shall constitute grounds for disciplinary action.

(f) This section shall become operative on July 1, 2004.

SEC. 5.5. Section 7583.7 is added to the Business and Professions Code, to read:

7583.7. (a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee or by any organization or school approved by the department. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately eight hours in length and shall cover the following topics:
(1) Responsibilities and ethics in citizen arrest.
(2) Relationship between a security guard and a peace officer in making an arrest.
(3) Limitations on security guard power to arrest.
(4) Restrictions on searches and seizures.
(5) Criminal and civil liabilities.
(A) Personal liability.
(B) Employer liability.
(6) Trespass law.
(7) Ethics and communications.

(8) Emergency situation response, including response to medical emergencies.

(9) Security officer safety.

(10) Any other topic deemed appropriate by the bureau.

(b) The majority of the course shall be taught by means of verbal instruction. This instruction may include the use of a video presentation.

(c) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

(d) Private patrol operators, or any lawful business or public agency that employs a security guard registered pursuant to this chapter shall provide a copy of the guidebook described in subdivision (c) to each person that they currently employ as a security guard and to each individual that they intend to hire as a security guard. The private patrol operator, lawful business, or public agency shall provide the guidebook to each person he or she intends to hire as a security guard a reasonable time prior to the time the person begins the course in the exercise of the power to arrest.

(e) The bureau may inspect, supervise, or view the administration of the test at any time and without any prior notification. Any impropriety in the administration of the course or the test shall constitute grounds for disciplinary action.

(f) This section shall become operative on July 1, 2004.

SEC. 6. Section 7583.20 of the Business and Professions Code is amended to read:

7583.20. (a) A registration issued under this chapter expires two years following the date of issuance or on the assigned renewal date. Every security guard issued a registration under this chapter that expires on or after January 1, 1997, and who is also issued or renews a firearms qualification card on or after January 1, 1997, shall be placed on a cyclical renewal so that the registration expires on the expiration date of the firearms qualification card. Notwithstanding any other provision of law, the bureau is authorized to extend or shorten the first term of registration following January 1, 1997, and to prorate the required registration fee in order to implement this cyclical renewal. At least 60 days prior to the expiration, a registrant seeking to renew a security guard registration shall forward to the bureau a completed registration renewal application and the renewal fee. The renewal application shall be on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct.

(b) The licensee shall provide to any employee information regarding procedures for renewal or registration.

(c) In the event a registrant fails to request a renewal of his or her registration as provided for in this chapter, the registration shall expire as indicated on the registration. If the registration is renewed within 60 days after its expiration, the registrant, as a condition precedent to renewal, shall pay the renewal fee and the delinquency fee.

(d) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars ($25).

(e) If the renewed registration card has not been delivered to the registrant prior to the expiration of the prior registration, the registrant may present evidence of renewal to substantiate continued registration for a period not to exceed 90 days after the date of expiration.

(f) A registration may not be renewed or reinstated unless a registrant meets both of the following requirements:

(1) All fines assessed pursuant to Section 7587.7 and not resolved in accordance with the provisions of that section have been paid.

(2) On and after July 1, 2005, the registrant certifies, on a form prescribed by the bureau, that he or she has completed the 32 hours of the training required by subdivision (b) of Section 7583.6.

SEC. 7. Section 7587.1 of the Business and Professions Code is amended to read:

7587.1. Notwithstanding Section 477, a firearm qualification card and a baton permit shall be considered a license subject to the terms of this section.

Notwithstanding the assessment or payment of fines for any violations of this chapter, the director may deny, suspend, or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated any provisions of this chapter.

(c) Violated any rule of the director adopted pursuant to the authority contained in this chapter.

(d) Committed any act or crime constituting grounds for denial of licensure under Section 480, including illegally using, carrying, or possessing a deadly weapon.

(e) Impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof.

(f) Committed or permitted any employee to commit any act, while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license.

(g) Willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(h) Committed assault, battery, or kidnapping, or used force or violence on any person, without proper justification.

(i) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(j) Acted as a runner or capper for any attorney.

(k) Been convicted of a violation of Section 148 of the Penal Code.

(*l*) Committed any act which is a ground for denial of an application for a license under this chapter.

(m) Committed any act prohibited by Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code.

(n) Purchased, possessed, or transported any tear gas weapon except as authorized by law. A violation of this subdivision may be punished by the suspension of a license for a period to be determined by the director.

(o) Been convicted of a violation of Section 95.3 of the Penal Code.

SEC. 8. Section 7588 of the Business and Professions Code is amended to read:

7588. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license for a private patrol operator may not exceed five hundred dollars ($500).

(b) The application fee for an original branch office certificate for a private patrol operator may not exceed two hundred fifty dollars ($250).

(c) The fee for an original license for a private patrol operator may not exceed seven hundred dollars ($700).

(d) The renewal fee is as follows:

(1) For a license as a private patrol operator, the fee may not exceed seven hundred dollars ($700).

(2) For a combination license as a private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, AC or DC prefix, the fee may not exceed six hundred dollars ($600).

(3) For a branch office certificate for a combination private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, the fee may not exceed forty dollars ($40), and for a private patrol operator, the fee may not exceed seventy-five dollars ($75).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager shall be the actual cost to the bureau for developing, purchasing, grading, and administering each examination.

(h) Registration fees pursuant to this chapter are as follows:

(1) A registration fee for a security guard shall be fifty dollars ($50).

(2) A security guard registration renewal fee shall be thirty-five dollars ($35).

(i) Fees to carry out other provisions of this chapter are as follows:

(1) A firearms qualification fee may not exceed eighty dollars ($80).

(2) A firearms requalification fee may not exceed sixty dollars ($60).

(3) An initial baton certification fee may not exceed fifty dollars ($50).

(4) An application fee and renewal fee for certification as a firearms training facility or a baton training facility may not exceed five hundred dollars ($500).

(5) An application fee and renewal fee for certification as a firearms training instructor or a baton training instructor may not exceed two hundred fifty dollars ($250).

SEC. 9. Section 7588.5 is added to the Business and Professions Code, to read:

7588.5. Notwithstanding any other provision of law, the Director of Consumer Affairs is authorized to temporarily reduce fees required by either paragraph (1) or (2) of subdivision (h) of Section 7588, or both, upon receipt of federal funds by the Department of Consumer Affairs for implementation of this act or any enhancement of private security services in this state, provided that the funds received are sufficient to justify the reduction.

SEC. 10. (a) Section 1.3 of this bill incorporates amendments to Section 7583.2 of the Business and Professions Code proposed by both this bill and AB 248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.2 of the Business and Professions Code, and (3) SB 1241 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 248, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 7583.2 of the Business and Professions Code proposed by both this bill and SB 1241. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.2 of the Business and Professions Code, (3) AB 248 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1241 in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 7583.2 of the Business and Professions Code proposed by this bill, AB 248, and SB 1241. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 7583.2 of the Business and Professions Code, and (3) this bill is enacted after AB 248 and SB 1241, in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative.

SEC. 11. Sections 2.5 and 3.5 of this bill incorporate amendments to Section 7583.6 of the Business and Professions Code proposed by both this bill and AB 248. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.6 of the Business and Professions Code, and (3) this bill is enacted after AB 248, in which case Sections 2 and 3 of this bill shall not become operative.

SEC. 12. Sections 4.5 and 5.5 of this bill incorporate amendments to Section 7583.7 of the Business and Professions Code proposed by both this bill and AB 248. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.7 of the Business and Professions Code, and (3) this bill is enacted after AB 248, in which case Sections 4 and 5 of this bill shall not become operative.

CHAPTER 887

An act relating to mental health.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

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

(a) According to a 2001 report of the Little Hoover Commission, more than one million children in California will experience an emotional or behavioral disorder each year, and more than 600,000 of those children will not receive adequate treatment.

(b) The commission further stated that with prevention and early intervention, many mental health problems in children could be avoided, reduced, or resolved, while inadequate care leads to the exacerbation of symptoms, resulting in costlier consequences and the necessity of more expensive responses.

(c) The commission's report indicates that while some children can access publicly funded mental health treatment through county mental

health programs, foster care programs, schools, or the juvenile justice system, taken as a whole, the children's mental health system lacks coordination and sufficient funding. Also, private insurance coverage of children's mental health treatment is inconsistent.

(d) The commission's report states that all children with identified mental health needs should have access to appropriate publicly or privately funded mental health and other services that support their rehabilitation, adjustment, and educational services.

SEC. 2. (a) The State Department of Mental Health shall develop, in consultation with the State Departments of Health Services, Education, and Social Services, county welfare departments, county mental health departments, and advocates for children with mental health care needs, an analysis of the increased federal funding, savings to the General Fund and the county mental health system, and improvements that could be realized to county mental health, foster care, juvenile justice, and local educational agency programs for the provision of mental health services by applying for a federal medicaid waiver or by adopting a state option to provide home- and community-based services to children with mental health care needs, with respect to whom there has been a determination that, but for provision of home- and community-based services, these children would require the level of care provided in a hospital due to the severity of their mental health care needs, the cost of which could be reimbursed under the state plan. To the extent permitted by federal law, the department may also consider children who would require the level of care provided in a skilled nursing facility or intermediate care facility. The analysis shall be submitted to the Legislature no later than 12 months after the department receives sufficient funds to develop the analysis. The analysis shall include a description of a demonstration program that includes a maximum of 400 children with severe emotional disturbances and an examination of the cost-effectiveness of including more than 400 children.

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

(1) Identify the number and diagnoses of the children that can be served under a federal medicaid waiver or option to serve a target population.

(2) Identify services that can be provided to the population to be served under the federal medicaid waiver or state option.

(3) Specify the eligibility criteria for obtaining services under the federal medicaid waiver or state option.

(4) Discuss, to the extent possible, whether a waiver or state option could improve interagency coordination between foster care, juvenile justice, county mental health, and local educational agency programs by maximizing efficiency in service delivery and eliminating undue delay in the provision of mental health services to children in conformity with

existing law, including federal special education laws (20 U.S.C. Sec. 1400 et seq.) and state special education laws (Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code).

(5) Determine whether a home- and community-based services medicaid option or waiver would provide cost benefits to the General Fund. In making this determination, the State Department of Mental Health, in consultation with the entities specified in subdivision (a), shall consider, to the extent relevant data is reasonably available, the nonfederal mental health treatment costs borne by state and local governmental agencies, including, but not limited to, mental health departments, foster care programs, local educational agencies, and juvenile justice programs, that could be reduced by obtaining federal funding for a portion of the treatment costs through the use of a federal medicaid waiver or the adoption of a state option. The State Department of Mental Health, in consultation with the entities specified in subdivision (a), is encouraged to consider the cost savings in these programs that may accrue to the state over time, in addition to those that will accrue in the first fiscal year of implementation. Cost savings for juvenile justice programs to be considered include, but are not limited to, the savings that would accrue by avoidance of juvenile justice placement, by the use of discharge planning, and by the provision of postrelease services that would reduce future institutionalization, risk of out-of-home placement, or incidence of recommitment or reincarceration as a result of juvenile delinquency or criminal proceedings.

(6) State whether a medicaid home- and community-based services option or waiver, will provide cost benefits to the General Fund. If the State Department of Mental Health determines that the option or waiver will not provide cost benefits to the General Fund, the report shall specify the reasons for the determination.

The State Department of Mental Health may contract with a nonprofit entity with a demonstrated history of expertise in analyzing and publishing data on California's public mental health system, to develop the analysis described in this section. The department or contractor may also contract with a consultant for assistance in the development of the fiscal data necessary to complete the analysis, and in the preparation of a draft federal medicaid waiver application for the state. In order to expedite identification of fiscal savings for the state, the department or contractor are encouraged to select a consultant, if needed, who can demonstrate experience in preparing successful federal medicaid waiver applications for home- and community-based services.

(c) If the State Department of Mental Health, in consultation with the State Department of Health Services, the Department of Finance, and the entities identified in subdivision (a), determines, based on the analysis

developed pursuant to this section, that a medicaid home- and community-based services option or a federal waiver will provide cost benefits to the General Fund, the State Department of Health Services is authorized, but not required, to submit to the appropriate federal agency a home- and community-based waiver application, or adopt a state home- and community-based services option, as appropriate, to provide services to the target population.

(d) The State Department of Mental Health may accept private nonstate donations to support the activities specified in this section.

(e) This section shall be implemented only to the extent sufficient funds for this purpose are appropriated by the Legislature in the annual Budget Act or other statute, or sufficient funds, as determined by the State Department of Mental Health, for the purposes of this section have been received pursuant to subdivision (d).

CHAPTER 888

An act to amend Section 8880.28 of the Government Code, relating to the California State Lottery.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 8880.28 of the Government Code is amended to read:

8880.28. (a) The commission shall promulgate regulations specifying the types of lottery games to be conducted by the lottery, provided:

(1) No lottery game may use the theme of roulette, dice, baccarat, blackjack, Lucky 7's, draw poker, slot machines, or dog racing.

(2) In lottery games utilizing tickets, each ticket in these games shall bear a unique number distinguishing it from every other ticket in that game; and no name of an elected official shall appear on these tickets.

(3) In games utilizing computer terminals or other devices, no coins or currency shall be dispensed to players from these computer terminals or devices.

(b) Notwithstanding subdivision (a), no changes in the types of games or methods of delivery of these games that incorporate technologies or mediums that did not exist, were not widely available, or were not commercially feasible at the time of the enactment of this

chapter in 1984 shall be made, unless all of the following conditions are met:

(1) This chapter is amended by statute to expressly authorize these changes.

(2) The act making the amendments contains express legislative findings that the amendments are consistent with the terms of, and further the purposes of, this chapter.

(3) The amendments comport with applicable state and federal law.

(c) For purposes of this section, a change in the method of delivery means a material change in the way a consumer directly interacts with the game.

(d) Subdivision (b) does not apply to technological changes implemented prior to October 11, 1993.

(e) This section does not limit any internal technological changes made to the equipment or components utilized by the lottery.

SEC. 2. The Legislature finds and declares that this act furthers the purpose of the California State Lottery Act of 1984 enacted by Proposition 37 at the November 6, 1984, general election.

CHAPTER 889

An act to amend Section 20463 of, and to repeal Section 20464 of, the Government Code, relating to public employees' retirement.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 20463 of the Government Code is amended to read:

20463. (a) The governing body of a public agency, or an employee organization, recognized under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, that represents employees of the public agency, that desires to consider the participation of the agency in this system or a specific change in the agency's contract with this system, may ask the board for a quotation of the approximate contribution to this system that would be required of the agency for that participation or change.

(b) If the governing body of a public agency requests a quotation, it shall provide each employee organization representing employees that will be affected by the proposed participation or change with a copy of the quotation within five days of receipt of the quotation.

(c) If an employee organization requests a quotation, the employee organization shall provide the public agency that will be affected by the proposed participation or change with a copy of the quotation within five days of receipt of the quotation.

(d) The board may establish limits on the number of quotations it will provide for each contract and the fees, if any, to be assessed for each quotation provided. The limits and fees established by the board shall be applied in the same manner to a public agency or an employee organization.

SEC. 2. Section 20464 of the Government Code is repealed.

CHAPTER 890

An act to amend Section 706.101 of the Code of Civil Procedure, relating to wage garnishment.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 706.101 of the Code of Civil Procedure is amended to read:

706.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid. In the case of a state employee, the office from which the employee is paid does not include the Controller's office unless the employee works directly for the Controller's office.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is complete at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make

service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) The state may issue an earnings withholding order directly, without the use of a levying officer, for purposes of collecting overpayments of unemployment compensation or disability benefits pursuant to Article 4 (commencing with Section 1375) of Chapter 5 of Part 1 of, and Article 5 (commencing with Section 2735) of Chapter 2 of Part 2 of, Division 1 of the Unemployment Insurance Code. The earnings withholding order shall be served by registered or certified mail, postage prepaid, with return receipt requested. Service is deemed complete at the time the return receipt is executed by, or on behalf of, the recipient. If the state does not receive a return receipt within 15 days from the date of deposit in the mail of the withholding order, the state shall refer the earnings withholding order to a levying officer for service in accordance with subdivision (b).

(d) Except as provided in subdivision (b) or (c), service of any notice or document under this chapter may be made by first-class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first-class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not that address is within the county. This subdivision does not preclude service by personal delivery (1) on the employer before the employer's return has been received by the levying officer or (2) on the person designated in the employer's return after its receipt.

(e) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20.

CHAPTER 891

An act to amend Section 114980 of, and to add Section 115000.1 to, the Health and Safety Code, relating to radioactive waste.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 114980 of the Health and Safety Code is amended to read:

114980. The Radiation Control Fund is hereby created as a special fund in the State Treasury. All moneys, including fees, penalties, interest earned, and fines collected under Sections 107100, 107160, 115045, 115065, and 115080, and the regulations adopted pursuant to those sections, shall be deposited in the Radiation Control Fund to cover the costs related to the enforcement of this chapter, including, but not limited to, implementation of Section 115000, Article 6 (commencing with Section 107150) of Chapter 4 of Part 1, and the Radiologic Technology Act (Section 27), and shall be available for expenditure by the department only upon appropriation by the Legislature. In addition to any moneys collected by, or on behalf of, the department for deposit in the Radiation Control Fund, all interest earned by the Radiation Control Fund shall be deposited in the Radiation Control Fund.

SEC. 2. Section 115000.1 is added to the Health and Safety Code, to read:

115000.1. (a) For the purposes of this section, the following terms have the following meanings:

(1) ''Generate'' means to produce or cause the production of, or to engage in an activity which otherwise results in the creation or increase in the volume of, low-level radioactive waste.

(2) (A) ''Generator'' means any person who, by his or her actions, or by the actions of his or her agent, employee, or independent contractor, generates low-level radioactive waste in the state.

(B) For purposes of this section, a person who provides for or arranges for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste generated by others is a generator only to the extent that his or her actions, or the actions of his or her agent, employee, or independent contractor, generate low-level radioactive waste.

(3) ''Person'' means an individual, partnership, corporation, or other legal entity, including any state, interstate, federal, or municipal governmental entity.

(4) ''Waste'' means material that is not in use and is no longer useful.

(5) ''Generator category'' includes, but is not limited to, any of the following:

(A) Nuclear powerplants.
(B) Reactor vendors or designers.
(C) Government.
(D) Medicine.
(E) Academia.
(F) Aerospace.
(G) Military.
(H) Research.
(I) Industrial gauges.

(J) Manufacturing.

(6) ''Low-level radioactive waste'' or ''LLRW'' has the same meaning as defined in Article 2 of the Southwestern Low-Level Radioactive Waste Disposal Compact, as set forth in Section 115255.

(7) ''Class'' means the class of low-level radioactive waste. ''Class A'', ''class B'', and ''class C'' waste are those classes defined in Section 61.55 of Title 10 of the Code of Federal Regulations.

(8) ''Licensed LLRW disposal facility'' means any of the three disposal facilities located at Barnwell, South Carolina; Clive, Utah; or Richland, Washington, that exist on January 1, 2003.

(b) The department shall, for the protection of public health and safety maintain a file of each manifest from each generator of LLRW that is sent to a disposal facility or to a facility subject to the Southwestern Low-level Radioactive Waste Disposal Compact, as set forth in Article 17 (commencing with Section 115250).

(c) The department shall, for the protection of public health and safety, maintain a file of all LLRW transferred for disposal to a licensed LLRW disposal facility during the reporting period, either directly or through a broker or agent, which shall meet all of the following conditions:

(1) Specify the category of generator, class, quantity by activity, and volume of LLRW, including an estimate of the peak and average quantities in storage, along with the identity of the generator, and the chemical and physical characteristics of that waste, including its half-life, properties, or constituents, and radionuclides present at, or above, the minimum labeling requirements, with their respective concentrations and amounts of radioactivity.

(2) Be updated annually, at minimum, to ensure an accurate and timely depiction of radioactive waste in the state.

(3) Include all of the following information in the file:

(A) The total volume, volume by class, and activity by radionuclide and class.

(B) The types and specifications of individual containers used and the number of each type transferred for disposal.

(C) The maximum surface radiation exposure level on any single container of LLRW transferred, the number of disposal containers that exceed 200 mR/hour, and the volume, class, and activity by radionuclide.

(D) The identification of each licensed LLRW disposal facility to which LLRW was transferred, either directly or through a broker or agent, and the volume and activity by class of LLRW transferred by each broker to each licensed LLRW disposal facility.

(E) The identification of all brokers or agents to which LLRW was transferred and the volume and activity by class of the generator's

LLRW transferred by each such broker or agent to each licensed LLRW disposal facility.

(F) The weight of source material by its type. For purposes of this paragraph, ''type'' includes, but is not limited to, natural uranium, depleted uranium, or thorium.

(G) The total number of grams of special nuclear material by radionuclide, and the maximum number of grams of special nuclear material in any single shipment by radionuclide.

(H) As complete a description as practicable of the principal chemical and physical form of the LLRW by volume and radionuclide, including the identification of any known hazardous properties, other than its radioactive property.

(I) For solidified or sorbed liquids, the nature of the liquid, the solidifying or sorbing agent used, and the final volume.

(J) For LLRW containing more than 0.1 percent by weight chelating agents, the identification of the chelating agent, the volume and weight of the LLRW and the weight percentage of chelating agent.

(K) For LLRW that was treated, either by the generator or its agent or independent contractor, in preparation for transfer to a licensed LLRW disposal facility described in paragraph (8) of subdivision (a) for the purpose of reducing its volume or activity by any method including reduction by storage for decay, or for the purpose of changing its physical or chemical characteristics in a manner other than by solidification or sorption of liquids, the file shall include a description of the treatment process.

(L) The volume, volume by class, and activity by radionuclide and class of that LLRW, if any, that the generator is holding at the end of the annual reporting period because the generator knows or has reason to believe that LLRW will not be accepted for disposal at any of the licensed LLRW disposal facilities. The file shall include a description of this LLRW.

(d) The department shall maintain a file on each generator's LLRW stored, including specific radionuclides, total volume, volume by class, total activity, and activity by radionuclide and class of LLRW stored for decay and stored for later transfer, including the periods of time for both types of storage.

(e) (1) The department shall prepare an annual report, including a set of tables summarizing data collected from the activities and maintenance of files specified in subdivisions (c) and (d) to the department. These annual data tables shall contain information that summarizes and categorizes, by category, and if applicable, subcategory, of generator and location by county and identity of generator, the nature, characteristics and the total volume, volume by class, total activity and activity by radionuclide and class of LLRW generated, disposed of, treated,

transferred, stored for later transfer, and stored for decay during each calendar year.

(2) The department shall note, in the set of tables prepared pursuant to paragraph (1), any generator for which data are lacking.

(f) The department shall make the information described in subdivisions (c) and (d) available to the public in a format that aggregates the information by county. The department shall not make public the identity and location of any site where LLRW is stored or used. The department may combine information from multiple counties if necessary to protect public security. Notwithstanding any other provision of law the department shall not make the report prepared pursuant to subdivision (e) available to the public, and the report is not subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250)) of Division 6 of Title 1 of the Government Code.

(g) The department may make the information described in subdivisions (c) and (d) available upon request to any Member of the Legislature. No Member of the Legislature may disclose the identity or location of any site where LLRW is stored or used to any member of the general public.

(h) To meet the requirements of this section, each generator shall submit to the department the information included in Forms 540, 541, and 542, and any successor forms, of the Nuclear Regulatory Commission, for each LLRW shipment. In addition, for purposes of subparagraph (L) of paragraph (4) of subdivision (c) and subdivision (d), each generator shall annually complete and submit to the department the information included on Forms 540, 541, and 542, and any successor forms, of the Nuclear Regulatory Commission that describe the LLRW stored and shipped by the generator.

SEC. 3. The department shall implement Section 115000.1 of the Health and Safety Code, only to the extent that funding is appropriated for that purpose.

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.

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CHAPTER 892

An act to add Section 1771.8 to the Labor Code, relating to public works.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

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

(1) Payment of the prevailing rate of per diem wages to workers employed on public works projects is necessary to attract the most skilled workers for those projects and to ensure that work of the highest quality is performed on those projects.

(2) Public works projects should never undermine the wage base in a community, and requiring that workers on public works projects are paid the prevailing rate of per diem wages ensures that wage base is not lowered.

(3) It is a matter of statewide concern that every public agency in California pay the prevailing rate of per diem wages to workers employed on public works projects undertaken by those public agencies.

(b) Therefore, it is the intent of the Legislature, in enacting Section 2 of this act, that every public agency in California pay the prevailing rate of per diem wages to workers employed on public works projects undertaken by that public agency.

SEC. 2. Section 1771.8 is added to the Labor Code, to read:

1771.8. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) shall adopt and enforce, or contract with a third party to adopt and enforce, a labor compliance program pursuant to subdivision (b) of Section 1771.5 for application to that public works project.

(b) This section shall become operative only if the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) is approved by the voters at the November 5, 2002, statewide general election.

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CHAPTER 893

An act to add Section 11759.2 to the Insurance Code, relating to workers' compensation.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 11759.2 is added to the Insurance Code, to read:

11759.2. (a) A licensed rating organization designated as the Insurance Commissioner's statistical agent shall prepare a report to be submitted to the Insurance Commissioner by April 1, 2003, on the potential underreporting of workers' compensation exposure in the taxicab industry. The report shall include an analysis of workers' compensation exposure, loss, and premium in the taxicab industry. The licensed rating organization shall submit a report to the Governor, the Legislature, and the commissioner by May 1, 2003, that describes its findings.

(b) A licensed rating organization designated as the insurance commissioner's statistical agent may confer with state agencies, including, but not limited to, the Employment Development Department, in the preparation of the study. The state agencies shall provide all necessary statistical or other information requested by the licensed rating organization designated as the Insurance Commissioner's statistical agent.

CHAPTER 894

An act to add Sections 45103.1 and 88003.1 to the Education Code, relating to personal services contracting.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. (a) The purpose of this act is to establish standards for the use of personal services contracts in school districts and community college districts.

(b) It is the intent of the Legislature that school districts may implement this act using their regular practices for evaluating bids for

personal services contracts, pursuant to Article 3 (commencing with Section 20110) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code. It is further the intent of the Legislature that, when feasible, the regular practice of school districts be to use cost information that is readily available, or to use information obtained from contractors in their bids, in evaluating the costs and benefits of personal services contracts and for evaluation of the criteria set forth in this act.

SEC. 2. Section 45103.1 is added to the Education Code, to read:

45103.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the school district, provided that:

(A) In comparing costs, there shall be included the school district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the school district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the school district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing school district costs that would be directly associated with the contracted function. These continuing school district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut school district pay rates.

(3) The contract does not cause the displacement of school district employees. The term ''displacement'' includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification

and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and district cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the school district from potential contractor rate increases is minimal.

(9) The contract is with a firm. A ''firm'' means a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the school district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new school district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within the district, cannot be performed satisfactorily by school district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the school district.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as ''service agreements,'' shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary school district hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts

shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. ''Emergency appointment'' means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the school district in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all school districts, including districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

SEC. 3. Section 88003.1 is added to the Education Code, to read:

88003.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the community college district, provided that:

(A) In comparing costs, there shall be included the community college district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the community college district's indirect overhead costs unless these costs can be

attributed solely to the function in question and would not exist if that function was not performed by the community college district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing community college district costs that would be directly associated with the contracted function. These continuing community college district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractors wages are at the industry's level and do not undercut community college district pay rates.

(3) The contract does not cause the displacement of community college district employees. The term ''displacement'' includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and community college district cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the community college district from potential contractor rate increases is minimal.

(9) The contract is with a firm. A ''firm'' means a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the community college district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new community college district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within community college districts, cannot be performed satisfactorily by community college district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the community college district.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as ''service agreements,'' shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the community college district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. ''Emergency appointment'' means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the community college district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the community college district in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the community college district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all community colleges, including community college districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

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 895

An act to amend Section 7522 of the Business and Professions Code, relating to private investigators.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 7522 of the Business and Professions Code is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of such employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, ''deadly weapon'' is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency

pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(g) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(h) A person engaged solely in the business of securing information about persons or property from public records.

(i) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private investigator or contracts for his or her services as or is employed as an armed private investigator. For purposes of this subdivision, ''armed private investigator'' means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(j) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(k) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(*l*) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(m) The act of serving process by an individual who is registered as a process server pursuant to Section 22350.

(n) (1) A person or business engaged in conducting objective observations of consumer purchases of products or services in the public environments of a business establishment by the use of a preestablished questionnaire, provided that person or business entity does not engage in any other activity that requires licensure pursuant to this chapter. The questionnaire may include objective comments.

(2) If a preestablished questionnaire is used as a basis, but not the sole basis, for disciplining or discharging an employee, or for conducting an interview with the employee that might result in the employee being terminated, the employer shall provide the employee with a copy of that questionnaire using the same procedures that an employer is required to follow under Section 2930 of the Labor Code for providing an employee with a copy of a shopping investigator's report. This subdivision does not exempt from this chapter a person or business described in paragraph (1) if a preestablished questionnaire of that person or business is used as the sole basis for evaluating an employee's work performance.

(o) Any joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code), or its employees, where either the committee or employee is performing a function authorized by the Labor Management Cooperation Act of 1978, which includes, but is not limited, to monitoring public works projects to ensure that employers are complying with federal and state public works laws.

CHAPTER 896

An act to amend Section 22825 of the Government Code, relating to public employees, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

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

(a) Retired public employees live on fixed incomes that have eroded significantly over the last several years due to inflation.

(b) In order to meet basic day-to-day living essentials, retirees depend on supplemental benefits, such as health care coverage, and even more so on their pensions, which under the California Public Employees' Retirement System (CalPERS) are subject to a minimum 2 percent cost-of-living adjustment each year.

(c) As inflation continues to diminish the real value of a retiree's pension, the portion of living expenses a retiree depends on from the plan decreases, thereby making retirement planning more difficult and sometimes impossible.

(d) Finding affordable quality health care has become virtually impossible in today's challenged market, especially for retirees, as a result of skyrocketing health care costs, including soaring prescription

drug fees, the costs of which are increasing several times faster than other healthcare services.

(e) The CalPERS board is charged with the administration of the Public Employees' Medical and Hospital Care Act (PEMHCA), which provides health benefits for hundreds of thousands of active and retired public employees whose employers contract with CalPERS for health benefits.

(f) Due to consistently high medical inflation rates, CalPERS recently deemed it necessary to approve health care premium increases under PEMHCA.

(g) With high medical inflation rates, subsequent health care premium increases and a restricted 2 percent annual inflationary cap on CalPERS pensions, retiree medical costs over time consume, and in some cases exceed, a retired member's pension allowance, leaving nothing for other day-to-day necessities.

(h) The minimum amount an employer participating in PEMHCA must pay on behalf of its retirees for health care coverage has not changed since 1962, with no adjustment for inflation since its enactment nearly 40 years ago.

(i) It is the intent of the Legislature to increase the existing minimum employer paid PEMHCA contribution, adjusting it annually for future inflation.

SEC. 2. Section 22825 of the Government Code is amended to read:

22825. (a) The employer and each employee or annuitant shall contribute a portion of the cost of providing for each employee and annuitant the benefit coverage afforded under any health benefit plan that the board has approved or for which it has executed a contract pursuant to this part, and in which the employee or annuitant may be enrolled.

(b) The employer's contribution for each employee or annuitant shall be the amount necessary to pay the cost of his or her enrollment, including the enrollment of his or her family members, in a health benefits plan or plans, or, if less, as follows:

(1) Prior to January 1, 2004, sixteen dollars ($16) per month.

(2) During calendar year 2004, thirty-two dollars and twenty cents ($32.20) per month.

(3) During calendar year 2005, forty-eight dollars and forty cents ($48.40) per month.

(4) During calendar year 2006, sixty-four dollars and sixty cents ($64.60) per month.

(5) During calendar year 2007, eighty dollars and eighty cents ($80.80) per month.

(6) During calendar year 2008, ninety-seven dollars ($97) per month.

Commencing January 1, 2009, the employer's contribution shall be adjusted annually by the board to reflect any change in the medical care component of the Consumer Price Index. There shall be only one contribution with respect to all annuitants receiving allowances as survivors of the same employee or annuitant.

(c) 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.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

CHAPTER 897

An act to amend Section 34505.9 of the Vehicle Code, relating to intermodal chassis.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 34505.9 of the Vehicle Code is amended to read:

34505.9. (a) An ocean marine terminal that receives and dispatches intermodal chassis may conduct the intermodal roadability inspection program, as described in this section, in lieu of the inspection required by Section 34505.5, if the terminal meets all of the following conditions:

(1) More than 1,000 chassis are based at the ocean marine terminal.

(2) The ocean marine terminal, following the two most recent consecutive inspections required by Section 34501.12, has received satisfactory compliance ratings, and the terminal has received no unsatisfactory compliance ratings as a result of any inspection conducted in the interim between the consecutive inspections conducted under Section 34501.12.

(3) Each intermodal chassis exiting the ocean marine terminal shall have a current decal and supporting documentation in accordance with Section 396.17 of Title 49 of the Code of Federal Regulations.

(4) The ocean marine terminal's intermodal roadability inspection program shall consist of all of the following:

(A) Each time an intermodal chassis is released from the ocean marine terminal, the chassis shall be inspected. The inspection shall include, but not be limited to, brake adjustment, brake system components and leaks, suspension systems, tires and wheels, vehicle connecting devices, and lights and electrical system, and shall include a visual inspection of the chassis to determine that it has not been tampered with.

(B) Each inspection shall be recorded on a daily roadability inspection report that shall include, but not be limited to, all of the following:

(i) Positive identification of the intermodal chassis, including company identification number and vehicle license plate number.

(ii) Date and nature of each inspection.

(iii) Signature, under penalty of perjury, of the ocean marine terminal operator or an authorized representative that the inspection has been performed.

(iv) The inspector shall affix a green tag to a chassis that has passed inspection and a red tag to a chassis that has failed inspection. The tag shall contain the name of the inspector and the date and time that the inspection was completed and shall be placed in a conspicuous location so that it may be viewed from the rear of the vehicle. The tag shall be provided by the marine terminal operator and shall meet specifications determined by the Department of the California Highway Patrol. The provisions of this subparagraph shall also be applicable to an intermodal chassis inspected by a marine terminal operator pursuant to Section 34505.5.

(C) Records of each inspection conducted pursuant to subparagraph (A) shall be retained for 90 days at the ocean marine terminal at which each chassis is based and shall be made available upon request by any authorized employee of the department.

(D) Defects noted on any intermodal chassis shall be repaired, and the repairs shall be recorded on the intermodal chassis maintenance file, before the intermodal chassis is released from the control of the ocean marine terminal. No vehicle subject to this section shall be released to a motor carrier or operated on the highway other than to a place of repair until all defects listed during the inspection conducted pursuant to subparagraph (A) have been corrected and attested to by the signature of the operator's authorized representative.

(E) Records of maintenance or repairs performed pursuant to the inspection in subparagraph (A) shall be maintained at the ocean marine terminal for two years and shall be made available upon request of the

department. Repair records may be retained in a computer system if printouts of those records are provided to the department upon request.

(F) Individuals performing ocean marine terminal roadability inspections pursuant to this section shall be qualified, at a minimum, as set forth in Section 396.19 of Title 49 of the Code of Federal Regulations. Evidence of each inspector's qualification shall be retained by the ocean marine terminal operator for the period during which the inspector is performing intermodal roadability inspections.

(b) The records maintained pursuant to paragraphs (C) and (E) of subdivision (a) and Section 34505.5 shall be made available during normal business hours to any motor carrier or driver or the authorized representative thereof who has been engaged to transport an intermodal container on a chassis inspected pursuant to this section or Section 34505.5 from the ocean marine terminal.

(c) Any citation issued for the violation of any state or federal law related to the defective condition of an intermodal chassis subject to inspection pursuant to this section or Section 34505.5, that is not owned by that motor carrier or commercial driver, shall be issued to the entity responsible for the inspection and maintenance of the intermodal chassis, unless the officer determines that the defective condition of the intermodal chassis was caused by the failure of the driver to operate a commercial motor vehicle in a safe manner.

(d) Any provision contained in a contract between the registered owner or lessee of an intermodal chassis subject to inspection pursuant to this section, or any other entity responsible for the inspection and maintenance of the intermodal chassis, and any motor carrier or any contract between a motor carrier and another motor carrier engaged to transport an intermodal container on a chassis subject to inspection pursuant to this section that contains a hold harmless or indemnity clause concerning defects in the physical condition of that chassis shall be void as against public policy. This subdivision shall not apply to damage to the intermodal chassis caused by the negligent or willful failure of the motor carrier to operate a commercial motor vehicle in a safe manner.

(e) Following a terminal inspection in which the department determines that an operator of an ocean marine terminal has failed to comply with the requirements of this section, the department shall conduct a reinspection within 120 days as specified in subdivision (h) of Section 34501.12. If the terminal fails the reinspection, the department shall direct the operator to comply with the requirements of Section 34505.5 until eligibility to utilize the inspection program described in this section is reestablished pursuant to subdivision (a). If any inspection results in an unsatisfactory rating due to conditions presenting an imminent danger to the public safety or due to the operator's repeated failure to inspect and repair intermodal chassis

pursuant to this section, the department shall immediately forward a recommendation to the Department of Motor Vehicles to suspend the operator's motor carrier property permit, and forward a recommendation to the Federal Motor Carrier Safety Administration for administrative or other action deemed necessary against the carrier's interstate operating authority, pursuant to Section 34505.6 or 34505.7.

(f) Any driver who believes that an intermodal chassis is in an unsafe operating condition may request that the chassis be reinspected by the entity responsible for the inspection and maintenance of the chassis pursuant to this section or Section 34505.5. The request for reinspection, any corrective action taken, or the reason why corrective action was not taken shall be recorded in the intermodal chassis maintenance file.

(g) No commercial driver shall be threatened, coerced, or otherwise retaliated against by any ocean marine terminal operator for contacting a law enforcement agency with regard to the physical condition of an intermodal chassis or for requesting that the intermodal chassis be reinspected or repaired.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Intermodal chassis'' means a trailer designed to carry intermodal freight containers.

(2) ''Ocean marine terminal'' means a terminal, as defined in Section 34515, located at a port facility that engages in the loading and unloading of the cargo of oceangoing vessels.

(i) Nothing in this section shall relieve a commercial driver or commercial motor carrier of any duty imposed by state or federal law related to the safe operation of a commercial motor vehicle.

(j) Nothing in this section shall affect the rights, duties, and obligations set forth in Section 2802 of the Labor Code.

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 898

An act to amend Sections 22778, 22810, 22825.7, 22832, 22840.2, 22842, 22852, 22854, 22856, 22859, and 22891 of, to add Sections

22780 and 22791.5 to, and to repeal and add Sections 22794 and 22840 of, the Government Code, and to add Section 107 to the Labor Code, relating to employment, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 22778 of the Government Code is amended to read:

22778. (a) The board shall make available to employees and annuitants eligible to enroll in any health benefits plan pursuant to this part any information, in a form as the board may deem satisfactory, that will enable the employees or annuitants to exercise an informed choice among the various types of health benefits plans that have been contracted for or approved. Each employee or annuitant enrolled in a health benefits plan shall be issued an appropriate document setting forth or summarizing the services or benefits to which the employee or annuitant or family members are entitled to thereunder, the procedure for obtaining benefits, and the principal provisions of the plan affecting the employee, annuitant, or family members.

(b) The board shall compile and provide data regarding age, sex, family composition, and geographical distribution of employees and annuitants and make continuing study of the operation of this part, including, but not necessarily limited to, surveys and reports on plans, medical and hospital benefits, the standard of care available to employees and annuitants, and the experience of plans receiving contributions under this part with respect to such matters as gross and net cost, administrative cost, benefits, utilization of benefits, and the portion of actual personal expenditure of employees and annuitants for health care that is being met by prepaid benefits.

(c) The board shall, with the advice of and in consultation and cooperation with, professional medical organizations and individuals or organizations having special skills or experience in the organization and provision of health care services on a prepaid basis, study methods of evaluating and improving the quality and cost of medical and hospital care provided under this part.

SEC. 2. Section 22780 is added to the Government Code, to read:

22780. The board or an authorized representative may perform audits of each employer and may, at a specified time and place, require the employer to provide information or make available for examination and copying books, papers, data, and records including, but not limited to, personnel and payroll records, as deemed necessary by the board to

determine compliance with the provisions of this part. The information obtained from an employer shall remain confidential.

SEC. 3. Section 22791.5 is added to the Government Code, to read:

22791.5. The board may enter into any joint purchasing arrangement with private or public entities, if the arrangement does all of the following:

(a) Benefits persons receiving health coverage under this part.

(b) Does not restrict the authority of the board or the state.

(c) Does not jeopardize the system's tax status or its governmental plan status.

(d) Does not violate federal or state law.

SEC. 4. Section 22794 of the Government Code is repealed.

SEC. 5. Section 22794 is added to the Government Code, to read:

22794. Rates charged under any health benefits plan shall reasonably reflect the cost of the benefits provided. This part does not limit the board's authority to enter into contracts with carriers providing compensation based on carrier performance or to credit premiums to an employer for expenditures that the board determines are likely to improve the health status of employees and annuitants or otherwise reduce health care costs.

SEC. 6. Section 22810 of the Government Code is amended to read:

22810. (a) 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 benefits 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.

(b) 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

benefits 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 benefits 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.

(c) 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 federal law.

(d) Any annuitant who becomes entitled to the survivor allowance under Section 21571 at the age of 62 years 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 benefits coverage.

(e) 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 benefits coverage.

(f) The board shall, by rule and regulation, make whatever provisions it deems necessary to eliminate or minimize the impact of adverse selection that would affect any plans approved or contracted for because of the enrollment of annuitants. This may include the reimbursement of surcharges for late enrollment in Part B of Medicare if the board determines that payment of the surcharge would be less costly than continued enrollment in a basic plan.

SEC. 7. Section 22825.7 of the Government Code is amended to read:

22825.7. (a) The employer or the board shall pay monthly to an employee or annuitant who is enrolled in, or whose family member is enrolled in, a health benefits plan under this part providing supplemental benefits for persons enrolled under health insurance provisions of Title XVIII of the federal Social Security Act, the amount of the standard charge, exclusive of surcharge for late enrollment, except as provided in Section 22810, for insurance described in Part B under that act but not to exceed the difference between the maximum employer contribution

under this article and the amount contributed by the employer to the cost of enrollment of the employee or annuitant and his or her family members in a health benefits plan or plans under this part. No payment may be made in any month in which that difference is less than one dollar ($1).

(b) This section shall be applicable only to state employees and annuitants who retired while state employees and the family members of those annuitants.

(c) With respect to annuitants, the board shall pay to the annuitant the amount required by this section from the same source from which their allowances are paid. Those amounts are hereby appropriated monthly from the General Fund to reimburse the board.

(d) There is hereby appropriated from the appropriate funds the amounts required by this section to be paid to active state employees.

SEC. 8. Section 22832 of the Government Code is amended to read:

22832. (a) The contributions required of a contracting agency, along with contributions withheld from salaries of its employees, shall be forwarded monthly, no later than the 10th day of the month for which the contribution is due, and shall be credited to the Public Employees' Contingency Reserve Fund as specified by Section 22826.

(b) The county superintendent of schools shall draw requisitions against the county school service fund and the funds of the respective school districts for amounts equal to the total of the employers' contributions required to be paid from the county school service fund and from the funds of the districts, and the contributions deducted from the compensation of employees paid from the funds. The amounts shall be deposited in the county treasury to the credit of the contract retirement fund established under Section 20617.

The county superintendent thereafter shall draw his or her requisitions against the fund in favor of the board which when allowed by the county auditor shall constitute warrants against the funds and shall forward the warrants to the board in accordance with this section.

(c) If a contracting agency fails to remit the contributions when due, the agency may be assessed interest at an annual rate of 10 percent and the costs of collection, including reasonable legal fees, when necessary to collect the amounts due. In the case of repeated delinquencies, the contracting agency may be assessed a penalty of 10 percent of the delinquent amount. That penalty may be assessed once during each 30-day period that the amount remains unpaid. Additionally, the contracting agency may be required to deposit one-month's premium as a condition of continued participation in the program.

SEC. 9. Section 22840 of the Government Code is repealed.

SEC. 10. Section 22840 is added to the Government Code, to read:

22840. (a) There shall be maintained in the State Treasury the Public Employees' Contingency Reserve Fund. The board may invest funds in the Public Employees' Contingency Reserve Fund in accordance with the provisions of law governing its investment of the retirement fund.

(b) (1) An account shall be maintained within the Public Employees' Contingency Reserve Fund with respect to the health benefits plans the board has approved or that have entered into a contract with the board. The account shall be credited, from time to time and in amounts as determined by the board, with moneys contributed under Section 22826 or 22831 to provide an adequate contingency reserve. The income derived from any dividends, rate adjustments, or other funds received from a health benefits plan shall be credited to the account. The board may deposit, in the same manner as provided in paragraph (3), up to one-half of one percent of premiums in the account for purposes of cost containment programs, subject to approval as provided in paragraph (2) of subdivision (c).

The account may be utilized to defray increases in future rates, to reduce the contributions of employees and annuitants and the employers, to implement cost containment programs, or to increase the benefits provided by a health benefits plan, as determined by the board.

(2) The total credited to the account for health benefits plans at any time shall be limited, in the manner and to the extent the board may find to be most practical, to a maximum of 10 percent of the total of the contributions of the employers and employees and annuitants in any fiscal year. The board may undertake any action to ensure that the maximum amount prescribed for the fund is approximately maintained.

(3) Board rules adopted pursuant to Section 22810 to minimize the impact of adverse selection or contracts entered into pursuant to Section 22794 to implement health benefits plan performance incentives may provide for deposit in and disbursement to carriers or to Medicare from the account the portion of the contributions otherwise payable directly to the carriers by the Controller under Section 22841 or 22842 as may be required for that purpose. The deposits may not be included in applying the limitations, prescribed in paragraph (2), on total amounts that may be deposited in or credited to the fund.

(4) Notwithstanding Section 13340, all moneys in the account for health benefit plans are continuously appropriated without regard to fiscal year for the purposes provided in this subdivision.

(c) (1) An account shall also be maintained in the Public Employees' Contingency Reserve Fund for administrative expenses consisting of funds deposited for this purpose pursuant to Sections 22826 and 22831.

(2) The moneys deposited pursuant to Sections 22826 and 22831 in the Public Employees' Contingency Reserve Fund may be expended by

the board for administrative purposes, provided that the expenditure is approved by the Department of Finance and the Joint Legislative Budget Committee in the manner provided in the Budget Act for obtaining authorization to expend at rates requiring a deficiency appropriation, regardless of whether the expenses were anticipated.

(d) An account shall be maintained in the Public Employees' Contingency Reserve Fund for health plan premiums paid by public agencies. These funds are continuously appropriated, without regard to fiscal year, for the payment of premiums or other charges to carriers or the Public Employees' Health Care Fund. Penalties and interest paid pursuant to subdivision (c) of Section 22832 shall be deposited in the account for administrative expenses as provided for by paragraph (1) of subdivision (c).

SEC. 11. Section 22840.2 of the Government Code is amended to read:

22840.2. (a) There shall be maintained in the State Treasury the Public Employees' Health Care Fund, the purpose of which is to fund the health benefits plan or plans administered or approved by the board. The board may invest funds in the Public Employees' Health Care Fund in accordance with the provisions of law governing its investment of the retirement fund.

(b) The Public Employees' Health Care Fund shall consist of the following:

(1) Any self-funded or minimum premium plan premiums paid by public agencies, the state and enrolled employees, annuitants, and family members, including premiums paid directly for continuation coverage authorized under the Consolidated Omnibus Budget and Reconciliation Act of 1986 or as thereafter amended, and as authorized by this part.

(2) Any reserve moneys from terminated plans designated by the board for payment to self-funded or minimum premium plans.

(c) Income, of whatever nature, earned on the Public Employees' Health Care Fund during any fiscal year, shall be credited to the fund.

(d) Notwithstanding Section 13340, the Public Employees' Health Care Fund is continuously appropriated, without regard to fiscal years, to pay benefits and claims costs, to pay the costs of administering self-funded or minimum premium plans, to refund those who made direct premium payments, and to pay such other costs as the board may determine as necessary, consistent with its fiduciary duty.

(e) The Legislature finds and declares that the Public Employees' Health Care Fund is a trust fund held for the exclusive benefit of enrolled employees, annuitants, family members, the self-funded plan administrator, and those contracting to provide medical and hospital care services.

SEC. 12. Section 22842 of the Government Code is amended to read:

22842. Contributions of employees and annuitants of contracting agencies, and contributions of the employers not credited to the Public Employees' Health Care Fund or to the Public Employees' Contingency Reserve Fund for purposes specified in subdivision (b) or (c) of Section 22840, shall be utilized for payment of premiums and other charges required to be paid to carriers, and those funds are continuously appropriated for that purpose to the extent of those contributions. Those amounts shall be suitably identified and remitted monthly to the carriers by warrant of the Controller upon claims filed by the board.

SEC. 13. Section 22852 of the Government Code is amended to read:

22852. (a) A contracting agency that has elected to be subject to this part may not maintain any other plan or program offering prepaid hospital and medical care for its employees.

(b) Notwithstanding subdivision (a), a plan operating on July 1, 2002, shall be permitted to continue as long as it meets the requirements of subdivision (e). A material change in the plan, including a change in carriers, shall be permitted. Notwithstanding any other provision of this part, a contracting agency may include a dependent of an employee or retiree who is not eligible for coverage as a family member or a domestic partner, as provided in this part, if the employee or retiree is also enrolled in the alternative plan.

(c) Notwithstanding subdivision (a), a self-insured plan operating on January 1, 2003, shall be permitted to continue as long as it meets the requirements of subdivision (e). The board may extend the deadline contained in this subdivision for good cause.

(d) Notwithstanding subdivision (a), an alternative plan established by a contracting agency and approved by the board after July 1, 2002, shall be permitted to continue until December 31, 2004. The plan may only be offered in an area in which: (1) there is no board approved health maintenance organization or exclusive provider organization plan available for enrollment, or (2) there is only one board approved health maintenance organization plan available for enrollment, and that plan has less than 55 percent of the primary care physicians in its provider network available for new patients. The contracting agency shall reimburse the board for reasonable administrative expenses incurred as a result of enrollment activities outside of the system's open enrollment period caused by the creation or termination of a plan offered pursuant to this subdivision. A contracting agency providing a plan pursuant to this subdivision shall notify the board by June 1, 2004, of its intent to either terminate that plan or to terminate its participation under this part as of January 1, 2005. On or after June 1, 2004, the board may extend

the termination date contained in this subdivision for a contracting agency at its discretion, based on compelling circumstances in the region in which the contracting agency is located.

(e) A plan maintained pursuant to this section shall meet and maintain the minimum standards for approved health benefit plans prescribed by the board pursuant to the requirements of this part.

(f) An election of a contracting agency to be subject to this part shall not be effective prior to the termination of any plan maintained in violation of this section. The establishment of any plan thereafter in violation of this section shall terminate participation of the agency and all of its employees under this part as of the end of the contract year.

(g) Nothing in this part may be construed to prohibit a contracting agency from offering health plans, including collectively bargained union health and welfare trust plans, to employees and annuitants of employee groups, including collective bargaining units, if the contracting agency has not elected to provide coverage for that group under this part.

SEC. 14. Section 22854 of the Government Code is amended to read:

22854. The board may terminate the participation of a contracting agency if it fails for three months after a demand to perform any act required by this part or board rules.

SEC. 15. Section 22856 of the Government Code is amended to read:

22856. Notwithstanding any other provision of law, a school district, county board of education, personnel commission of a school district, or a county superintendent of schools may, by appropriate resolution, elect to become subject to this part. Employer contributions for annuitants shall at all times equal employer contributions paid for active employees, except as otherwise provided in this part.

SEC. 16. Section 22859 of the Government Code is amended to read:

22859. A contracting agency may elect by amendment to its contract with the board to participate in a Medicare reimbursement program for its employees or annuitants, or family members of employees or annuitants, who are enrolled in a health benefits plan under this part that provides supplemental benefits for persons enrolled under the health insurance provisions of Title XVIII of the federal Social Security Act, as prescribed by board regulations.

SEC. 17. Section 22891 of the Government Code is amended to read:

22891. As used in this chapter:

(a) ''Health benefits trust'' means the California Association of Highway Patrolman Health Benefits Trust, the Peace Officers Research

Association of California Health Benefits Trust, the California Correctional Peace Officer Association Health Benefits Trust, or a self-funded plan administered by the board under this part.

(b) ''Participant'' means an employee, annuitant, or family member who is a member of a health benefits trust and who is injured by or due to the actions or inactions of a third person, and includes any other person to whom a claim accrues by reason of the injury or death of the employee, annuitant or family member.

(c) ''Third party'' means any tortfeasor or alleged tortfeasor against whom the participant asserts a claim for injury or death.

SEC. 18. Section 107 is added to the Labor Code, to read:

107. (a) The enforcement of Section 14110.65 of the Welfare and Institutions Code is vested with the State Department of Health Services.

(b) Any claim made under Section 14110.65 of the Welfare and Institutions Code shall not constitute a wage claim as provided in subdivision (a) of Section 96, and shall not be subject to this chapter.

SEC. 19. The Board of Administration of the Public Employees' Retirement System shall submit to the Joint Legislative Budget Committee an annual report, not later than February 1 of each year, concerning the utilization of funds for cost containment pursuant to Section 22840 of the Government Code. The report shall include the amount deposited in the Public Employees' Contingency Reserve Fund for this purpose, the objectives of any expenditure, and an assessment of whether the objectives were met.

CHAPTER 899

An act to amend Sections 12376 and 12377 of, and to repeal and add Article 1 (commencing with Section 11690) of Chapter 3 of Part 3 of Division 2 of, the Insurance Code, relating to insurance.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Article 1 (commencing with Section 11690) of Chapter 3 of Part 3 of Division 2 of the Insurance Code is repealed.

SEC. 2. Article 1 (commencing with Section 11690) is added to Chapter 3 of Part 3 of Division 2 of the Insurance Code, to read:

Article 1. Deposits by Workers' Compensation Insurers

11690. For purposes of this article:

(a) ''Compensable workers' compensation claim'' means a claim where the claimant is entitled to benefits under the workers' compensation law of the state.

(b) ''Delinquency proceeding'' means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer, where there has not been a court order finding the insurer insolvent.

(c) ''Receiver'' means liquidator, rehabilitator, or conservator, as appropriate.

11691. (a) In order to provide protection to the workers of this state in the event that the insurers issuing workers' compensation insurance to employers fail to pay compensable workers' compensation claims, when due, except in the case of the State Compensation Insurance Fund, every insurer desiring admission to transact workers' compensation insurance, or workers' compensation reinsurance business, 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 portion of policies of workers' compensation insurance under the class of disability insurance, deposit cash instruments 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 letters of credit that perform in material respects as any other security allowable as a form of deposit for purposes of a workers' compensation deposit and that meet the standard set forth in Section 922.5, or approved securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9, with that deposit to be in an amount and subject to any exceptions as set forth in this article. 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 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, 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 specified by the commissioner, but in any event no less than one hundred thousand dollars ($100,000), 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 11693, whichever is greater. The deposit shall be for the purpose of paying compensable workers' compensation claims under policies issued by the insurer or reinsured by the admitted reinsurer and expenses as provided in Section 11698.02, in the event the insurer or reinsurer fails to pay those claims when they come due.

(b) Each insurer or reinsurer desiring to have the ability to reinsure the injury, disablement, or death portions of policies of workers' compensation under the class of disability insurance shall provide prior notice to the commissioner, in the manner and form prescribed by the commissioner of its intent to reinsure that insurance. In the event of late notice, a late filing fee shall be imposed on the reinsurer pursuant to Section 924 for failure to notify the commissioner of its intent to reinsure workers' compensation insurance.

(c) If the deposit required by this section is not made with the Treasurer, then the depositor 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 Sections 11691.2, 11696, 11698, and 11698.3. 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 herein, 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.

(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 deposits 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 make a deposit pursuant to this section.

(f) (1) As of January 1, 2003, an admitted insurer reinsuring business covered in this article (hereafter referred to as reinsurer) shall identify to the commissioner, in a form prescribed by the commissioner, amounts deposited for credit in the name of each ceding insurer.

(2) Beginning January 1, 2005, all reinsurance agreements covering claims and obligations under business covered by this article, and allowable for purposes of granting a ceding carrier a deposit credit, shall include a provision granting the commissioner, in the event of a delinquency proceeding, receivership, or insolvency of a ceding insurer, any sums from a reinsurer's deposit that are necessary for the commissioner to pay those reinsured claims and obligations, or to ensure their payment by the California Insurance Guarantee Association, deemed by the commissioner due under the reinsurance agreement, upon failure of the reinsurer for any reason to make payments under the policy of reinsurance. The commissioner shall give 30 days' notice prior to drawing upon these funds of an intent to do so. Notwithstanding the commissioner's right to draw on these funds, the reinsurer shall otherwise retain its right to determine the validity of those claims and obligations and to contest their payment under the reinsurance agreement. Prior to a reinsurer's deposit being drawn upon, in whole or in part, by the department, the department shall provide a reinsurer with an explanation of procedures that a reinsurer may use to explain to the department why the use of the reinsurer's deposit may not be appropriate under the reinsurance agreement.

(3) No reinsurer entering into a contract identified in paragraph (2), beginning on or after January 1, 2005, may cede claims or obligations assumed from a ceding insurer unless the deposit securing the ceded claims or obligations is governed by paragraph (2) or, upon approval of the commissioner, would secure the ceded claims or obligations in all

material respects and in the same manner as a deposit identified in paragraph (2) above.

(4) All sums received from the reinsurer by the commissioner for those claims paid by the California Insurance Guarantee Association shall be held separate and apart from and not included in the general assets of the insolvent insurer, and shall be transferred to the California Insurance Guarantee Association upon receipt by the commissioner. In the event of a final judgment or settlement adverse to the drawing of funds by the commissioner pursuant to paragraph (2) or (3), the California Insurance Guarantee Association shall repay funds it obtained to pay covered claims and shall, if necessary, either levy a surcharge as needed or seek legislative approval to levy the surcharge if the California Insurance Guarantee Association is already levying the maximum surcharge permissible under law.

(g) If a reinsurer has not maintained deposits as required by subdivision (a) in amounts equal to the amounts of deposit credits claimed by its ceding insurers, the commissioner, after notifying the reinsurer and its ceding insurers of the deposit shortfall and allowing 15 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. A ceding insurer disallowed a reserve credit pursuant to this provision shall immediately make the deposit required by this section.

11691.1. The fees for filing a schedule of securities with the Treasurer, and making a deposit of the same, and for each withdrawal, substitution, or any other change in the securities comprising this deposit with the Treasurer, shall be paid to the commissioner for the costs of review and approval of deposits, and shall be the same as are prescribed by Article 11 (commencing with Section 939) of Chapter 1 of Part 2 of Division 1.

All other reasonable charges made by the Treasurer for servicing securities deposited with him or her shall be paid to the Treasurer by the insurer that has deposited the security, and shall not be charged to the commissioner.

11691.2. The deposit required pursuant to Section 11691 shall be security for the payment of the insurer's obligations on worker's compensation insurance transacted in this state. The deposit shall not be withdrawn except upon the written order of the commissioner to use the proceeds thereof in payment of compensable worker's compensation claims and expenses as provided in Section 11698.02, or as otherwise provided in this article, but shall be forthwith payable to the commissioner or at the direction of the commissioner by the Treasurer or the bank, savings and loan association, or trust company approved by the commissioner upon that order. No deposit so placed with a bank, savings and loan association, or trust company shall be subject to any

lien or claim asserted by it or be subject to any disposition obligation, demand, liability, cause of action, judgment, or other claim, or cost or expense attendant thereon, other than as is permitted by the commissioner. Notwithstanding any other provisions of this code, the deposit shall be retained by the Treasurer or the bank, savings and loan association, or trust company approved by the commissioner and only released in accordance with the provisions of this article or pursuant to regulations or a written order of the commissioner.

11691.3. 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 11691. 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 11691, 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.

11692. A certificate of authority to transact workers' compensation insurance in this state shall not be issued nor renewed to any insurer until the deposit required pursuant to Section 11691 is approved by the commissioner. The commissioner shall notify the Division of Workers' Compensation of the Department of Industrial Relations concerning the approval of every deposit made pursuant to this article.

11692.5. On and after the effective date of this article, the commissioner shall collect a late filing fee from any admitted insurer or reinsurer that fails to deposit the securities when required by this code in the following amount:

(a) If the deposit shortfall is outstanding for less than 31 days, 0.5 percent of the deposit shortfall, but in no event not less than six hundred dollars ($600).

(b) If the deposit shortfall is outstanding for more than 30 days but less than 61 days, an additional late filing fee in the amount of 1 percent of the deposit shortfall, but in no event not less than one thousand two hundred dollars ($1,200) shall be due.

(c) An additional late filing fee of 1.5 percent of the deposit shortfall for every 30-day period thereafter, or fraction thereof, that the amount is outstanding, but in no event shall the total late filing fee be less than three thousand dollars ($3,000). The late filing fees provided herein are in addition to all other rights and remedies granted the commissioner by this article.

11693. The deposit required pursuant to Section 11691 shall be made or adjusted on or prior to April 1 of each year in an amount as follows:

(a) Not less than the sum of the following amounts computed, less credits and deductions allowable with respect to reinsurance in admitted insurers, as provided under Section 11691, as of the close of the last preceding December 31 or as of any calendar quarter end as directed by the commissioner pursuant to Section 11694 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.

11694. After the first annual statement to the commissioner covering business of the insurer for a full year in this state, the deposit required pursuant to Section 11691 shall be computed from the figures shown in the last preceding report of business as of December 31, filed with the commissioner, and shall be reported to the commissioner on or before March 1 of each year in a form prescribed by the commissioner. Notwithstanding anything to the contrary in this article, should the commissioner determine that there has been a material change in the insurer's ultimate liability for future payments upon compensable workers' compensation claims in this state, at the commissioner's

discretion, the amount of the deposit shall then be fixed by the commissioner at the amount that he or she deems sufficient to secure the payment of the insurer's ultimate obligations on its workers' compensation insurance transacted in this state, and upon notification from the commissioner the insurer shall immediately but in no event less than 30 days after notification, increase the deposit as directed.

11695. Where an admitted insurer has voluntarily ceased to do in this state the business for which a deposit is required pursuant to Section 11691, the deposit shall be fixed by the commissioner at the amount that he or she deems sufficient for the protection of the beneficiaries of the policies of that insurer.

11696. In the event an insurer not in a delinquency proceeding fails to pay any compensable workers' compensation claim against it, or fails to pay, to the extent of its liability as a reinsurer, any compensable workers' compensation claim covered by a policy wholly or partly reinsured by it, the commissioner shall use the proceeds of the deposit required pursuant to Section 11691 to pay all those compensable workers' compensation claims and related expenses as described in Section 11698.02.

11697. The payment of a workers' compensation claim by the commissioner shall constitute a satisfaction of the claim to the extent of the payment made. In the event any judgment is entered on the claim, the commissioner shall file a proportionate satisfaction thereof in the office of the clerk of the court wherein the judgment is entered.

11698. (a) In the event any one of the eventualities described in paragraph (1), (2), (3), or (4), transpires, the commissioner shall immediately take control or possession of the deposit required pursuant to Section 11691 and may use the deposit to pay or procure the payment of those compensable workers' compensation claims against the insurer, and those expenses described in Section 11698.02. The proceeds of the deposit shall in that event inure to the commissioner as a trust to be held separate and apart from all other assets of the insurer held by the commissioner. They shall be used only for the purposes set forth and in accordance with the procedures established in this article. Once it is determined that there are no remaining undischarged liabilities for compensable workers' compensation claims or it is actuarially demonstrated that the deposit exceeds those liabilities, the commissioner shall transfer the remaining amount of the deposit to the general assets of the estate.

(1) If the commissioner is named conservator of that insurer pursuant to Article 14 (commencing with Section 1011) of Chapter 1 of Part 2 of Division 1.

(2) The proper court has appointed the commissioner ancillary receiver of the insurer or reinsurer.

(3) A delinquency proceeding has been instituted by the proper court against the insurer or reinsurer.

(4) If it appears to the commissioner that any of the conditions set forth in Section 1011 exist or that irreparable loss and injury to the property and business of the insurer or reinsurer has occurred or may occur unless the commissioner acts immediately without notice and before applying to the court for any order.

(b) If the commissioner has proceeded under subdivision (a) or Section 11696 or 11698.3 and a deposit of securities registered with a qualified depository located in a reciprocal state and in the custody of a qualified custodian pursuant to Section 1104.9 cannot be released to the commissioner according to the terms of the agreement entered into pursuant to Section 11691 or the requirements of Section 11691.2 because of a delinquency proceeding initiated in the reciprocal state in which the qualified depository is located, or, if the deposit of securities registered with a qualified depository has been executed upon at any time by any creditor of an insurer and that execution has been affirmed by a written opinion of a court of competent federal appellate jurisdiction, the commissioner may, after a public hearing and upon a finding that deposits of securities registered with that depository do not allow the commissioner to discharge his or her responsibilities as set forth in this chapter, require workers' compensation insurers authorized to transact insurance in this state to cease and desist making any further deposits authorized by Section 11691 in approved securities registered with that depository. For the purposes of this subdivision, the term ''delinquency proceeding'' shall have the same meaning as contained in subdivision (b) of Section 1064.1.

11698.01. When the commissioner is authorized to proceed under Section 11698 he or she may do either of the following:

(a) Subject to Sections 11698.2, 11698.21, and 11698.22, enter into reinsurance and assumption agreements with one or more admitted solvent workers' compensation insurers by the terms of which liability for all those obligations is reinsured and assumed by such insurer.

(b) Use the deposit required pursuant to Section 11691 to pay or procure payment of the insurer's compensable workers' compensation claims and those expenses authorized in Section 11698.02.

11698.02. The proceeds of the deposit required pursuant to Section 11691 shall be used solely to pay compensable workers' compensation claims under the insured or reinsured policies, allocated claims expense necessary to pay those claims, and the expenses connected with all proceedings or actions permitted or required by this article in furtherance of the payment of those claims, or should the commissioner pursuant to subdivision (a) of Section 11698.01 enter into reinsurance and

assumption agreements with one or more reinsurers, the proceeds of the deposit shall be used to reimburse those reinsurers.

11698.1. From time to time and in any event at or prior to the time of the filing of his or her petition for discharge as receiver, the commissioner shall do the following:

(a) File with the Workers' Compensation Appeals Board an accounting of all trust funds received and used from the proceeds of the deposit required pursuant to Section 11691.

(b) File with the court an accounting of all funds received and used as expenses from the general funds of the insurer.

11698.2. If the commissioner enters into a reinsurance and assumption agreement as provided in subdivision (a) of Section 11698.01, that agreement shall provide for all of the following:

(a) The reinsurance and assumption of all those obligations by the reinsuring and assuming insurers.

(b) If there is more than one reinsurer the proportion of all those obligations assumed by each reinsurer and a method for the actual processing and payment of those obligations by the reinsurers or their representatives.

(c) The reimbursement of the reinsuring and assuming insurers from the deposit of the insurer in the delinquency proceeding. The provision shall conform with Section 11698.21 and shall not be effective unless approved by the Workers' Compensation Appeals Board.

(d) The amounts, if any, to be paid the reinsurers from the general funds of the insurer. If the agreement provides that amounts from the general funds of the insurer are to be paid to the reinsurers, those payments shall be approved by the court where the delinquency proceedings are pending.

(e) Any other matters as are necessary and proper to achieve the purposes of the reinsurance and assumption agreement.

11698.21. (a) The reimbursement provision referred to in subdivision (c) of Section 11698.2 shall provide for the transfer of the securities in the deposit to the deposits of the reinsurers. Thereafter, except as provided in subdivision (b), the deposit of the reinsuring and assuming insurers shall be security for the payment of all of those obligations assumed by the agreement as well as those obligations on workers' compensation insurance transacted in this state by the reinsurer, provided, however, that in determining the amount which shall remain on deposit as security for those obligations that are reinsured and assumed, the method prescribed by paragraph (1) of subdivision (a) of Section 11693 shall be used without any limitation as to time. In providing for the transfer of the securities the agreement may provide for their direct transfer to the deposit account of the reinsurers, or, if the securities deposited are in denominations or units as to make the

equitable transfer to more than one reinsurer impossible, it may provide either for a formula under which the transfers may be made and differences in value reconciled by payments or credits among the reinsurers or for the sale of those securities by the commissioner and the reinvestment of the proceeds in other securities in amounts that can be so equitably transferred.

(b) The agreement shall provide that if it appears that the market value of the securities on deposit will exceed the obligations assumed by the reinsurers, the commissioner may withhold the transfer of a portion of the deposit and may after a two-year period enter into a final settlement with the reinsurers with respect thereto at which time any excess in that deposit shall be transferred to the general assets of the insurer in the delinquency proceeding.

11698.22. The commissioner shall not enter into an agreement with an insurer if its reinsurance and assumption of liability will impair its solvency or render its further transaction of business hazardous under subdivision (d) of Section 1011.

11698.3. (a) If the insurer is a member insurer of the California Insurance Guarantee Association (the association) and has been the subject of an order of liquidation or receivership with a finding of insolvency which has been entered by a court of competent jurisdiction the association then becomes obligated to pay compensable workers' compensation claims arising under the insurer's policies, which are otherwise ''covered claims'' as defined in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 2. The commissioner shall immediately take control or possession of the deposit required pursuant to Section 11691 and shall transfer the deposit to the association.

(b) The association shall use the proceeds of the deposit and any interest earned thereon, for the payment of compensable workers' compensation claims arising under the insolvent insurer's policies and which are otherwise covered claims, as defined in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 2, and all expenses related thereto.

(c) The association shall make a full report and accounting of the disposition of the deposit on or in the form and at the times as the commissioner shall request, including a report of all interest income earned on the deposit.

(d) At the time all of the insolvent insurer's California workers' compensation claims liabilities are discharged, or at the time it is actuarially determined that the remaining proceeds, and any interest earned thereon, exceed those liabilities, the association shall return the surplus to the insolvent insurer's estate.

11699. Unless the deposit required pursuant to Section 11691 is withdrawn by the commissioner pursuant to the authority granted him or her by this article, it, or any remainder thereof, may be repaid to the insurer either upon satisfactory showing to the commissioner that every liability to pay compensable workers' compensation claims has been assumed and reinsured with a solvent admitted insurer or fully paid and discharged. In the event the insurer remains admitted for workers' compensation insurance, or desires to reinsure the injury, disablement, or death portions of policies of workers' compensation under the class of disability insurance, then it must maintain at least the minimum deposit required by Section 11691.

11700. The deposit required pursuant to Section 11691, unless withdrawn by the commissioner, shall be used only for the payment of compensable workers' compensation claims and expenses as provided in Section 11698.02 as long as there remains unpaid any claim or any part thereof.

11701. The commissioner may revoke the certificate of authority to transact workers' compensation insurance or to reinsure the injury, disablement, or death portions of policies of workers' compensation under the class of disability insurance in this state of any insurer failing to comply with the requirements of this article. The power vested in the commissioner by this section is additional to any and all other powers and remedies vested in the commissioner by law. Failure to make the deposit required by this article within the required time shall be deemed to constitute a condition of hazard as set forth in Section 1011.

11702. The provisions of this article shall not apply to workers' compensation insurance covering those persons defined as employees by subdivision (d) of Section 3351 of the Labor Code.

11703. An insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations pursuant to Section 6354.5 of the Labor Code.

SEC. 3. Section 12376 of the Insurance Code is amended to read:

12376. (a) If an underwritten title company is placed into bankruptcy, receivership, or conservation by the commissioner, each title insurer operating under an underwriting agreement with the underwritten title company during the six months prior to the earliest of the conservation, bankruptcy, or receivership shall be liable for its proportionate share of the commissioner's costs and any escrow and subescrow account shortages as determined by the calculations set forth in subdivisions (b) and (c).

(b) If, during the six months prior to the earliest of the establishment of a conservation, bankruptcy, or receivership under subdivision (a), the underwritten title company was authorized by underwriting agreements

to issue title policies for more than one title insurer, the liability of each title insurer is determined by multiplying the amount of the total escrow and subescrow shortages, as well as the costs, and expenses, as set forth in subdivision (c), by that title insurer's percentage of the underwritten title company's net premiums for policies issued by each title insurer during the 12-month period preceding the earliest of the establishment of the conservation, bankruptcy, or receivership, with each title insurer's liability pursuant to this subdivision to be referred to as its proportionate share.

(c) When determining the total proportionate liability of each title insurer, the commissioner shall include the following:

(1) The commissioner's costs and expenses of seizing and taking control of the underwritten title company's offices, operations, and assets.

(2) The commissioner's costs and expenses of handling, adjusting, and closing all subescrow and escrow accounts, including the costs and expenses of determining whether shortages exist in any subescrow and escrow accounts.

(3) Other costs and expenses incurred by the commissioner in connection with borrowing from the Insurance Fund pursuant to subdivision (g) and foregone earnings or interest of the Insurance Fund resulting from the borrowing.

As used in this subdivision, ''commissioner's costs and expenses'' includes the costs and expenses of all agents and contractors retained by the commissioner in performing functions set forth in this subdivision, and ''subescrow'' and ''escrow'' means title subescrows and escrows. These calculations shall result in 100 percent of the shortage, costs, and expenses being proportionately allocated to each title insurer authorized to issue title policies in the last six months preceding the underwritten title company being placed into bankruptcy, receivership, or conservation.

(d) (1) The commissioner shall make an initial estimate of the total shortage in the escrow and subescrow accounts and the commissioner's costs and expenses as provided in subdivision (c) and shall provide this estimate in writing to each title insurer determined to have liability under this section as soon as practicable. The initial estimate shall be substantiated by a summary of the accounting information pertinent to the commissioner's estimate of the escrow and subescrow shortfalls and the commissioner's costs and expenses.

(2) The commissioner shall make further estimates, as necessary, of the total shortage in the escrow and subescrow accounts and the commissioner's costs and expenses as provided in subdivision (c) and shall provide the estimates in writing to each title insurer determined to

have liability under this section. These estimates shall be substantiated by a detailed summary of pertinent accounting information.

(3) After receiving an estimate pursuant to paragraphs (1) and (2), each title insurer having liability under this section shall, within 30 days after written notification, deposit its proportionate share of the shortage, costs, and expenses into an escrow account established by the commissioner for the purpose of reimbursement to subescrow or escrow accountholders, reimbursement to the commissioner in the event that the commissioner advances or has advanced payments to subescrow or escrow accountholders, or payment or reimbursement of the commissioner's costs and expenses pursuant to subdivision (c). If a title insurer fails to make a payment required by this subdivision within the 30-day period, the title insurer shall pay a penalty calculated at the rate of 10 percent per annum on the unpaid amount until the payment is received by the commissioner.

(e) Nothing in this section relieves a person of liability under any other provision of law that he or she may have for a shortage as set forth in subdivision (a). A title insurer, on becoming liable for a shortage as set forth in this section, is entitled to enforce every available remedy, or bring any cause of action that would have been available to a person compensated by the title insurer.

(f) A title insurer shall be entitled to make a claim for reimbursement for subescrow or escrow shortages paid to subescrow or escrow accountholders and for payments of its proportionate share pursuant to subdivision (c). Those claims shall be given the same preference as those claims referenced in paragraph (2) of subdivision (a) of Section 1033.

(g) A title insurer shall be entitled to make a claim for reimbursement for payment of its proportionate share of the commissioner's costs and expenses paid pursuant to subdivision (c). Those claims shall be given the same preference as those claims referenced in paragraph (2) of subdivision (a) of Section 1033. The commissioner shall return to each title insurer its proportional share of any funds remaining in the escrow account after all liabilities in subdivision (a) have been satisfied.

(h) In order to minimize potential losses and negative impacts on consumers having money in escrow accounts held by an underwritten title company taken into conservation, bankruptcy, or receivership by the commissioner, the commissioner shall hire all necessary escrow consultants or other experts necessary to achieve this goal.

(i) The commissioner may borrow from the Insurance Fund to cover shortages in subescrow or escrow accounts and to pay costs and expenses set forth in subdivision (c).

SEC. 4. Section 12377 of the Insurance Code is amended to read:

12377. (a) All escrow funds received by an underwritten title company that are subject to Section 12413.5 shall not be considered part

of the estate of the underwritten title company for purposes of liquidation, receivership, bankruptcy, or conservation pursuant to Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1.

(b) Where an underwritten title company is placed into conservation, receivership, or bankruptcy and the escrow accounts held by the company are found to have shortages, the department, conservator, liquidator, receiver, or bankruptcy trustee shall do everything reasonably possible to trace these moneys to other depository accounts or assets.

(c) Any real or personal property traceable to shortages in the escrow accounts shall not be considered part of the estate available to other claimants under Section 1033. Those assets shall be liquidated and paid in the following order: (1) if the commissioner has paid or advanced funds to subescrow or escrow accountholders from sources other than the escrow established pursuant to subdivision (c) of Section 12376, they shall be paid to the commissioner to the extent that the commissioner has not been repaid by title insurers having liability under Section 12376, (2) they shall be deposited into an escrow established pursuant to subdivision (c) of Section 12376, and (3) they shall be directly reimbursed to the title insurer or insurers that have reimbursed escrow depositors under Section 12376. In no event shall a title insurer be reimbursed an amount in excess of its liability as determined in Section 12376.

SEC. 5. Sections 1, 2, 3, and 4 of this act shall become operative only if Assembly Bill 2007 is enacted and becomes effective on or before January 1, 2003.

CHAPTER 900

An act to add Section 50089 to the Government Code, relating to public employees.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 50089 is added to the Government Code, to read:

50089. (a) Any employee organization primarily comprised of peace officers, as described by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, that is a chapter of, or affiliated directly or indirectly in any manner with, a general nonprofit corporation

formed for the specific and primary purpose to act as an employee organization for peace officers in this state that directly or indirectly represents less than 7,000 retired or active peace officers, that has not filed with the Secretary of State an agent of the employee organization who has been designated for purposes of service of process as described in Section 1701, 6410, 8210, 9670, 12610, 24003, or 25550 of the Corporations Code by the effective date of this section, shall not be qualified to be the exclusive or majority bargaining agent, as described in subdivision (a) of Section 3502.5, until January 1, 2007.

(b) Any general nonprofit corporation formed for the specific and primary purpose to act as a recognized employee organization, as defined in subdivision (b) of Section 3501, for peace officers in this state that directly or indirectly represents less than 7,000 retired or active peace officers, that has any affiliate, chapter, or member that has failed to file with the Secretary of State an agent who has been designated for purposes of service of process by the effective date of this section, shall be prohibited from establishing or recognizing any member, affiliate, or chapter that was not a bona fide member, affiliate, or chapter of the nonprofit corporation as of January 1, 2003, until January 1, 2007.

(c) This section shall not apply to any national organization that directly or indirectly represents retired or active peace officers.

CHAPTER 901

An act to amend Sections 984, 2116, 2601, 2613, 2708, and 3254 of, and to add Chapter 7 (commencing with Section 3300) to Part 2 of Division 1 of, the Unemployment Insurance Code, relating to disability compensation, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 984 of the Unemployment Insurance Code is amended to read:

984. (a) (1) Each worker shall pay worker contributions at the rate determined by the director pursuant to this section with respect to wages, as defined by Sections 926, 927, and 985. On or before October 31 of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of worker contributions for the calendar year and shall notify promptly all employers of employees covered for disability insurance of the rate.

(2) (A) Except as provided in paragraph (3), the rate of worker contributions for calendar year 1987 and for each subsequent calendar year shall be 1.45 times the amount disbursed from the Disability Fund during the 12-month period ending September 30 and immediately preceding the calendar year for which the rate is to be effective, less the amount in the Disability Fund on that September 30, with the resulting figure divided by total wages paid pursuant to Sections 926, 927, and 985 during the same 12-month period, and then rounded to the nearest one-tenth of 1 percent.

(B) The director shall increase the rate of worker contributions by .08 percent for the 2004 and 2005 calendar years to cover the initial cost of family temporary disability insurance benefits provided in Chapter 7 (commencing with Section 3300) of Part 2.

(3) The rate of worker contributions shall not exceed 1.5 percent or be less than 0.1 percent. The rate of worker contributions shall not decrease from the rate in the previous year by more than two-tenths of 1 percent.

(b) Worker contributions required under Sections 708 and 708.5 shall be at a rate determined by the director to reimburse the Disability Fund for unemployment compensation disability benefits paid and estimated to be paid to all employers and self-employed individuals covered by those sections. On or before November 30th of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of contributions for the succeeding calendar year for all employers and self-employed individuals covered under Sections 708 and 708.5 and shall notify promptly the employers and self-employed individuals of the rate. The rate shall be determined by dividing the estimated benefits and administrative costs paid in the prior year by the product of the annual remuneration deemed to have been received under Sections 708 and 708.5 and the estimated number of persons who were covered at any time in the prior year. The resulting rate shall be rounded to the next higher one-hundredth percentage point. The rate may also be reduced or increased by a factor estimated to maintain as nearly as practicable a cumulative zero balance in the funds contributed pursuant to Sections 708 and 708.5. Estimates made pursuant to this subdivision may be made on the basis of statistical sampling, or another method determined by the director.

(c) The director's action in determining a rate under this section shall not constitute an authorized regulation.

(d) Notwithstanding subdivision (a), the director may, at his or her discretion, increase or decrease, by not to exceed 0.1 percent, the rate of worker contributions determined pursuant to subdivision (a), up to a maximum worker contribution rate of 1.5 percent, if he or she determines the adjustment is necessary to reimburse the Disability Fund

for disability benefits paid or estimated to be paid to individuals covered by this section or to prevent the accumulation of funds in excess of those needed to maintain an adequate fund balance.

SEC. 1.5. Section 2116 of the Unemployment Insurance Code is amended to read:

2116. It is unlawful to do any of the following:

(a) Falsely certify the medical condition of any person in order to obtain disability insurance benefits, including family temporary disability insurance benefits, whether for the maker or for any other person.

(b) Knowingly present or cause to be presented any false or fraudulent written or oral material statement in support of any claim for disability insurance including family temporary disability insurance benefits.

(c) Knowingly solicit, receive, offer, pay, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for soliciting a claimant to apply for disability insurance including family temporary disability insurance benefits unless the payment is lawful pursuant to Section 650 of the Business and Professions Code.

(d) Knowingly assist, abet, solicit, or conspire with any person who engages in an unlawful act under this section.

SEC. 2. Section 2601 of the Unemployment Insurance Code is amended to read:

2601. The purpose of this part is to compensate in part for the wage loss sustained by any individual who is unable to work due to the employee's own sickness or injury, the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child, and to reduce to a minimum the suffering caused by unemployment resulting therefrom. This part shall be construed liberally in aid of its declared purpose to mitigate the evils and burdens which fall on the unemployed and disabled worker and his or her family.

SEC. 3. Section 2613 of the Unemployment Insurance Code is amended to read:

2613. (a) The Director of Employment Development shall develop and maintain a program of education concerning disability insurance rights and benefits.

(b) The director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to sickness, injury, or pregnancy. The notice shall be given by every employer to each new employee hired on or after June 1, 1988, and to each employee leaving work due to pregnancy or nonoccupational sickness or injury on or after July 1, 1989.

(c) Commencing January 1, 2004, the director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care for any sick or injured family member or new child who is unable to care for himself or herself. The notice shall be given by every employer to each new employee hired on or after January 1, 2004, and to each employee leaving work on or after July 1, 2004, due to pregnancy, nonoccupational sickness or injury, or the need to provide care for any sick or injured family member or new child who is unable to care for himself or herself.

SEC. 4. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating his or her conclusion as to the claimant's disability, and a statement of his or her opinion as to the expected duration of the disability.

(b) A certificate filed to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee shall contain:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee is needed to care for the child, parent, spouse, or domestic partner.

(5) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, spouse, or domestic partner.

''Warrants the participation of the employee'' includes, but is not limited to, providing psychological comfort, and arranging ''third party'' care for the child, parent, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for an employee taking leave for reason of the birth of a child of the employee or the employee's domestic partner, or the placement of a child who is unable to care for himself or herself with the employee in connection with the adoption or foster care of the child by the employee or domestic partner.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state, shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate with the investigation. A physician or practitioner licensed by and practicing in a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part, the term ''physician'' has the same meaning as it does in Section 3209.3 of the Labor Code. For purposes of this part, ''practitioner'' means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or nurse practitioner.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is

shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include identification of diagnoses, symptoms, or a statement as to the facts of the claimant's disability by the physician or practitioner treating the claimant, by the registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant, or by an examining physician or other representative of the department.

SEC. 5. Section 3254 of the Unemployment Insurance Code is amended to read:

3254. The Director of Employment Development shall approve any voluntary plan, except one filed pursuant to Section 3255, as to which he or she finds that there is at least one employee in employment and all of the following exist:

(a) The rights afforded to the covered employees are greater than those provided for in Chapter 2 (commencing with Section 2625) and those provided for in Chapter 7 (commencing with Section 3300).

(b) The plan has been made available to all of the employees of the employer employed in this state or to all employees at any one distinct, separate establishment maintained by the employer in this state. ''Employees'' as used in this subdivision includes those individuals in partial or other forms of short-time employment and employees not in employment as the Director of Employment Development shall prescribe by authorized regulations.

(c) A majority of the employees of the employer employed in this state or a majority of the employees employed at any one distinct, separate establishment maintained by the employer in this state have consented to the plan.

(d) If the plan provides for insurance the form of the insurance policies to be issued have been approved by the Insurance Commissioner and are to be issued by an admitted disability insurer.

(e) The employer has consented to the plan and has agreed to make the payroll deductions required, if any, and transmit the proceeds to the plan insurer, if any.

(f) The plan provides for the inclusion of future employees.

(g) The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the Director of Employment Development finds that the employer or a majority of its employees employed in this state covered by the plan have given notice of the termination of the plan. The notice shall be filed in writing with the

Director of Employment Development and shall be effective only on the anniversary of the effective date of the plan next following the filing of the notice, but in any event not less than 30 days from the time of the filing of the notice; except that the plan may be terminated on the operative date of any law increasing the benefit amounts provided by Sections 2653 and 2655 or the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the termination of the plan is transmitted to the Director of Employment Development not less than 30 days prior to the operative date of that law or change. If the plan is not terminated on the 30 days' notice because of the enactment of a law increasing benefits or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to that increase or change on the operative date of the increase or change.

(h) The amount of deductions from the wages of an employee in effect for any plan shall not be increased on other than an anniversary of the effective date of the plan except to the extent that any increase in the deductions from the wages of an employee allowed by Section 3260 permits that amount to exceed the amount of deductions in effect.

(i) The approval of the plan or plans will not result in a substantial selection of risks adverse to the Disability Fund.

SEC. 6. Chapter 7 (commencing with Section 3300) is added to Part 2 of Division 1 of the Unemployment Insurance Code, to read:

CHAPTER 7. PAID FAMILY CARE LEAVE

3300. The Legislature finds and declares all of the following:

(a) It is in the public benefit to provide family temporary disability insurance benefits to workers to care for their family members. The need for family temporary disability insurance benefits has intensified as both parent's participation in the workforce has increased, and the number of single parents in the workforce has grown. The need for partial wage replacement for workers taking family care leave will be exacerbated as the population of those needing care, both children and parents of workers, increases in relation to the number of working age adults.

(b) Developing systems that help families adapt to the competing interests of work and home not only benefits workers, but also benefits employers by increasing worker productivity and reducing employee turnover.

(c) The federal Family and Medical Leave Act (FMLA) and California's Family Rights Act (CFRA) entitle eligible employees working for covered employers to take unpaid, job-protected leave for up to 12 workweeks in a 12-month period. Under the FMLA and the CFRA, unpaid leave may be taken for the birth, adoption, or foster

placement of a new child; to care for a seriously ill child, parent, or spouse; or for the employee's own serious health condition.

(d) State disability insurance benefits currently provide wage replacement for workers who need time off due to their own non-work-related injuries, illnesses, or conditions, including pregnancy, that prevent them from working, but do not cover leave to care for a sick or injured child, spouse, parent, domestic partner, or leave to bond with a new child.

(e) The majority of workers in this state are unable to take family care leave because they are unable to afford leave without pay. When workers do not receive some form of wage replacement during family care leave, families suffer from the worker's loss of income, increasing the demand on the state unemployment insurance system and dependence on the state's welfare system.

(f) It is the intent of the Legislature to create a family temporary disability insurance program to help reconcile the demands of work and family. The family temporary disability insurance program shall be a component of the state's unemployment compensation disability insurance program, shall be funded through employee contributions, and shall be administered in accordance with the policies of the state disability insurance program created pursuant to this part. Initial and ongoing administrative costs associated with the family temporary disability insurance program shall be payable from the Disability Fund.

3301. (a) The purpose of this chapter is to establish, within the state disability insurance program, a family temporary disability insurance program to provide up to six weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

Nothing in this chapter shall be construed to abridge the rights and responsibilities conveyed under the CFRA or pregnancy disability leave.

(b) An individual's ''weekly benefit amount'' shall be the amount provided in Section 2655.

(c) The maximum amount payable to an individual during any disability benefit period for family temporary disability insurance shall be six times his or her ''weekly benefit amount,'' but in no case shall the total amount of benefits payable be more than the total wages paid to the individual during his or her disability base period. If the benefit is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(d) No more than six weeks of family temporary disability insurance benefits shall be paid within any 12-month period.

3302. For purposes of this part:

(a) ''Child'' means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who stands in loco parentis to that child.

(b) ''Family care leave'' means any of the following:

(1) Leave for reason of the birth of a child of the employee or the employee's domestic partner, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee or domestic partner, or the serious health condition of a child of the employee, spouse or domestic partner.

(2) Leave to care for a parent, spouse, or domestic partner who has a serious health condition.

(c) ''Parent'' means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(d) ''Domestic partner'' has the same meaning as defined in Section 297 of the Family Code.

(e) ''Family member'' means child, parent, spouse, or domestic partner as defined in this section.

(f) ''Serious health condition'' means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code.

3303. (a) An individual shall be deemed eligible for family temporary disability insurance benefits on any day in which he or she is unable to perform his or her regular or customary work because he or she is caring for a new child during the first year after the birth or placement of the child or a seriously ill child, parent, spouse, or domestic partner, subject to a waiting period of seven consecutive days during each family temporary disability benefit period where no benefits are payable within that period.

(b) An individual is not eligible for family temporary disability insurance benefits with respect to any day that he or she has received unemployment compensation benefits under Part 1 (commencing with Section 100) or under an unemployment compensation act of any other state or of the federal government.

(c) An individual is not eligible for family temporary disability insurance benefits with respect to any day of unemployment and disability for which he or she has received, or is entitled to receive, ''other benefits'' in the form of cash benefits as defined in subdivision (b) of Section 2629.

(d) An individual is not eligible for family temporary disability insurance benefits with respect to any day that he or she is entitled to

receive state disability insurance benefits under Part 2 (commencing with Section 2601) or under a disability insurance act of any other state.

(e) An individual is not eligible for family temporary disability insurance benefits with respect to any day that another family member is able and available for the same period of time that the individual is providing the required care.

(f) An individual who is entitled to leave under the FMLA and the CFRA must take Family Temporary Disability Insurance (FTDI) leave concurrent with leave taken under the FMLA and the CFRA.

(g) As a condition of an employee's initial receipt of family temporary disability insurance benefits during any 12-month period in which an employee is eligible for these benefits, an employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the employee's initial receipt of these benefits. If an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one week shall be applied to the waiting period required under subdivision (a). This subdivision may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this subdivision.

3304. Eligible workers shall receive benefits in accordance with provisions established under this division.

3305. If the director finds that any individual falsely certifies the medical condition of any person in order to obtain family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of 25 percent of the benefits paid as a result of the false certification. The provisions of this article, the provisions of Article 9 (commencing with Section 1176) with respect to refunds, and the provisions of Chapter 7 (commencing with Section 1701) with respect to collections shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

SEC. 7. This act shall become operative on January 1, 2004, except that benefits shall be payable for periods of family temporary disability leave commencing on or after July 1, 2004.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 902

An act to amend Section 19775.18 of, and to add Sections 20890.2 and 21362.3 to, the Government Code, relating to public employees' compensation.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19775.18 of the Government Code is amended to read:

19775.18. (a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1, a state employee who, as a member of the California National Guard or a United States military reserve organization, is ordered to active duty on and after September 11, 2001, as a result of the War on Terrorism, shall have the benefits provided for in subdivision (b).

(b) Any state employee to which subdivision (a) applies, while on active duty, shall receive from the state, for the duration of the event known as the War on Terrorism, as authorized pursuant to Sections 12302 and 12304 of Title 10 of the United States Code, but not to exceed 365 calendar days, as part of his or her compensation both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty. The amount an employee, as defined in Section 18526, would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty, shall be determined by the Department of Personnel Administration.

(2) All benefits that he or she would have received had he or she not served on active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not reinstate to state service following active duty, shall have that compensation treated as a loan payable with interest at the rate

earned on the Pooled Money Investment Account. This subdivision does not apply to compensation received pursuant to Section 19775.

(d) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to a state employee who was not eligible to participate in a federally sponsored income protection program for National Guard personnel or military reserve personnel, or both, called into active duty, as determined by the Department of Personnel Administration. For a state employee eligible to participate in a federally sponsored income protection program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federally sponsored income protection program, the state employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federally sponsored income protection program. For individuals who elected the federally sponsored income protection program, the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 365 calendar days. The Governor may, by Executive order, extend this period of time by no more than an additional 365 calendar days.

(e) For purposes of this section, ''state employee'' means an employee as defined in Section 18526 or an officer or employee of the legislative, executive, or judicial department of the state.

(f) This section does not apply to any state employee entitled to additional compensation or benefits pursuant to Section 19775.16 or Section 19775.17 of this code, or Section 395.08 of the Military and Veterans Code.

(g) This section does not apply to any active duty served after the close of the War on Terrorism.

SEC. 2. Section 20890.2 is added to the Government Code, to read:

20890.2. (a) Past miscellaneous service performed as an employee of the Department of the California Highway Patrol while a student at the department's training school established pursuant to Section 2262 of the Vehicle Code shall be converted to patrol member service if all of the following apply:

(1) The service was rendered by a current employee of the Department of the California Highway Patrol.

(2) The service is credited to an employee who has patrol member service credit for service performed with the Department of the California Highway Patrol.

(3) The patrol member failed to file a written election to retain the service as miscellaneous service within 90 days of notification by the board.

(b) The Department of the California Highway Patrol shall notify the board, in the manner established by the board, of any employee who is eligible for conversion of service pursuant to this section.

SEC. 3. Section 21362.3 is added to the Government Code, to read:

21362.3. (a) Notwithstanding subdivision (h) of Section 21362.2, for the California Highway Patrol Commissioner, with respect to service to all state employers under Section 21362.2, the benefit may not exceed 100 percent of final compensation.

(b) This section shall become inoperative on January 1, 2008, unless a later enacted statute deletes or extends that date.

CHAPTER 903

An act to amend Sections 24214, 25011, 25018, 26807, and 26906 of, to add Section 22261 to, and to repeal and add Section 24300 of, the Education Code, relating to state teachers' retirement, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 22261 is added to the Education Code, to read:

22261. Notwithstanding any other provision of law, the board may make investments related to the planning, development, or acquisition of surplus real property owned by an employer, if the investment satisfies the requirements of Section 22250 and does not constitute a prohibited transaction for purposes of Section 503 of the Internal Revenue Code.

SEC. 2. Section 24214 of the Education Code, as amended by Section 2 of Chapter 896 of the Statutes of 2000, 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 may 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 may 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 may 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 are not 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 are not 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, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars ($22,000) multiplied by the percentage increase in the average earnable salary of active members of the Defined Benefit Program, as determined by the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

(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 of the Education Code, as added by Section 3 of Chapter 896 of the Statutes of 2000, 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 may 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 may 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 may 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 are not 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, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars ($22,000) multiplied by the average earnable salary of active members of the Defined Benefit Program, as determined by the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

(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 may 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.

SEC. 4. Section 24300 of the Education Code is repealed.

SEC. 5. Section 24300 is added to the Education Code, to read:

24300. (a) A member may, prior to the effective date of the member's retirement, elect an option pursuant to this part, that would provide an actuarially modified retirement allowance payable throughout the life of the member and the member's option beneficiary, as follows:

(1) Option 2. The modified retirement allowance shall be paid to the retired member. Upon the retired member's death, an allowance equal to the modified amount that the retired member was receiving shall be paid to the option beneficiary.

(2) Option 3. The modified retirement allowance shall be paid to the retired member. Upon the retired member's death, an allowance equal to one-half of the modified amount that the retired member was receiving shall be paid to the option beneficiary.

(3) Option 4. The modified retirement allowance shall be paid to the retired member as long as both the retired member and the option beneficiary are living. Upon the death of either the retired member or the option beneficiary, an allowance equal to two-thirds of the modified amount that the retired member was receiving shall be paid to the surviving retired member or the surviving option beneficiary.

(4) Option 5. The modified retirement allowance shall be paid to the retired member as long as both the retired member and the option beneficiary are living. Upon the death of either the retired member or the

option beneficiary, an allowance equal to one-half of the modified amount that the retired member was receiving shall be paid to the surviving retired member or surviving option beneficiary.

(5) Option 6. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to the modified amount that the retired member was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retired member, the retirement allowance without modification for the option shall be payable to the retired member. If the option beneficiary predeceases the retired member, the retired member may designate a new option beneficiary. The effective date of the new designation shall be six months following the date notification is received by the board, so long as both the retired member and the designated option beneficiary are then living. Notification shall be on a properly executed form for the new designation. The selection of the new option beneficiary under this subdivision is subject to an actuarial modification of the unmodified retirement allowance. A retired member may not designate any new option beneficiary that would result in any additional liability to the fund.

(6) Option 7. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to one-half of the modified amount the retired member was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retired member, the retirement allowance without modification for the option shall be payable to the retired member. If the option beneficiary predeceases the retired member, the retired member may designate a new option beneficiary. The effective date of the new designation shall be six months following the date notification is received by the board, provided both the retired member and the designated option beneficiary are then living. Notification shall be on a properly executed form for the new designation. The selection of the new option beneficiary under this subdivision is subject to an actuarial modification of the unmodified retirement allowance. A retired member may not designate any new option beneficiary that would result in any additional liability to the fund.

(7) Option 8. (A) Any member, prior to the effective date of the member's retirement, may designate multiple option beneficiaries. The member who has designated more than one option beneficiary shall select an option that the member is authorized to elect subject to subdivision (e) for each beneficiary designated that would provide an actuarially modified retirement allowance payable throughout the lives of the member and the member's option beneficiaries.

(B) The modified retirement allowance shall be paid to the retired member as long as the retired member and at least one of the option

beneficiaries are living. Upon the retired member's death, an allowance shall be paid to each surviving option beneficiary in accordance with the option elected respective to that beneficiary. However, if one or more of the option beneficiaries predeceases the retired member, the retired member's allowance shall be adjusted in accordance with the option elected for the deceased beneficiary. The member shall determine the percentage of the unmodified allowance that will be modified by the election of Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 under this option, the aggregate of which may not exceed 100 percent of the member's unmodified allowance. The election of this option is subject to approval by the board.

(b) For purposes of this section, the member shall designate an option beneficiary on a form prescribed by the system, which shall be duly executed and filed with the system at the time of the member's retirement.

(c) A member may revoke or change an election of an option at any time prior to the effective date of the member's retirement under this part.

(d) On or before July 1, 2004, the board shall evaluate the existing options and annuities provided pursuant to this section, Chapter 38 (commencing with Section 25000) of this part, and Part 14 (commencing with Section 26000) and adopt, as a plan amendment, any appropriate changes to the options and annuities based on the needs of members, participants, and their beneficiaries, including, but not limited to, providing economic security for beneficiaries and reducing complexity in the selection of options and annuities by members and participants. The changes to the options and annuities may have no net actuarial impact on the retirement fund, and the board may establish any eligibility criteria it deems necessary to prevent an adverse actuarial impact to the fund. The board shall designate the effective date of the plan amendment, which shall be at least 18 months after the amendment is adopted by the board, and notwithstanding any other provision of this section, the options and annuities available to members and participants eligible to retire pursuant to this part after the effective date of the plan amendment made pursuant to this subdivision shall reflect the changes adopted as a plan amendment pursuant to this subdivision.

(e) Any member or participant who retired and elected an option or a joint and survivor annuity, or who filed a preretirement election of an option prior to the effective date of the plan amendment made pursuant to subdivision (d), may elect to change to a different option or joint and survivor annuity, as modified by the board as a plan amendment pursuant to subdivision (d), if the member or participant meets all the criteria established by the board to prevent a change in an option or joint and survivor annuity from having an adverse actuarial impact on the

retirement fund, including, but not limited to, the effective date of a new designation or limitations on any changes if a member or participant, as the case may be, or beneficiary, or both, is currently not living or afflicted with a known terminal illness. The member or participant shall designate the change during the six-month period that begins with the effective date of the plan amendment, on a form prescribed by the system. Any member changing an option election pursuant to this subdivision is not subject to the allowance reduction prescribed in Section 24309 or 24310 as a result of the election. If a member or participant elects to change his or her option or joint and survivor annuity under this subdivision, the member or participant shall retain the same option beneficiary or beneficiaries as named in the prior designation.

(f) The Legislature reserves the right to modify this section prior to the effective date of the plan amendment made pursuant to subdivision (d) to prevent any actuarial impact to the fund.

SEC. 6. Section 25011 of the Education Code is amended to read:

25011. (a) A member or nonmember spouse may elect to receive the retirement benefit as an annuity payable in monthly installments, provided the balance of credits in the member's or nonmember spouse's respective 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 with a ''pop-up'' feature. 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.

However, 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 form of payment 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. If the annuity beneficiary predeceases the member, the member may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the member and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph is subject to an actuarial modification of the single life annuity with a cash refund feature. A member may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(4) A 50-percent joint and survivor annuity with a ''pop-up'' feature. 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. However, 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 form of payment 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. If the annuity beneficiary predeceases the member, the member may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the member and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph is subject to an actuarial modification of the single life annuity with a cash refund feature. A member may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(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 in whole year increments over a period of years specified by the member, from a minimum of three years to a maximum of 10 years. However, the annuity period may 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) If a nonmember spouse elects to receive the retirement benefit as an annuity, the nonmember spouse shall elect the form of payment specified in paragraph (1), (2), or (5) of subdivision (b) and, in those paragraphs, references to a ''member'' shall apply to the nonmember spouse.

SEC. 7. Section 25018 of the Education Code 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) For a member receiving an allowance pursuant to Chapter 26 (commencing with Section 24100), a 100-percent joint and survivor annuity with a ''pop-up'' feature. 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. However, 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 form of payment 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. If the annuity beneficiary predeceases the member, the member may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the member and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph shall be subject to an actuarial modification of the single life annuity with a cash refund feature. A member may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(4) For a member receiving an allowance pursuant to Chapter 26 (commencing with Section 24100), a 50-percent joint and survivor annuity with a ''pop-up'' feature. 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. However, 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 form of payment 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. If the annuity beneficiary predeceases the member, the member may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the member and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph shall be subject to an actuarial modification of the single life annuity with a cash refund feature. A member may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(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 in whole year increments over a period of years specified by the member, from a minimum of three years to a maximum of 10 years. However, the annuity period may 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.

SEC. 8. Section 26807 of the Education Code is amended to read:

26807. (a) Upon application for a retirement benefit under this part, the participant may elect to receive the retirement benefit in the form of an annuity, provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars ($3,500).

(b) If the participant elects to receive the retirement benefit as an annuity, the participant 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 participant if the participant elected to receive the retirement benefit in a lump-sum payment. This benefit shall be payable for the life of the participant. Upon the death of the participant, no other benefit shall be payable to any beneficiary under this part.

(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 participant if the participant elected to receive the retirement benefit in a lump-sum payment. This benefit shall be payable for the life of the participant and any balance remaining upon the death of the participant shall be payable in a lump sum to the participant's beneficiary.

(3) A 100-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the retirement benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity beneficiary. Upon the death of the participant, the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. However, if the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment 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. If the annuity beneficiary predeceases the participant, the participant may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the participant and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph shall be subject to an actuarial modification of the single life annuity with a

cash refund feature. A participant may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(4) A 50-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the retirement benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity beneficiary. Upon the death of the participant, one-half of the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. However, if the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment 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. If the annuity beneficiary predeceases the participant, the participant may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the participant and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph shall be subject to an actuarial modification of the single life annuity with a cash refund feature. A participant may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the sum of the balance of the employee account and the employer account on the date the retirement benefit becomes payable. The annuity shall be payable in whole year increments over a period of years specified by the participant, from a minimum of three years to a maximum of 10 years. However, the annuity period may not exceed the life expectancy of the participant or of the participant and the participant's annuity beneficiary. If the participant's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the participant's annuity beneficiary pursuant to Section 27007.

SEC. 9. Section 26906 of the Education Code is amended to read:

26906. (a) Upon application for a disability benefit under this part, the participant may elect to receive the disability benefit in the form of an annuity provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars ($3,500).

(b) If the participant elects to receive the disability benefit as an annuity, the participant 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 participant if the participant elected to receive the disability benefit in a lump-sum payment. This benefit shall be payable for the life of the participant. Upon the death of the participant, no other benefit shall be payable to any beneficiary under this part.

(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 participant if the participant elected to receive the disability benefit in a lump-sum payment. This benefit shall be payable for the life of the participant and any balance remaining upon the death of the participant shall be payable in a lump sum to the participant's beneficiary.

(3) A 100-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the disability benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity beneficiary. Upon the death of the participant, the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. However, if the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment 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. If the annuity beneficiary predeceases the participant, the participant may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the participant and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph shall be subject to an actuarial modification of the single life annuity with a cash refund feature. A participant may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(4) A 50-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the disability benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity

beneficiary. Upon the death of the participant, one-half of the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. However, if the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment 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. If the annuity beneficiary predeceases the participant, the participant may designate a new annuity beneficiary. The effective date of the new designation shall be six months following the date notification, on a properly executed form, is received by the board, provided both the participant and the new designated annuity beneficiary are then living. The selection of the new annuity beneficiary under this paragraph shall be subject to an actuarial modification of the single life annuity with a cash refund feature. A participant may not designate a new annuity beneficiary if that designation would result in any additional liability to the fund.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the sum of balance of the employee account and the employer account on the date the disability benefit becomes payable. The annuity shall be payable in whole year increments over a period of years specified by the participant, from a minimum of three years to a maximum of 10 years. However, the annuity period may not exceed the life expectancy of the participant or of the participant and the participant's annuity beneficiary. If the participant's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the participant's annuity beneficiary pursuant to Section 27007.

SEC. 10. The sum of one million eight hundred thousand dollars ($1,800,000) is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board to maintain and enhance the level of customer service provided by the State Teachers' Retirement System.

CHAPTER 904

An act to amend Section 19556 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19556 of the Business and Professions Code is amended to read:

19556. (a) The distribution shall be made by the distributing agent to beneficiaries qualified under this article. For the purposes of this article, a beneficiary shall be all of the following:

(1) A nonprofit corporation or organization entitled by law to receive a distribution made by a distributing agent.

(2) Exempt or entitled to an exemption from taxes measured by income imposed by this state and the United States.

(3) Engaged in charitable, benevolent, civic, religious, educational, or veterans' work similar to that of agencies recognized by an organized community chest in the State of California, except that the funds so distributed may be used by the beneficiary for capital expenditures.

(4) Approved by the board.

(b) At least 20 percent of the distribution shall be made to charities associated with the horse racing industry. In addition to this 20 percent of the distribution, another 5 percent of the distribution shall be paid to a welfare fund described in subdivision (b) of Section 19641 and another 5 percent of the distribution shall be paid to a nonprofit corporation, the primary purpose of which is to assist horsemen and backstretch personnel who are being affected adversely as a result of alcohol or substance abuse. No beneficiary otherwise qualified under this section to receive charity day net proceeds shall be excluded on the basis that the beneficiary provides charitable benefits to persons connected with the care, training, and running of racehorses, except that type of beneficiary shall make an accounting to the board within one calendar year of the date of receipt of any distribution.

(c) (1) In addition to the distribution pursuant to subdivision (b), a separate 20 percent of the distribution shall be made to a nonprofit corporation or trust, the directors or trustees of which shall serve without compensation except for reimbursement for reasonable expenses, and which has as its sole purpose the accumulation of endowment funds, the income on which shall be distributed to qualified disabled jockeys.

(2) To receive a distribution under this subdivision, a corporation or trust must establish objective qualifications for disabled jockeys, and provide an annual accounting and report to the board on its activities indicating compliance with the requirements of this subdivision.

(3) The nonprofit corporation or trust shall, in an amount proportional to the contributions received pursuant to this subdivision as a percentage of the total contributions received by the corporation or trust, give preference in assisting qualified disabled jockeys to the following:

(A) Jockeys who were disabled while participating in the racing or training of horses at licensed racing associations or approved training facilities in California.

(B) Jockeys licensed by the board who were disabled while participating in the racing or training of horses in a state other than California.

(d) When the nonprofit corporation or trust described in subdivision (c) has received distributions in an amount equal to two million dollars ($2,000,000), the distribution mandated by subdivision (c) shall cease.

CHAPTER 905

An act to amend Sections 71601, 71615, 71632.5, 71636, 71639.1, 71639.3, and 71652 of, and to add Sections 68114.10 and 71636.3 to, the Government Code, and to amend Section 3700 of the Labor Code, relating to judicial branch employees, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 68114.10 is added to the Government Code, to read:

68114.10. Effective July 1, 2003, there is hereby established in the State Treasury the Judicial Branch Workers' Compensation Fund for the purpose of funding workers' compensation claims for judicial branch employees, including employees of the Administrative Office of the Courts, appellate courts, participating superior courts, Commission on Judicial Performance, and Habeas Corpus Resource Center. Contributions from participating judicial branch employers shall be credited to the fund. Income of whatever nature earned on the Judicial Branch Workers' Compensation Fund during any fiscal year shall be credited to the fund. Notwithstanding Section 13340 of the Government Code, moneys in the fund are continuously appropriated without regard to fiscal years. The fund shall be used by the Administrative Office of the Courts to pay workers' compensation claims of judicial branch employees and administrative costs.

SEC. 2. Section 71601 of the Government Code is amended to read:

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 or in a local rule, 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 judge pro tempore.

(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. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days.

SEC. 3. Section 71615 of the Government Code is amended to read:

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.

(g) Notwithstanding paragraph (4) of subdivision (c), both of the following shall apply:

(1) Unless prohibited or limited by charter provisions, the policies regarding transfer between either the trial court and the county or the county and the trial court that were in effect as of January 1, 2001, shall be continued while an existing memorandum of understanding or agreement remains in effect or until January 1, 2005, whichever period is longer. Thereafter, any 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.

(2) Unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that were in effect on January 1, 2001, shall be continued if trial court or county employees transfer between either 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 until January 1, 2005, whichever period is longer. Thereafter, any 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.

SEC. 4. Section 71632.5 of the Government Code is amended to read:

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 that 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 that 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. That 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 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 any funds, then to any 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 the 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 any time during the term of the 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, without a negotiated agreement, 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 a secret ballot election in favor of the agency shop agreement. The petition may only be filed after the

recognized employee organization has requested the trial court to negotiate on an agency shop arrangement and, beginning seven working days after the trial court received this request, the two parties have had 30 calendar days to attempt good faith negotiations 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 trial court 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 was in effect on January 1, 2002, the recognized employee organization shall defend, indemnify, and hold the trial court harmless against any liability arising from any claims, demands, or other action relating to the trial court's compliance with the agency fee obligation. Upon notification to the trial court by the recognized employee organization, the amount of the fee shall be deducted by the trial court from the wages or salary of the employee and paid to the employee organization. This subdivision shall be applicable on the operative date of this section, except that if a memorandum of understanding or agreement between the trial court and a recognized employee organization was in effect before January 1, 2002, as to the employees covered by the memorandum of understanding or agreement, the implementation date of this subdivision 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 trial 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 or arrangement does not apply to management, confidential, or supervisory employees. If those employees nonetheless choose to join the recognized employee organization and pay dues or pay the organization a service fee, Section 71638 shall apply to those employees, and the trial court shall administer deductions for which the recognized employee organization shall defend, indemnify, and hold the trial court harmless.

(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 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 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.

(h) A trial court shall not offer employees inducements or benefits of any kind in return for employees opposing or rescinding an agency shop arrangement.

SEC. 5. Section 71636 of the Government Code is amended to read:

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. A trial court shall not offer to provide employees benefits of any kind for the purpose of inducing those employees to decertify or withdraw support from a recognized employee organization.

(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.

SEC. 6. Section 71636.3 is added to the Government Code, to read:

71636.3. (a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a trial court 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 trial court pursuant to Section 71636, a bargaining unit in effect as of January 1, 2002, shall continue in effect unless changed under the rules adopted by the trial court pursuant to Section 71636.

(c) A trial court shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party, selected by the trial court and the employee organization, who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. In the event the trial court and the employee organization cannot agree on a neutral third party, the Division of Conciliation of the Department of Industrial Relations shall be the neutral third party and shall verify the exclusive or majority status of the employee organization. In the event that the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

SEC. 7. Section 71639.1 of the Government Code is amended to read:

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) or (d). 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 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, on or before March 1, 2003, 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, if 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 these 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 these 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), (d), and (e) may be provided for by mutual agreement between a trial court and representatives of recognized employee organizations.

SEC. 8. Section 71639.3 of the Government Code is amended to read:

71639.3. (a) 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.

(b) A court decision interpreting or applying this article is not binding in cases or proceedings arising under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

SEC. 9. Section 71652 of the Government Code is amended to read:

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. Employees shall be laid off on the basis of seniority of the employees in the class of layoff, in the absence of a mutual agreement between the trial court and a recognized employee organization providing for a different order of layoff.

(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.

SEC. 10. Section 3700 of the Labor Code is amended to read:

3700. Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise

of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

For purposes of this section, ''state'' shall include the superior courts of California.

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 906

An act to amend Section 1714 of, and to repeal Section 1714.4 of, the Civil Code, relating to firearms.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1714 of the Civil Code is amended to read:

1714. (a) Every one is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313), and Coulter v. Superior Court (21 Cal. 3d 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.

SEC. 2. Section 1714.4 of the Civil Code is repealed.

CHAPTER 907

An act to amend Section 182 of, and to add Section 529.7 to, the Penal Code, relating to identity theft.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 182 of the Penal Code is amended to read:

182. (a) If two or more persons conspire:

(1) To commit any crime.

(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

(3) Falsely to move or maintain any suit, action, or proceeding.

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows:

When they conspire to commit any crime against the person of any official specified in paragraph (6), they are guilty of a felony and are punishable by imprisonment in the state prison for five, seven, or nine years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony the defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in the county jail for not more than one year, or in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. When they receive a felony conviction for conspiring to commit identity theft, as defined in Section 530.5, the court may impose a fine of up to twenty-five thousand dollars ($25,000).

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect the conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

SEC. 2. Section 529.7 is added to the Penal Code, to read:

529.7. Any person who obtains, or assists another person in obtaining, a driver's license, identification card, vehicle registration certificate, or any other official document issued by the Department of Motor Vehicles, with knowledge that the person obtaining the document is not entitled to the document, is guilty of a misdemeanor, and is

punishable by imprisonment in a county jail for up to one year, or a fine of up to one thousand dollars ($1,000), or both.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 908

An act to amend Section 786 of the Penal Code, relating to identity theft.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 786 of the Penal Code is amended to read:

786. (a) When property taken in one jurisdictional territory by burglary, carjacking, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.

(b) (1) The jurisdiction of a criminal action for unauthorized use of personal identifying information, as defined in Section 530.5 of the Penal Code, shall also include the county where the theft of the personal identifying information occurred, or the county where the information was used for an illegal purpose. If multiple offenses of unauthorized use of personal identifying information, all involving the same defendant or defendants and the same personal identifying information belonging to the one person, occur in multiple jurisdictions, any one of those jurisdictions is a proper jurisdiction for all of the offenses.

(2) When charges alleging multiple offenses of unauthorized use of personal identifying information occurring in multiple territorial jurisdictions are filed in one county pursuant to this section, the court shall hold a hearing to consider whether the matter should proceed in the county of filing, or whether one or more counts should be severed. The district attorney filing the complaint shall present evidence to the court that the district attorney in each county where any of the charges could have been filed has agreed that the matter should proceed in the county of filing. In determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim and witnesses.

(c) This section shall not be interpreted to alter victims' rights under Section 530.6.

SEC. 2. The Legislature finds and declares that this measure is intended to reduce the number of separate prosecutions, which will, in turn, produce a cost savings to local governments and the courts.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

CHAPTER 909

An act to amend Sections 12001, 12071, 12072, 12073, 12076, and 12078 of, and to add Section 12083 to, the Penal Code, relating to firearms.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. This act shall be known, and may be cited as, the Firearms Trafficking Prevention Act of 2002.

SEC. 2. Section 12001 of the Penal Code is amended to read:

12001. (a) (1) As used in this title, the terms ''pistol,'' ''revolver,'' and ''firearm capable of being concealed upon the person'' shall apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. These

terms also include any device that has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(2) As used in this title, the term ''handgun'' means any ''pistol,'' ''revolver,'' or ''firearm capable of being concealed upon the person.''

(b) As used in this title, ''firearm'' means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, 12101, and 12801 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term ''firearm'' includes the frame or receiver of the weapon.

(d) For the purposes of Sections 12025 and 12031, the term ''firearm'' also shall include any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes.

(e) For purposes of Sections 12070, 12071, and paragraph (8) of subdivision (a), and subdivisions (b), (c), (d), and (f) of Section 12072, the term ''firearm'' does not include an unloaded firearm that is defined as an ''antique firearm'' in Section 921(a)(16) of Title 18 of the United States Code.

(f) Nothing shall prevent a device defined as a ''handgun,'' ''pistol,'' ''revolver,'' or ''firearm capable of being concealed upon the person'' from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, the term ''BB device'' means any instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun.

(h) As used in this title, ''wholesaler'' means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

''Wholesaler'' shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued

pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, ''application to purchase'' means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

(3) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.

(j) For purposes of Section 12023, a firearm shall be deemed to be ''loaded'' whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, 12101, and 12801 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term ''any firearm'' may be used in those sections, each firearm or the frame or receiver of the same shall constitute a distinct and separate offense under those sections.

(*l*) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

(m) Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include two copies of the applicant's fingerprints on forms prescribed by the Department of Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.

(n) As used in this chapter, a ''personal handgun importer'' means an individual who meets all of the following criteria:

(1) He or she is not a person licensed pursuant to Section 12071.

(2) He or she is not a licensed manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(3) He or she is not a licensed importer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) He or she is the owner of a pistol, revolver, or other firearm capable of being concealed upon the person.

(5) He or she acquired that pistol, revolver, or other firearm capable of being concealed upon the person outside of California.

(6) He or she moves into this state on or after January 1, 1998, as a resident of this state.

(7) He or she intends to possess that pistol, revolver, or other firearm capable of being concealed upon the person within this state on or after January 1, 1998.

(8) The pistol, revolver, or other firearm capable of being concealed upon the person was not delivered to him or her by a person licensed pursuant to Section 12071 who delivered that firearm following the procedures set forth in Section 12071 and subdivision (c) of Section 12072.

(9) He or she, while a resident of this state, had not previously reported his or her ownership of that pistol, revolver, or other firearm capable of being concealed upon the person to the Department of Justice in a manner prescribed by the department that included information concerning him or her and a description of the firearm.

(10) The pistol, revolver, or other firearm capable of being concealed upon the person is not a firearm that is prohibited by subdivision (a) of Section 12020.

(11) The pistol, revolver, or other firearm capable of being concealed upon the person is not an assault weapon, as defined in Section 12276 or 12276.1.

(12) The pistol, revolver, or other firearm capable of being concealed upon the person is not a machinegun, as defined in Section 12200.

(13) The person is 18 years of age or older.

(o) For purposes of paragraph (6) of subdivision (n):

(1) Except as provided in paragraph (2), residency shall be determined in the same manner as is the case for establishing residency pursuant to Section 12505 of the Vehicle Code.

(2) In the case of members of the Armed Forces of the United States, residency shall be deemed to be established when he or she was discharged from active service in this state.

(p) As used in this code, ''basic firearms safety certificate'' means a certificate issued by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4, prior to January 1, 2003.

(q) As used in this code, ''handgun safety certificate'' means a certificate issued by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4, as that article is operative on or after January 1, 2003.

(r) As used in this title, ''gunsmith'' means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, who is engaged primarily in the business of repairing firearms, or making or fitting special barrels, stocks, or trigger mechanisms to firearms, or the agent or employee of that person.

SEC. 3. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face ''Valid for Retail Sales of Firearms'' and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) and paragraph (1) of subdivision (f) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) ''IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A

LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(B) ''IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(C) ''IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.''

(D) ''DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.''

(E) ''FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.''

(F) ''NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.''

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or other evidence of residency as permitted by the Department of Justice. The firearms dealer shall retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange dummy round into the magazine.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use

of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population of less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, ''clear evidence of his or her identity and age'' means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a ''secure facility'' means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those

requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) (1) Except as otherwise provided in this paragraph, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a), and all persons who have submitted information pursuant to subdivision (a) of Section 12083. The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located.

(2) The department shall remove from the list any person whose federal firearms license has expired or has been revoked.

(3) Information compiled from the list shall be made available, upon request, for the following purposes only:

(A) For law enforcement purposes.

(B) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(C) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(4) Information provided pursuant to paragraph (3) shall be limited to information necessary to corroborate an individual's current license status as being one of the following:

(A) A person licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(B) A person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and who is not subject to the requirement that he or she be licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee

that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(i) (1) For every verification inquiry made pursuant to paragraph (1) of subdivision (f) of Section 12072, the department shall determine whether the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and, if applicable, is properly licensed pursuant to this section.

(2) If the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and if applicable, is properly licensed pursuant to this section, the department shall immediately provide a unique verification number to the inquiring party.

(3) If the intended recipient does not possess an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or if applicable, is not properly licensed pursuant to this section, the department shall do all of the following:

(A) Immediately notify the inquiring party of that fact.

(B) Within 24 hours, notify the chief law enforcement officer of the jurisdiction where the address on the federal firearms license about which the inquiry was made is located, and notify an appropriate employee of the federal Bureau of Alcohol, Tobacco and Firearms of the denied verification.

SEC. 3.5. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face ''Valid for Retail Sales of Firearms'' and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) and paragraph (1) of subdivision (f) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) ''IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(B) ''IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS

ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(C) ''IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.''

(D) ''DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.''

(E) ''FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.''

(F) ''NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.''

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid

handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or other evidence of residency as permitted by the Department of Justice. The firearms dealer shall retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange dummy round into the magazine.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the

pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall

store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population of less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with

Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, ''clear evidence of his or her identity and age'' means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a ''secure facility'' means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of

proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) (1) Except as otherwise provided in this paragraph, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a), and all persons who have submitted information pursuant to subdivision (a) of Section 12083. The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located.

(2) The department shall remove from the centralized list any person whose federal firearms license has expired or has been revoked.

(3) Information compiled from the list shall be made available, upon request, for the following purposes only:

(A) For law enforcement purposes.

(B) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(C) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(4) Information provided pursuant to paragraph (3) shall be limited to information necessary to corroborate an individual's current license status as being one of the following:

(A) A person licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(B) A person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and who is not subject

to the requirement that he or she be licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(i) (1) For every verification inquiry made pursuant to paragraph (1) of subdivision (f) of Section 12072, the department shall determine whether the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and, if applicable, is properly licensed pursuant to this section.

(2) If the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and if applicable, is properly licensed pursuant to this section, the department shall immediately provide a unique verification number to the inquiring party.

(3) If the intended recipient does not possess an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921)

of Title 18 of the United States Code, or if applicable, is not properly licensed pursuant to this section, the department shall do all of the following:

(A) Immediately notify the inquiring party of that fact.

(B) Within 24 hours, notify the chief law enforcement officer of the jurisdiction where the address on the federal firearms license about which the inquiry was made is located, and notify an appropriate employee of the federal Bureau of Alcohol, Tobacco and Firearms of the denied verification.

SEC. 4. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor, nor sell a handgun to an individual under 21 years of age.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(7) The dealer shall comply with the provisions of paragraph (19) of subdivision (b) of Section 12071.

(8) No person shall sell or otherwise transfer his or her ownership in a pistol, revolver, or other firearm capable of being concealed upon the person unless the firearm bears either:

(A) The name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number assigned to that firearm.

(B) The identification number or mark assigned to the firearm by the Department of Justice pursuant to Section 12092.

(9) (A) No person shall make an application to purchase more than one pistol, revolver, or other firearm capable of being concealed upon the person within any 30-day period.

(B) Subparagraph (A) shall not apply to any of the following:

(i) Any law enforcement agency.

(ii) Any agency duly authorized to perform law enforcement duties.

(iii) Any state or local correctional facility.

(iv) Any private security company licensed to do business in California.

(v) Any person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of his or her employment as a peace officer.

(vi) Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.

(vii) Any person who may, pursuant to Section 12078, claim an exemption from the waiting period set forth in subdivision (c) of this section.

(viii) Any transaction conducted through a licensed firearms dealer pursuant to Section 12082.

(ix) Any transaction conducted through a law enforcement agency pursuant to Section 12084.

(x) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto and who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071.

(xi) The exchange of a pistol, revolver, or other firearm capable of being concealed upon the person where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.

(xii) The replacement of a pistol, revolver, or other firearm capable of being concealed upon the person when the person's pistol, revolver, or other firearm capable of being concealed upon the person was lost or

stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local law enforcement agency of the city, county, or city and county in which he or she resides.

(xiii) The return of any pistol, revolver, or other firearm capable of being concealed upon the person to its owner.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no handgun shall be delivered unless the purchaser, transferee, or person being loaned the handgun presents a handgun safety certificate to the dealer.

(6) No pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person and that the previous application to purchase involved none of the entities specified in subparagraph (B) of paragraph (9) of subdivision (a).

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall

complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed firearms dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for a basic firearms safety certificate or a handgun safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Using or allowing another to use one's identification, proof of residency, or thumbprint.

(7) Allowing others to give unauthorized assistance during the examination.

(8) Reference to unauthorized materials during the examination and cheating by the applicant.

(9) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as authorized by the department.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless:

(A) Prior to January 1, 2005, the intended recipient does one of the following:

(i) Presents proof of licensure pursuant to Section 12071 to that person.

(ii) Presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(B) Commencing January 1, 2005, one of the following is satisfied:

(i) The person intending to deliver, sell, or transfer the firearms obtains from the department, prior to delivery, a unique verification number pursuant to subdivision (i) of Section 12071. The person

intending to deliver, sell, or transfer firearms shall provide the unique verification number to the recipient along with the firearms upon delivery, in a manner to be determined by the department.

(ii) The intended recipient presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event, the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a ''continuing offense'' and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2), (3), or (5), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating the provisions, other than paragraph (9) of subdivision (a), of this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a ''criminal street gang'' as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(A) A violation of paragraph (2), (4), or (5) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) A violation of paragraph (1), (3), (4), (5), or (6) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(E) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

(5) (A) A first violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of fifty dollars ($50).

(B) A second violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of one hundred dollars ($100).

(C) A third or subsequent violation of paragraph (9) of subdivision (a) is a misdemeanor.

(D) For purposes of this paragraph each application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (9) of subdivision (a) shall be deemed a separate offense.

SEC. 5. Section 12073 of the Penal Code is amended to read:

12073. (a) As required by the Department of Justice, every dealer shall keep a register or record of electronic or telephonic transfer in which shall be entered the information prescribed in Section 12077.

(b) This section shall not apply to any of the following transactions:

(1) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to another dealer upon proof of compliance with the requirements of paragraph (1) of subdivision (f) of Section 12072.

(2) The delivery, sale, or transfer of an unloaded firearm by a dealer to another dealer if that firearm is intended as merchandise in the receiving dealer's business upon proof of compliance with the requirements of paragraph (1) of subdivision (f) of Section 12072.

(3) The delivery, sale, or transfer of an unloaded firearm by a dealer to a person licensed as an importer or manufacturer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(4) The delivery, sale, or transfer of an unloaded firearm by a dealer who sells, transfers, or delivers the firearm to a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(5) The delivery, sale, or transfer of an unloaded firearm by a dealer to a wholesaler if that firearm is being returned to the wholesaler and is intended as merchandise in the wholesaler's business.

(6) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(7) The loan of an unloaded firearm by a dealer who also operates a target facility which holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purpose of practicing shooting at targets upon established ranges, whether public or private, to a person at that target

facility or club or organization, if the firearm is kept at all times within the premises of the target range or on the premises of the club or organization.

(8) The delivery of an unloaded firearm by a dealer to a gunsmith for service or repair.

(9) The return of an unloaded firearm to the owner of that firearm by a dealer, if the owner initially delivered the firearm to the dealer for service or repair.

(c) A violation of this section is a misdemeanor.

SEC. 6. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding

the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in

Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision

(e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and

institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Section 12083, and Section 12289.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 6.1. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or

telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify

the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars

($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083, 12099, 12234, 12289, 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being

concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 6.2. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson

shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice

employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification

by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or

clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Section 12083, subdivision (c) of Section 12131, and Section 12289.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 6.3. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of

subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is

received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by

paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the

General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083 and 12099, subdivision (c) of Section 12131, Sections 12234, 12289, and 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 7. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The waiting periods described in Sections 12071, 12072, and 12084 shall not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their

employer to carry firearms while in the performance of their duties. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the dealer or local law enforcement agency acting pursuant to Section 12084 at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. The dealer or local law enforcement agency shall keep the certification with the record of sale, or LEFT, as the case may be. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that

agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

(4) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a peace officer pursuant to Section 10334 of the Public Contract Code. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred pursuant to Section 10334 of the Public Contract Code to that peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(5) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a retiring peace officer who is authorized to carry a firearm pursuant to Section 12027.1. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred to that retiring peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(6) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 do not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this paragraph shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(7) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, loan, delivery, or transfer of a firearm made by an authorized law enforcement representative of a city, county, city and county, state, or the federal government to any public or private nonprofit historical society, museum, or institutional collection or the

purchase or receipt of that firearm by that public or private nonprofit historical society, museum, or institutional collection if all of the following conditions are met:

(A) The entity receiving the firearm is open to the public.

(B) The firearm prior to delivery is deactivated or rendered inoperable.

(C) The firearm is not subject to Section 12028, 12028.5, 12030, or 12032.

(D) The firearm is not prohibited by other provisions of law from being sold, delivered, or transferred to the public at large.

(E) Prior to delivery, the entity receiving the firearm submits a written statement to the law enforcement representative stating that the firearm will not be restored to operating condition, and will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable provisions of this article and, if applicable, Section 12801.

(F) Within 10 days of the date that the firearm is sold, loaned, delivered, or transferred to that entity, the name of the government entity delivering the firearm, and the make, model, serial number, and other identifying characteristics of the firearm and the name of the person authorized by the entity to take possession of the firearm shall be reported to the department in a manner prescribed by the department.

(G) In the event of a change in the status of the designated representative, the entity shall notify the department of a new representative within 30 days.

(8) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, loan, delivery, or transfer of a firearm made by any person other than a representative of an authorized law enforcement agency to any public or private nonprofit historical society, museum, or institutional collection if all of the following conditions are met:

(A) The entity receiving the firearm is open to the public.

(B) The firearm is deactivated or rendered inoperable prior to delivery.

(C) The firearm is not of a type prohibited from being sold, delivered, or transferred to the public.

(D) Prior to delivery, the entity receiving the firearm submits a written statement to the person selling, loaning, or transferring the firearm stating that the firearm will not be restored to operating condition, and will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable, provisions of this article and, if applicable Section 12801.

(E) If title to a handgun is being transferred to the public or private nonprofit historical society, museum, or institutional collection, then the

designated representative of that public or private historical society, museum or institutional collection within 30 days of taking possession of that handgun, shall forward by prepaid mail or deliver in person to the Department of Justice, a single report signed by both parties to the transaction, that includes information identifying the person representing that public or private historical society, museum, or institutional collection, how title was obtained and from whom, and a description of the firearm in question, along with a copy of the written statement referred to in subparagraph (D). The report forms that are to be completed pursuant to this paragraph shall be provided by the Department of Justice.

(F) In the event of a change in the status of the designated representative, the entity shall notify the department of a new representative within 30 days.

(b) (1) Section 12071, subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(2) Subdivision (b) of Section 12801 shall not apply to the delivery, sale, or transfer of a handgun to a person licensed pursuant to Section 12071, where the licensee is receiving the handgun in the course and scope of his or her activities as a person licensed pursuant to Section 12071.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) If taking possession of the firearm prior to January 1, 2003, the person taking title to the firearm shall first obtain a basic firearms safety

certificate. If taking possession on or after January 1, 2003, the person taking title to the firearm shall first obtain a handgun safety certificate.

(3) As used in this subdivision, ''immediate family member'' means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration and, when the firearm is a handgun, commencing January 1, 2003, the individual being loaned the handgun has a valid handgun safety certificate.

(2) Subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a firearm where all of the following conditions exist:

(A) The person loaning the firearm is at all times within the presence of the person being loaned the firearm.

(B) The loan is for a lawful purpose.

(C) The loan does not exceed three days in duration.

(D) The individual receiving the firearm is not prohibited from owning or possessing a firearm pursuant to Section 12021 or 12021.1 of this code, or by Section 8100 or 8103 of the Welfare and Institutions Code.

(E) The person loaning the firearm is 18 years of age or older.

(F) The person being loaned the firearm is 18 years of age or older.

(e) Section 12071, subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the delivery of a firearm to a gunsmith for service or repair, or to the return of the firearm to its owner by the gunsmith.

(f) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term ''infrequent'' shall not be construed to prohibit different local chapters of the same nonprofit

corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or

8103 of the Welfare and Institutions Code from possessing firearms and all of the following conditions are met:

(A) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, nor a person who is receiving that firearm pursuant to subparagraph (G), (I), or (J) of paragraph (2) of subdivision (u), the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(B) If the person taking title or possession is receiving the firearm pursuant to subparagraph (G) of paragraph (2) of subdivision (u), the person shall do both of the following:

(i) Within 30 days of taking possession, forward by prepaid mail or deliver in person to the department, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(ii) Prior to taking title or possession of the firearm, if title or possession is taken prior to January 1, 2003, the person shall either obtain a basic firearms safety certificate or be exempt from obtaining a basic firearms safety certificate pursuant to Section 12081. Prior to taking title or possession of the firearm, if title or possession is taken on or after January 1, 2003, the person shall obtain a handgun safety certificate.

(C) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (I) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(D) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (J) of paragraph (2) of subdivision

(u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the AFS via the CLETS by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver that pistol, revolver, or other firearm capable of being concealed upon the person to the person referred to in this subparagraph if delivery takes place prior to January 1, 2003, unless, prior to the delivery of the same, the person presents proof to the agency that he or she is the holder of a basic firearms safety certificate or is exempt from obtaining a basic firearms safety certificate pursuant to Section 12081, or, commencing January 1, 2003, is the holder of a handgun safety certificate.

(3) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, and until January 1, 2003, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply. Commencing January 1, 2003, the exemption shall not apply, and the individual shall obtain a handgun safety certificate prior to transferring ownership to himself or herself, or taking possession of a handgun in an individual capacity.

(j) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071, subdivision (c) of Section 12072, and subdivision (b) of Section 12801 shall not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof of compliance with the requirements of paragraph (1) of subdivision (f) of Section 12072.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof of compliance with the requirements of paragraph (1) of subdivision (f) of Section 12072.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering

the firearm that he or she is licensed pursuant to Section 12071 by complying with paragraph (1) of subdivision (f) of Section 12072.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) of Section 12072, subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video

production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a), subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(6) Subparagraph (A) of paragraph (3) of subdivision (a) of Section 12072 shall not apply to the sale of a handgun if both of the following requirements are satisfied:

(A) The sale is to a person who is at least 18 years of age.

(B) The firearm is an antique firearm as defined in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the

application to purchase is completed, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the same as described in subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges, to a person 18 years of age or older, for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) (1) The waiting period described in Sections 12071, 12072, and 12084 shall not apply to the sale, delivery, loan, or transfer of a firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent sale, loan, or transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, which is a curio or relic manufactured at least 50 years prior to the current date, but not including replicas thereof, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(u) As used in this section:

(1) ''Infrequent'' has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) ''A person taking title or possession of firearms by operation of law'' includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(J) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 8. Section 12083 is added to the Penal Code, to read:

12083. (a) A person who is licensed as a dealer, importer, manufacturer, or collector of firearms, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and whose licensed premises are within this state, shall, within 30 days of the date of issuance of the license, provide a copy of the license with an original signature of the licensee to the Department of Justice in a manner to be determined by the department. If the date of issuance of the license is prior to January 1, 2004, the person shall provide a copy of the license with the original signature to the department no later than February 1, 2004.

(b) A violation of this section is punishable as an infraction.

(c) Any costs incurred by the department to implement this section and to implement the amendments made to Section 12071 by the act which enacted this section shall be funded from the Dealers' Record of Sale Special Account, as set forth in subdivision (g) of Section 12076, upon appropriation by the Legislature.

SEC. 9. Notwithstanding subdivision (c) of Section 12083, Section 12083 of the Penal Code, and the amendments made to Section 12071 of the Penal Code by this act shall become operative on January 1, 2004,

if the actual reserve balance in the Dealers' Record of Sale Special Account is one million dollars ($1,000,000) or more on January 1, 2004, as determined by the department. If the reserve balance is not equal to one million dollars ($1,000,000) or more on January 1, 2004, as determined by the department, those provisions shall become operative when the department determines that the actual reserve balance in the Dealers' Record of Sale Special Account equals one million dollars ($1,000,000) or more.

SEC. 10. Section 3.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 2793. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12071 of the Penal Code, and (3) this bill is enacted after AB 2793, in which case Section 12071 of the Penal Code as amended by AB 2793, shall remain operative only until the operative date specified in Section 9 of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 11. (a) Section 6.1 of this bill incorporates amendments to Section 12076 of the Penal Code proposed by both this bill and AB 2580. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12076 of the Penal Code, (3) AB 2902 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2580, 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 12076 of the Penal Code proposed by both this bill and AB 2902. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12076 of the Penal Code, (3) AB 2580 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2902, 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 12076 of the Penal Code proposed by this bill, AB 2580, and AB 2902. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 12076 of the Penal Code, and (3) this bill is enacted after AB 2580, and AB 2902, in which case Sections 6, 6.1, and 6.2 of this bill shall not become operative.

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 910

An act to amend Sections 12076, 12082, and 12305 of, and to add Sections 12099, 12234, and 12289.5 to, the Penal Code, relating to dangerous weapons.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent

register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to

be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12099, 12234, 12289, 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 1.1. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of

the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more

than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the

notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083, 12099, 12234, 12289, 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used

for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 1.2. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision

(e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the

submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Section 12099, subdivision (c) of Section 12131, Sections 12234, 12289, 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number

of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 1.3. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years

from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to

be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083 and 12099, subdivision (c) of Section 12131, Sections 12234, 12289, and 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 2. Section 12082 of the Penal Code is amended to read:

12082. (a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Section 12071 in accordance with this section in order to comply with subdivision (d) of Section 12072. The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm. The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with subdivision (c) of Section 12072. If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting period described in Sections 12071 and 12072, return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of subdivision (a) of Section 12072. If the dealer cannot legally return the firearm to the transferor or seller or the person loaning the firearm, then the dealer shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county who shall then dispose of the firearm in the manner provided by Sections 12028 and 12032. The purchaser or transferee or person being loaned the firearm may be required by the dealer to pay a fee not to exceed ten dollars ($10) per firearm, plus the applicable fee that the Department of Justice may charge pursuant to Section 12076. Nothing in these provisions shall prevent a dealer from charging a smaller fee. The fee that the department may charge is the fee that would be applicable pursuant to Section 12076, if the dealer was selling, transferring, or delivering a firearm to a purchaser or transferee or person being loaned a firearm, without any other parties being involved in the transaction.

(b) The Attorney General shall adopt regulations under this section to do all of the following:

(1) Allow the seller or transferor of the person loaning the firearm, and the purchaser or transferee or the person being loaned the firearm, to complete a sale, loan, or transfer through a dealer, and to allow those persons and the dealer to comply with the requirements of this section and Sections 12071, 12072, 12076, and 12077 and to preserve the confidentiality of those records.

(2) Where a personal handgun importer is selling or transferring a pistol, revolver, or other firearm capable of being concealed upon the person to comply with clause (ii) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, to allow a personal handgun

importer's ownership of the pistol, revolver, or other firearm capable of being concealed upon the person being sold or transferred to be recorded in a manner that if the firearm is returned to that personal handgun importer because the sale or transfer cannot be completed, the Department of Justice will have sufficient information about that personal handgun importer so that a record of his or her ownership can be maintained in the registry provided by subdivision (c) of Section 11106.

(3) Ensure that the register or record of electronic or telephonic transfer shall state the name and address of the seller or transferor of the firearm or the person loaning the firearm and whether or not the person is a personal handgun importer in addition to any other information required by Section 12077.

(c) Notwithstanding any other provision of law, a dealer who does not sell, transfer, or keep an inventory of handguns is not required to process private party transfers of handguns.

(d) A violation of this section by a dealer is a misdemeanor.

SEC. 3. Section 12099 is added to the Penal Code, to read:

12099. (a) Except as provided in subdivision (b), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventory of short-barreled shotguns and short-barreled rifles.

(b) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.

SEC. 4. Section 12234 is added to the Penal Code, to read:

12234. (a) Except as provided in subdivision (b), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventory of machine guns.

(b) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.

SEC. 5. Section 12289.5 is added to the Penal Code, to read:

12289.5. (a) Except as provided in subdivision (b), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for

security and safe storage purposes, and to reconcile the inventory of assault weapons.

(b) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.

SEC. 6. Section 12305 of the Penal Code is amended to read:

12305. (a) Every dealer, manufacturer, importer, and exporter of any destructive device, or any motion picture or television studio using destructive devices in the conduct of its business, shall obtain a permit for the conduct of that business from the Department of Justice.

(b) Any person, firm, or corporation not mentioned in subdivision (a) shall obtain a permit from the Department of Justice in order to possess or transport any destructive device. No permit shall be issued to any person who meets any of the following criteria:

(1) Has been convicted of any felony.

(2) Is addicted to the use of any narcotic drug.

(3) Is a person in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of this code.

(c) Applications for permits shall be filed in writing, signed by the applicant if an individual, or by a member or officer qualified to sign if the applicant is a firm or corporation, and shall state the name, business in which engaged, business address and a full description of the use to which the destructive devices are to be put.

(d) Applications and permits shall be uniform throughout the state on forms prescribed by the Department of Justice.

(e) Each applicant for a permit shall pay at the time of filing his or her application a fee not to exceed the application processing costs of the Department of Justice. A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee not to exceed the application processing costs of the Department of Justice. The department shall establish a schedule of fees to cover the costs of the inspection duties imposed on the department in subdivisions (f) and (g). The fees shall be equitable and shall not exceed the costs of providing the required inspections. After the department establishes fees sufficient in amount to cover processing costs and the costs of required departmental inspections, the amount of the fees shall only increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department.

(f) Except as provided in subdivision (g), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and

safe storage purposes, and to reconcile the inventory of destructive devices.

(g) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.

(h) Subdivisions (f) and (g) shall not apply to individuals possessing an assault weapon pursuant to a permit issued by the Department of Justice for noncommercial purposes.

SEC. 7. The duties imposed on the department by this act are to be funded through inspection fees imposed pursuant to Section 12305 of the Penal Code and, as may be necessary, from the Dealers' Record of Sale Special Account.

SEC. 8. (a) Section 1.1 of this bill incorporates amendments to Section 12076 of the Penal Code proposed by both this bill and AB 2080. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12076 of the Penal Code, (3) AB 2902 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2080, 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 12076 of the Penal Code proposed by both this bill and AB 2902. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12076 of the Penal Code, (3) AB 2080 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2902, 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 12076 of the Penal Code proposed by this bill, AB 2080, and AB 2902. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 12076 of the Penal Code, and (3) this bill is enacted after AB 2080, and AB 2902, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

CHAPTER 911

An act to amend Sections 12071, 12132, and 12276.1 of the Penal Code, relating to firearms.

[Approved by Governor September 25, 2002. Filed with
Secretary of State September 26, 2002.]

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

SECTION 1. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face ''Valid for Retail Sales of Firearms'' and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) ''IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A

LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(B) ''IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(C) ''IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.''

(D) ''DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.''

(E) ''FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.''

(F) ''NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.''

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or other evidence of residency as permitted by the Department of Justice. The firearms dealer shall retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange, red, or other readily identifiable dummy round into the magazine. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange, red, or other readily identifiable dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population of less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the

acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, ''clear evidence of his or her identity and age'' means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a ''secure facility'' means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of 5 inches or more measured in any direction, the window shall be covered with steel bars of at least $^1/_2$ inch diameter or metal grating of at least 9 gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than 6 inches wide measured in any direction.

(E) Any metal screens have spaces no larger than 3 inches wide measured in any direction.

(F) All steel bars shall be no further than 6 inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(3) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of

eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b). Information provided pursuant to this paragraph shall be limited to information necessary to corroborate an individual's current license status.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 1.5. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face ''Valid for Retail Sales of Firearms'' and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the

sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) and paragraph (1) of subdivision (f) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) ''IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(B) ''IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(C) ''IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR

SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.''

(D) ''DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.''

(E) ''FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.''

(F) ''NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.''

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or

other evidence of residency as permitted by the Department of Justice. The firearms dealer shall retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange, red, or other readily identifiable dummy round into the magazine. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange, red, or other readily identifiable dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the

pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange, red, or other readily identifiable dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable. This requirement shall not apply to an Olympic competition pistol if no firearms safety device, other than a cable lock that the department has determined would

damage the barrel of the pistol, has been approved for the pistol, and the pistol is either listed in paragraph (2) of subdivision (h) of Section 12132 or is subject to paragraph (3) of subdivision (h) of Section 12132.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial

census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population of less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with

Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, ''clear evidence of his or her identity and age'' means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a ''secure facility'' means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of 5 inches or more measured in any direction, the window shall be covered with steel bars of at least $^1/_2$ inch diameter or metal grating of at least 9 gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than 6 inches wide measured in any direction.

(E) Any metal screens have spaces no larger than 3 inches wide measured in any direction.

(F) All steel bars shall be no further than 6 inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of

proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) (1) Except as otherwise provided in this paragraph, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a), and all persons who have submitted information pursuant to subdivision (a) of Section 12083. The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located.

(2) The department shall remove from the centralized list any person whose federal firearms license has expired or has been revoked.

(3) Information compiled from the list shall be made available, upon request, for the following purposes only:

(A) For law enforcement purposes.

(B) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(C) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(4) Information provided pursuant to paragraph (3) shall be limited to information necessary to corroborate an individual's current license status as being one of the following:

(A) A person licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(B) A person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and who is not subject

to the requirement that he or she be licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a).

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(i) (1) For every verification inquiry made pursuant to paragraph (1) of subdivision (f) of Section 12072, the department shall determine whether the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and, if applicable, is properly licensed pursuant to this section.

(2) If the intended recipient possesses an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and if applicable, is properly licensed pursuant to this section, the department shall immediately provide a unique verification number to the inquiring party.

(3) If the intended recipient does not possess an appropriate, valid license issued pursuant to Chapter 44 (commencing with Section 921)

of Title 18 of the United States Code, or if applicable, is not properly licensed pursuant to this section, the department shall do all of the following:

(A) Immediately notify the inquiring party of that fact.

(B) Within 24 hours, notify the chief law enforcement officer of the jurisdiction where the address on the federal firearms license about which the inquiry was made is located, and notify an appropriate employee of the federal Bureau of Alcohol, Tobacco and Firearms of the denied verification.

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 paragraphs (2) and (3).

(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

(3) The department shall create a program that is consistent with the purpose stated in paragraph (1) to exempt new models of competitive firearms from this chapter. The exempt competitive firearms may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the department deems relevant.

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	.22LR
PARDINI	SPE	.22LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP–2000	.22 SHORT

(3) The Department of Justice shall create a program that is consistent with the purposes stated in subdivision (b) to exempt new models of competitive pistols that would otherwise fall within the definition of ''assault weapon'' pursuant to this section from being classified as an

assault weapon. The exempt competitive pistols may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the department deems relevant.

(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. Section 1.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 2080. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, but this bill becomes operative with regard to Section 12071 of the Penal Code first, (2) each bill amends Section 12071 of the Penal Code, and (3) this bill is enacted after AB 2080, in which case Section 12071 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of Section 12071 specified in AB 2080, at which time Section 1.5 of this bill shall become operative.

CHAPTER 912

An act to amend Sections 12076, 12125, 12127, and 12131 of the Penal Code, relating to unsafe handguns.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or

knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district

in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, subdivision (c) of Section 12131, and Section 12289.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a

reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 1.1. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required

to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not

pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Section 12083, subdivision (c) of Section 12131, and Section 12289.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 1.2. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of

subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is

received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by

paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the

General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Section 12099, subdivision (c) of Section 12131, Sections 12234, 12289, 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 1.3. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(3) On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or

telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify

the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars

($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, paragraph (1) and subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, Sections 12083 and 12099, subdivision (c) of Section 12131, Sections 12234, 12289, and 12289.5, and subdivisions (f) and (g) of Section 12305.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being

concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) ''Purchaser'' means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) ''Purchase'' means the purchase, loan, or transfer of a firearm.

(3) ''Sale'' means the sale, loan, or transfer of a firearm.

(4) ''Seller'' means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 2. Section 12125 of the Penal Code is amended to read:

12125. (a) Commencing January 1, 2001, any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 12130 to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited by this chapter, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this state pursuant to Section 12131.

(2) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized

agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of any pistol, revolver or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

SEC. 3. Section 12127 of the Penal Code is amended to read:

12127. (a) As used in this chapter, the ''firing requirement for handguns'' means a test in which the manufacturer provides three handguns of the make and model for which certification is sought to an independent testing laboratory certified by the Attorney General pursuant to Section 12130. These handguns may not be refined or modified in any way from those that would be made available for retail sale if certification is granted. The magazines of a tested pistol shall be identical to those that would be provided with the pistol to a retail customer. The laboratory shall fire 600 rounds from each gun, stopping after each series of 50 rounds has been fired for 5 to 10 minutes to allow the weapon to cool, stopping after each series of 100 rounds has been fired to tighten any loose screws and clean the gun in accordance with the manufacturer's instructions, and stopping as needed to refill the empty magazine or cylinder to capacity before continuing. The ammunition used shall be of the type recommended by the handgun manufacturer in the user manual, or if none is recommended, any standard ammunition of the correct caliber in new condition that is commercially available. A handgun shall pass this test if each of the three test guns meets both of the following:

(1) Fires the first 20 rounds without a malfunction that is not due to ammunition that fails to detonate.

(2) Fires the full 600 rounds with no more than six malfunctions that are not due to ammunition that fails to detonate and without any crack

or breakage of an operating part of the handgun that increases the risk of injury to the user.

(b) If a pistol or revolver fails the requirements of either paragraph (1) or (2) of subdivision (a) due to ammunition that fails to detonate, the pistol or revolver shall be retested from the beginning of the ''firing requirement for handguns'' test. A new model of the pistol or revolver that failed due to ammunition that fails to detonate may be submitted for the test to replace the pistol or revolver that failed.

(c) As used in this section, ''malfunction'' means a failure to properly feed, fire, or eject a round, or failure of a pistol to accept or eject the magazine, or failure of a pistol's slide to remain open after the magazine has been expended.

SEC. 4. Section 12131 of the Penal Code is amended to read:

12131. (a) On and after January 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state pursuant to this title. The roster shall list, for each firearm, the manufacturer, model number, and model name.

(b) (1) The department may charge every person in this state who is licensed as a manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster pursuant to subdivision (a) and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs necessary to implement this chapter.

(2) Any pistol, revolver, or other firearm capable of being concealed upon the person that is manufactured by a manufacturer who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, and who fails to pay any fee required pursuant to paragraph (1), may be excluded from the roster.

(c) The Attorney General may annually retest up to 5 percent of the handgun models that are listed on the roster described in subdivision (a).

(d) The retesting of a handgun model pursuant to subdivision (c) shall conform to the following:

(1) The Attorney General shall obtain from retail or wholesale sources, or both, three samples of the handgun model to be retested.

(2) The Attorney General shall select the certified laboratory to be used for the retesting.

(3) The ammunition used for the retesting shall be of a type recommended by the manufacturer in the user manual for the handgun. If the user manual for the handgun model makes no ammunition recommendation, the Attorney General shall select the ammunition to be used for the retesting. The ammunition shall be of the proper caliber for the handgun, commercially available, and in new condition.

(e) The retest shall be conducted in the same manner as the testing prescribed in Sections 12127 and 12128.

(f) If the handgun model fails retesting, the Attorney General shall remove the handgun model from the roster maintained pursuant to subdivision (a).

(g) A handgun model removed from the roster pursuant to subdivision (f) may be reinstated on the roster if all of the following are met:

(1) The manufacturer petitions the Attorney General for reinstatement of the handgun model.

(2) The manufacturer pays the Department of Justice for all of the costs related to the reinstatement testing of the handgun model, including the purchase price of the handguns, prior to reinstatement testing.

(3) The reinstatement testing of the handguns shall be in accordance with subdivisions (d) and (e).

(4) The three handgun samples shall be tested only once for reinstatement. If the sample fails it may not be retested.

(5) If the handgun model successfully passes testing for reinstatement, and if the manufacturer of the handgun is otherwise in compliance with this chapter, the Attorney General shall reinstate the handgun model on the roster maintained pursuant to subdivision (a).

(6) The manufacturer shall provide the Attorney General with the complete testing history for the handgun model.

(7) Notwithstanding subdivision (c), the Attorney General may, at any time, further retest any handgun model that has been reinstated to the roster.

SEC. 5. (a) Section 1.1 of this bill incorporates amendments to Section 12076 of the Penal Code proposed by both this bill and AB 2080. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12076 of the Penal Code, (3) AB 2580 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2080, 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 12076 of the Penal Code proposed by both this bill and AB 2580. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12076 of the Penal Code, (3) AB 2080 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2580 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 12076 of the Penal Code proposed by this bill, AB 2080, and AB 2580. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 12076 of the Penal Code, and (3) this bill is enacted after AB 2080, and AB 2580, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 6. Operation of Section 12131 as amended by this act is contingent upon an appropriation for that purpose from the Dealers' Record of Sale Special Account.

CHAPTER 913

An act to amend Section 1714 of, and to repeal Section 1714.4 of, the Civil Code, relating to firearms.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1714 of the Civil Code is amended to read:

1714. (a) Every one is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal.3d 153), Bernhard v. Harrah's Club (16 Cal.3d 313), and Coulter v. Superior Court (21 Cal.3d 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic

beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.

SEC. 2. Section 1714.4 of the Civil Code is repealed.

CHAPTER 914

An act to amend Section 103525 of, and to add Sections 103525.5, 103526, 103526.5, 103527, and 103528 to, the Health and Safety Code, relating to vital statistics.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 103525 of the Health and Safety Code is amended to read:

103525. (a) The State Registrar, local registrar, or county recorder shall, upon request and payment of the required fee, supply to any applicant a certified copy of the record of any birth, fetal death, death, marriage, or marriage dissolution registered with the official.

When the original forms of certificates of live birth furnished by the State Registrar contain a printed section at the bottom containing medical and social data or labeled ''Confidential Information for Public Health Use Only,'' that section shall not be reproduced in a certified copy of the record except as specifically authorized in Section 102430.

(b) Notwithstanding subdivision (a) or any other provision of law, commencing July 1, 2003, the State Registrar, local registrar, or county recorder shall provide certified copies of birth and death records only as authorized under Section 103526 or 103526.5.

SEC. 2. Section 103525.5 is added to the Health and Safety Code, to read:

103525.5. (a) Until January 1, 2006, in addition to the fees prescribed by Sections 103625 and 103626, an applicant for a certified copy of a birth or death record shall pay an additional fee of two dollars

($2). Commencing January 1, 2006, this fee shall be reduced to one dollar ($1).

(b) Until January 1, 2006, each local registrar or county recorder collecting the fee pursuant to this section shall transmit one dollar and sixty-five cents ($1.65) of the fee to the State Registrar by the 10th day of the month following the month in which the fee was received. Commencing January 1, 2006, each local registrar or county recorder collecting the fee pursuant to this section shall transmit sixty-five cents ($.65) of the fee to the State Registrar by the 10th day of the month in which the fee was received. These funds, and fees collected by the State Registrar pursuant to this section, shall be used by the State Registrar, upon appropriation by the Legislature, to develop safety and security measures to protect against fraudulent use of birth and death records, including, but not limited to, computerizing records, redacting and removing signatures as required by law, and electronically distributing redacted records to local registrars and county recorders for their use in complying with Sections 103526 and 103526.5.

(c) Thirty-five cents ($0.35) of the fee specified in subdivision (a) shall be retained by the public official charged with the collection of the fee to defray the costs of the additional security features required by Sections 103526 and 103526.5.

(d) The entire amount of the fee collected pursuant to subdivision (a) by the State Registrar shall be retained and used by the State Registrar, upon appropriation by the Legislature, for the purpose specified in subdivision (b). The entire amount of the fee collected by the local registrar or county recorder pursuant to subdivision (c) shall be retained and used by that official for the purpose specified in subdivision (c).

SEC. 3. Section 103526 is added to the Health and Safety Code, to read:

103526. (a) If the State Registrar, local registrar, or county recorder receives a written request for a certified copy of a birth or death record pursuant to Section 103525 that is accompanied by a notarized statement sworn under penalty of perjury that the requester is an authorized person, as defined in this section, that official may furnish a certified copy to the applicant in accordance with Section 103525. If a request for a certified copy of a birth or death record is made in person, the official shall take a statement sworn under penalty of perjury that the requester is signing his or her own legal name and is an authorized person, and that official may then furnish a certified copy to the applicant.

(b) In all other circumstances, the certified copy provided to the applicant shall be an informational certified copy and shall display a legend that states ''INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY.'' The legend shall be placed on the certificate in a manner that will not conceal information.

(c) For purposes of this section, an ''authorized person'' is any of the following:

(1) The registrant or a parent or legal guardian of the registrant.

(2) A party entitled to receive the record as a result of a court order, or an attorney or a licensed adoption agency seeking the birth record in order to comply with the requirements of Section 3140 or 7603 of the Family Code.

(3) A member of a law enforcement agency or a representative of another governmental agency, as provided by law, who is conducting official business.

(4) A child, grandparent, grandchild, sibling, spouse, or domestic partner of the registrant.

(5) An attorney representing the registrant or the registrant's estate, or any person or agency empowered by statute or appointed by a court to act on behalf of the registrant or the registrant's estate.

(6) Any funeral director who orders certified copies of a death certificate on behalf of any individual specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100.

(d) Any person who asks the funeral director to request a death certificate on his or her behalf warrants the truthfulness of his or her relationship to the decedent, and is personally liable for all damages occasioned by, or resulting from, a breach of that warranty.

(e) Notwithstanding any other provision of law, funeral directors who order death certificates on behalf of individuals specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100 shall not be required to provide the notarized statement required by subdivision (a).

(f) Informational certified copies of birth and death certificates issued pursuant to subdivision (b) shall only be printed from the single statewide database prepared by the State Registrar and shall be electronically redacted to remove any signatures for purposes of compliance with this section. Local registrars and county recorders shall not issue informational certified copies of birth and death certificates from any source other than the statewide database prepared by the State Registrar. This subdivision shall become operative on January 1, 2006.

(g) This section shall become operative on July 1, 2003.

SEC. 4. Section 103526.5 is added to the Health and Safety Code, to read:

103526.5. (a) Each certified copy of a birth or death record issued pursuant to Section 103525 shall include the date issued, the name of the issuing officer, the signature of the issuing officer, whether that is the State Registrar, local registrar, county recorder, or county clerk, or an authorized facsimile thereof, and the seal of the issuing office.

(b) (1) All certified copies of birth and death records issued pursuant to Section 103525 shall be printed on chemically sensitized security paper that measures $8^1/_2$ by 11 inches and that has the following features:

(A) Intaglio print.

(B) Latent image.

(C) Fluorescent, consecutive numbering with matching bar code.

(D) Microprint line.

(E) Prismatic printing.

(F) Watermark.

(G) Void pantograph.

(H) Fluorescent security threads.

(I) Fluorescent fibers.

(J) Any other security features deemed necessary by the State Registrar.

(2) In addition to the security features required by paragraph (1), commencing January 1, 2006, the security paper used for informational certified copies of birth and death records pursuant to subdivision (b) of Section 103526 shall also contain a statement in perforated type that states ''INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY.''

(c) The State Registrar, local registrars, county recorders, and county clerks shall take precautions to ensure that uniform and consistent standards are used statewide to safeguard the security paper described in subdivision (b), including, but not limited to, the following measures:

(1) Security paper shall be maintained under secure conditions so as not to be accessible to the public.

(2) A log shall be kept of all visitors allowed in the area where security paper is stored.

(3) All spoilage shall be accounted for and subsequently destroyed by shredding on the premises.

(d) This section shall become operative on July 1, 2003.

SEC. 5. Section 103527 is added to the Health and Safety Code, to read:

103527. (a) The State Registrar shall appoint a Vital Records Protection Advisory Committee to study and make recommendations to protect individual privacy, inhibit identity theft, and prevent fraud involving birth and death certificates while providing needed access to birth and death record information to those seeking it for legitimate purposes. The committee shall have the following duties:

(1) Review and make recommendations as to the adequacy of procedures to safeguard individual privacy and prevent fraud, while ensuring appropriate access to birth and death records.

(2) Make recommendations to the State Registrar as to items that should be redacted from informational certified copies of birth and death certificates issued pursuant to Section 103526.

(3) Make recommendations to the State Registrar regarding fraud prevention measures concerning vital records.

(b) The committee shall include representatives from private and governmental entities that use vital records as identity or legal documents, consumers, law enforcement officials, genealogists, and organizations that research vital records for legal or social purposes. The State Registrar shall make every effort to ensure that committee membership also represents the community at large.

(c) (1) Except as provided in paragraph (2), membership on the committee shall be for a term of three years.

(2) Appointments shall be made on a staggered basis to allow for a change of one-third of the membership on an annual basis. One-third of the initial committee membership shall be appointed to one-year terms, and one-third of the initial committee membership shall be appointed to two-year terms.

SEC. 6. Section 103528 is added to the Health and Safety Code, to read:

103528. The department may create an automated system for the purposes of implementing Sections 103525, 103525.5, 103526, and 103526.5.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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CHAPTER 915

An act to amend, renumber, and add Section 1798.82 of, and to add Section 1798.29 to, the Civil Code, relating to personal information.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. (a) The privacy and financial security of individuals is increasingly at risk due to the ever more widespread collection of personal information by both the private and public sector.

(b) Credit card transactions, magazine subscriptions, telephone numbers, real estate records, automobile registrations, consumer surveys, warranty registrations, credit reports, and Internet Web sites are all sources of personal information and form the source material for identity thieves.

(c) Identity theft is one of the fastest growing crimes committed in California. Criminals who steal personal information such as social security numbers use the information to open credit card accounts, write bad checks, buy cars, and commit other financial crimes with other people's identities. The Los Angeles County Sheriff's Department reports that the 1,932 identity theft cases it received in the year 2000 represented a 108 percent increase over the previous year's caseload.

(d) Identity theft is costly to the marketplace and to consumers.

(e) According to the Attorney General, victims of identity theft must act quickly to minimize the damage; therefore expeditious notification of possible misuse of a person's personal information is imperative.

SEC. 2. Section 1798.29 is added to the Civil Code, to read:

1798.29. (a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, ''breach of the security of the system'' means unauthorized aquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, ''personal information'' means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(f) For purposes of this section, ''personal information'' does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, ''notice'' may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency's Web site page, if the agency maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with

the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 3. Section 1798.82 of the Civil Code is amended and renumbered to read:

1798.84. (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.

SEC. 4. Section 1798.82 is added to the Civil Code, to read:

1798.82. (a) Any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, ''breach of the security of the system'' means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, ''personal information'' means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(f) For purposes of this section, ''personal information'' does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, ''notice'' may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the person or business has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the Web site page of the person or business, if the person or business maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part, shall be deemed to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 5. This act shall become operative on July 1, 2003.

SEC. 6. This act deals with subject matter that is of statewide concern, and it is the intent of the Legislature that this act supersede and preempt all rules, regulations, codes, statutes, or ordinances or all cities, counties, cities and counties, municipalities, and other local agencies regarding the matters expressly set forth in this act.

CHAPTER 916

An act to amend Sections 295 and 11106 of the Penal Code, relating to the Department of Justice.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 295 of the Penal Code is amended to read:

295. (a) This chapter shall be known and may be cited as the DNA and Forensic Identification Data Base and Data Bank Act of 1998.

(b) The Legislature finds and declares all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a useful law enforcement tool for identifying and prosecuting sexual and violent offenders.

(2) It is the intent of the Legislature, in order to further the purposes of this chapter, to require DNA and forensic identification databank samples for the felony offenses described in subdivision (a) of Section 296.

(3) It is necessary to enact this act defining and governing the state's DNA and forensic identification database and databank in order to clarify existing law and to enable the state's DNA and forensic identification database and databank program to become a more effective law enforcement tool.

(c) The purpose of the DNA and forensic identification databank is to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious detection and prosecution of individuals responsible for sex offenses and other violent crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children.

(d) The Department of Justice, through its DNA Laboratory, shall be responsible for the management and administration of the state's DNA database and databank identification program and for liaison with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national DNA database such as the FBI's Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide.

(e) The Department of Justice shall be responsible for implementing this chapter. The Department of Justice DNA Laboratory, the Department of Corrections, and the Department of the Youth Authority shall adopt policies and enact regulations for the implementation of this chapter, as necessary, to give effect to the intent and purpose of this

chapter, and to ensure that databank blood specimens, saliva samples, and thumb and palm print impressions are collected from qualifying offenders in a timely manner, as soon as possible after conviction, or a plea or finding of guilty, no contest, or not guilty by reason of insanity, or upon the disposition rendered in the case of a juvenile who is adjudged a ward of the court under Section 602 of the Welfare and Institutions Code for commission of any of this chapter's enumerated qualifying offenses, or when it is determined that a qualifying offender has not given the required samples. The Department of Corrections and the Department of the Youth Authority shall adopt the policies and regulations for implementing this chapter with advice from and in consultation with the Department of Justice DNA Laboratory Director.

The Department of Corrections and the Department of the Youth Authority shall submit copies of their policies and regulations with respect to this chapter to the Department of Justice DNA Laboratory Director, and periodically shall submit to the director written reports updating the director as to the status of their compliance with this chapter.

(f) (1) When the specimens, samples, and print impressions required by this chapter are collected at a county jail or other county detention facility, including a private community correctional facility, the county sheriff or chief administrative officer of the county jail or other detention facility shall be responsible for ensuring all of the following:

(A) The requisite specimens, samples, and print impressions are collected from qualifying offenders during the intake process at that facility, or reasonably promptly thereafter.

(B) The requisite specimens, samples, and print impressions are collected as soon as administratively practicable after a qualifying offender reports to the facility for the purpose of providing specimens, samples, and print impressions.

(C) The specimens, samples, and print impressions collected pursuant to this chapter are forwarded immediately to the Department of Justice, and in compliance with department policies.

(2) The specimens, samples, and print impressions required by this chapter shall be collected by a person using a collection kit approved by the Department of Justice and in accordance with the requirements and procedures set forth in subdivision (b) of Section 298.

(3) The counties shall be reimbursed for the costs of obtaining specimens, samples, and print impressions subject to the conditions and limitations set forth by the Department of Justice policies governing reimbursement for collecting specimens, samples, and print impressions pursuant to this chapter.

(g) Any funds appropriated by the Legislature to implement this chapter, including funds to reimburse counties, shall be deposited into

the Department of Justice DNA Testing Fund as created by paragraph (2) of subdivision (b) of Section 290.3.

(h) The Department of Justice DNA Laboratory shall be known as the Jan Bashinski DNA Laboratory.

SEC. 2. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (c), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12072 or 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local

law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of

being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

CHAPTER 917

An act to amend Section 12088 of, to amend and repeal Section 12088.1 of, and to add Sections 12087.6 and 12088.15 to, the Penal Code, relating to firearm safety devices.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 12087.6 is added to the Penal Code, to read:

12087.6. As used in this article:

(a) ''Firearms safety device'' means a device other than a gun safe that locks and is designed to prevent children and unauthorized users from firing a firearm. The device may be installed on a firearm, be incorporated into the design of the firearm, or prevent access to the firearm.

(b) ''Gun safe'' means a locking container that fully contains and secures one or more firearms, and that meets the standards for gun safes adopted pursuant to Section 12088.2.

(c) ''Long-gun safe'' means a locking container designed to fully contain and secure a rifle as defined in paragraph (20) of subdivision (c) of Section 12020 or a shotgun as defined in paragraph (21) of subdivision (c) of Section 12020, that has a locking system consisting of either a mechanical combination lock or an electronic combination lock that has at least 1,000 possible unique combinations consisting of a minimum of three numbers, letters, or symbols per combination, and that is not listed on the roster maintained pursuant to subdivision (d) of Section 12088.

SEC. 2. Section 12088 of the Penal Code is amended to read:

12088. (a) The Department of Justice shall certify laboratories to verify compliance with standards for firearms safety devices set forth in Section 12088.2.

(b) The Department of Justice may charge any laboratory that is seeking certification to test firearms safety devices a fee not exceeding the costs of certification, including costs associated with the development and approval of regulations and standards pursuant to Section 12088.2.

(c) The certified laboratory shall, at the manufacturer's or dealer's expense, test the firearms safety device and submit a copy of the final test report directly to the Department of Justice along with the firearms safety device. The department shall notify the manufacturer or dealer of its receipt of the final test report and the department's determination as to whether the firearms safety device tested may be sold in this state.

(d) On and after July 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the firearms safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for firearms safety devices and may be sold in this state.

(e) The roster shall list, for each firearms safety device, the manufacturer, model number, and model name.

(f) The department may randomly retest samples obtained from sources other than directly from the manufacturer of the firearms safety device listed on the roster to ensure compliance with the requirements of this article.

(g) Firearms safety devices used for random sample testing and obtained from sources other than the manufacturer shall be in new, unused condition, and still in the manufacturer's original and unopened package.

SEC. 3. Section 12088.1 of the Penal Code, as added by Section 1 of Chapter 246 of the Statutes of 1999, is amended to read:

12088.1. (a) All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state, shall include or be accompanied by a firearms safety device that is listed on the Department of Justice's roster of approved firearms safety devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm, or to the physical characteristics of the firearm that match those listed on the roster for use with the device.

(b) All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state shall be accompanied with warning language or labels as described in Section 12088.3.

(c) (1) All long-gun safes commercially sold or transferred in this state, or manufactured in this state for sale in this state, that do not meet the standards for gun safes adopted pursuant to Section 12088.2 shall be accompanied by the following warning:

''WARNING: This gun safe does not meet the safety standards for gun safes specified in California Penal Code Section 12088.2. It does not satisfy the requirements of Penal Code Section 12088.1, which mandates that all firearms sold in California be accompanied by a firearms safety device or proof of ownership, as required by law, of a gun safe that meets the Section 12088.2 minimum safety standards developed by the California Attorney General.''

(2) This warning shall be conspicuously displayed in its entirety on the principal display panel of the gun safe's package, on any descriptive materials that accompany the gun safe, and on a label affixed to the front of the gun safe.

(3) This warning shall be displayed in both English and Spanish in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package or descriptive materials in a manner consistent with Part 1500.121 of Title 16 of the Code of Federal Regulations, or successor regulations thereto.

(d) The sale or transfer of a firearm shall be exempt from subdivision (a) if both of the following apply:

(1) The purchaser or transferee owns a gun safe that meets the standards set forth in Section 12088.2. Gun safes shall not be required to be tested, and therefore may meet the standards without appearing on the Department of Justice roster.

(2) The purchaser or transferee presents an original receipt for purchase of the gun safe, or other proof of purchase or ownership of the gun safe as authorized by the Attorney General, to the firearms dealer. The dealer shall maintain a copy of this receipt or proof of purchase with the dealers' record of sales of firearms.

(e) The sale or transfer of a firearm shall be exempt from subdivision (a) if all of the following apply:

(1) The purchaser or transferee purchases an approved safety device no more than 30 days prior to the day the purchaser or transferee takes possession of the firearm.

(2) The purchaser or transferee presents the approved safety device to the firearms dealer when picking up the firearm.

(3) The purchaser or transferee presents an original receipt to the firearms dealer which shows the date of purchase, the name, and the model number of the safety device.

(4) The firearms dealer verifies that the requirements in (1) to (3), inclusive, have been satisfied.

(5) The firearms dealer maintains a copy of the receipt along with the dealers' record of sales of firearms.

SEC. 4. Section 12088.1 of the Penal Code, as added by Section 1 of Chapter 245 of the Statutes of 1999, is repealed.

SEC. 5. Section 12088.15 is added to the Penal Code, to read:

12088.15. (a) No person shall keep for commercial sale, offer, or expose for commercial sale, or commercially sell any firearms safety device that is not listed on the roster maintained pursuant to subdivision (d) of Section 12088, or that does not comply with the standards for firearms safety devices adopted pursuant to Section 12088.2.

(b) No person may distribute as part of an organized firearm safety program, with or without consideration, any firearm safety device that is not listed on the roster maintained pursuant to subdivision (d) of Section 12088 or does not comply with the standards for firearms safety devices adopted pursuant to Section 12088.2.

(c) No long-gun safe may be manufactured in this state for sale in this state that does not comply with the standards for gun safes adopted pursuant to Section 12088.2, unless the long-gun safe is labeled by the manufacturer consistent with the requirements of Section 12088.1.

(d) (1) Any person who keeps for commercial sale, offers, or exposes for commercial sale, or who commercially sells a long-gun safe that does not comply with the standards for gun safes adopted pursuant to Section 12088.2, and who knows or has reason to know, that the long-gun safe in question does not meet the standards for gun safes adopted pursuant to Section 12088.2, is in violation of this section, and is punishable as provided in subdivision (e), unless the long-gun safe is labeled pursuant to Section 12088.1.

(2) Any person who keeps for commercial sale, offers, or exposes for commercial sale, or who commercially sells a long-gun safe that does not comply with the standards for gun safes adopted pursuant to Section 12088.2, and who removes or causes to be removed from the long-gun safe, the label required pursuant to Section 12088.1, is in violation of this section, and is punishable as provided in subdivision (e).

(e) A violation of this section is punishable by a civil fine of up to five hundred dollars ($500). A second violation of this section that occurs within five years of the date of a previous offense is punishable by a civil fine of up to one thousand dollars ($1,000) and, if the violation is committed by a licensed firearms dealer, the dealer shall be ineligible to sell firearms in this state for 30 days. A third or subsequent violation that occurs within five years of two or more previous offenses is punishable by a civil fine of up to five thousand dollars ($5,000) and, if the violation is committed by a licensed firearms dealer, the firearms dealer shall be permanently ineligible to sell firearms in this state.

(f) The Attorney General, a district attorney, or a city attorney may bring a civil action for a violation of the provisions of this section.

CHAPTER 918

An act to amend Section 1521.5 of the Health and Safety Code, to amend Section 11146 of the Penal Code, and to amend Sections 309, 361.4, 361.5, 366.21, 16003, and 16504.5 of, and to amend and repeal Section 10850.3 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1521.5 of the Health and Safety Code is amended to read:

1521.5. (a) The county welfare director shall, prior to the issuance of any foster family home license, ensure that the county licensing staff, or the placement staff, conducts one or more in-home interviews with the prospective foster parent sufficient to collect information on caregiver qualifications that may be used by the placement agency to evaluate the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children. The inability of a prospective foster parent to meet the varying needs of children shall not, in and of itself, preclude a prospective foster parent from obtaining a foster family home license.

(b) All in-home interviews required by this section shall be on an in-person basis.

(c) If the in-home interview is conducted by the licensing agency, it shall be a part of the licensing record, and shall be shared with the placement agency pursuant to subdivision (e) of Section 1798.24 of the Civil Code.

(d) The in-home interview required by this section shall be completed no later than 120 days following notification by the licensing agency.

(e) No license shall be issued unless an in-home interview has been conducted as required by this section.

SEC. 2. Section 11146 of the Penal Code is amended to read:

11146. This chapter applies to:

(a) The California Commission for Teacher Preparation and Licensing, in licensing of all teaching and services credential applicants, pursuant to Section 44341 of the Education Code.

(b) The State Department of Social Services in licensing those community care facility operators providing services to children as mandated in Section 1522 of the Health and Safety Code.

(c) The county welfare department in carrying out its approval authority for relative and nonrelative extended family member foster care placements pursuant to Section 309 of the Welfare and Institutions Code.

SEC. 3. Section 309 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 653 of the Statutes of 2001, is amended to read:

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(4) The child has left a placement in which he or she was placed by the juvenile court.

(5) The parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (e) of that section.

(b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician or surgeon or the medical facility.

(c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) (1) If an able and willing relative, as defined in Section 319, or an able and willing nonrelative extended family member, as defined in

Section 362.7, is available and requests temporary placement of the child pending the detention hearing, the county welfare department shall initiate an assessment of the relative's or nonrelative extended family member's suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative or nonrelative extended family member to care for the child's needs, and a consideration of the results of a criminal records check and a check of allegations of prior child abuse or neglect concerning the relative or nonrelative extended family member and other adults in the home. Upon completion of this assessment, the child may be placed in the approved home.

(2) The standards used to evaluate and grant or deny approval of the home of the relative and of the home of a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.

(3) If a relative or nonrelative extended family member meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigation's criminal history information for the relative or nonrelative extended family member, and other adults in the home, as indicated, the county welfare department may approve the home and document that approval, if the relative or nonrelative extended family member, and each adult in the home, has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or nonrelative extended family member or other adult in the home has a criminal record, the approval may be terminated.

(e) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 4. Section 309 of the Welfare and Institutions Code, as amended by Section 8 of Chapter 653 of the Statutes of 2001, is amended to read:

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(4) The child has left a placement in which he or she was placed by the juvenile court.

(b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician or surgeon or the medical facility.

(c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) If an able and willing relative, as defined in Section 319, or an able and willing nonrelative extended family member, as defined in Section 362.7, is available and requests temporary placement of the child pending the detention hearing, the county welfare department shall initiate an assessment of the relative's or nonrelative extended family member's suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative or nonrelative extended family member to care for the child's needs, and a consideration of the results of a criminal records check and a check of allegations of prior child abuse or neglect concerning the relative or nonrelative extended family member and other adults in the home. Upon completion of this assessment, the child may be placed in the approved home. The standards used to evaluate and grant or deny approval of the home of a relative or a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for licensing foster family homes. These regulations prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver. If a relative or nonrelative extended family member meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigation's criminal history information for a relative, or nonrelative extended family member, and other adults in the home, as indicated, the county welfare department may approve the home and document that approval, if the relative, or nonrelative extended family member, and

each adult in the home has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or nonrelative extended family member or other adult in the home has a criminal record, the approval may be terminated.

SEC. 5. Section 361.4 of the Welfare and Institutions Code, as added by Section 2 of Chapter 445 of the Statutes of 2001, is amended to read:

361.4. (a) Prior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement.

(b) Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or county social worker placing the child shall cause a state and federal level criminal records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System pursuant to Section 16504.5. The criminal records check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. A criminal records check may be conducted pursuant to this section on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record. Within five judicial days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated through the Department of Justice to ensure the accuracy of the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the safety of the home. The Department of Justice shall forward fingerprint requests for federal level criminal history information to the Federal Bureau of Investigation pursuant to this section.

(c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse

Index check shall be conducted on all persons over the age of 18 years living in the home.

(d) (1) If the fingerprint clearance check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other child who is not a licensed or certified foster parent for placement of a child.

(2) If the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be placed in the home.

(e) Nothing in this section shall preclude a county from conducting a criminal background check that the county is otherwise authorized to conduct using fingerprints.

(f) This section shall become operative on January 1, 2005.

SEC. 6. Section 361.4 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 445 of the Statutes of 2001, is amended to read:

361.4. (a) Prior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement.

(b) Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or county social worker placing the child shall cause a state and federal level criminal records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System pursuant to Section 16504.5. The criminal records check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. A criminal records check may be conducted pursuant to this section on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record. Within five judicial days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated through the Department of Justice to ensure the accuracy of the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the

safety of the home. The Department of Justice shall forward fingerprint requests for federal level criminal history information to the Federal Bureau of Investigation pursuant to this section.

(c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Index check shall be conducted on all persons over the age of 18 years living in the home.

(d) (1) If the fingerprint clearance check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other child who is not a licensed or certified foster parent for placement of a child.

(2) If the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child shall not be placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child, pursuant to paragraph (3) of this subdivision.

(3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a request with the Director of Social Services seeking permission for the county to establish a procedure to evaluate and grant appropriate individual criminal records exemptions for persons described in subdivision (b). The director shall grant or deny the county's request within 14 days of receipt. The county shall evaluate individual criminal records in accordance with the standards and limitations set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code, and in no event shall the county place a child in the home of a person who is ineligible for an exemption under that provision.

(B) The department shall monitor county implementation of the authority to grant an exemption under this paragraph to ensure that the county evaluates individual criminal records and allows or disallows placements according to the standards set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(4) The department shall conduct an evaluation of the implementation of paragraph (3) through random sampling of county exemption decisions.

(5) The State Department of Social Services shall not evaluate or grant criminal record exemption requests for persons described in

subdivision (b), unless the exemption request is made by an Indian tribe pursuant to subdivision (f).

(6) If a county has not requested, or has not been granted, permission by the State Department of Social Services to establish a procedure to evaluate and grant criminal records exemptions, the county may not place a child into the home of a person described in subdivision (b) if any person residing in the home has been convicted of a crime other than a minor traffic violation, except as provided in subdivision (f).

(e) Nothing in this section shall preclude a county from conducting a criminal background check that the county is otherwise authorized to conduct using fingerprints.

(f) Upon request from an Indian tribe, the State Department of Social Services shall evaluate an exemption request, if needed, to allow placement into an Indian home that the tribe has designated for placement under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) that would otherwise be barred under this section. However, if the county with jurisdiction over the child that is the subject of the tribe's request has established an approved procedure pursuant to paragraph (3) of subdivision (d), the tribe may request that the county evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing in this subdivision limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

(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 before January 1, 2005, deletes or extends that date.

SEC. 7. Section 361.5 of the Welfare and Institutions Code, as amended by Section 11.3 of Chapter 653 of the Statutes of 2001, is amended to read:

361.5. (a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

(2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months from the date the child entered foster care.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, ''a sibling group'' shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1), (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of

the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, ''serious danger'' means that without the intervention of another person or agency, the child would

have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, ''willful abandonment'' shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling's or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall

order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to

determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(j) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 8. Section 361.5 of the Welfare and Institutions Code, as amended by Section 11.6 of Chapter 653 of the Statutes of 2001, is amended to read:

361.5. (a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

(2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months from the date the child entered foster care.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, ''a sibling group'' shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1), (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of

the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, ''serious danger'' means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, ''willful abandonment'' shall not be construed as actions

taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling or

half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall

conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(j) This section shall become operative on January 1, 2006, unless a later enacted statute extends or deletes that date.

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 to the court in writing any information he or she deems relevant.

(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 shall 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 and counsel for the child 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, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any court-appointed child advocate, and any 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.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a 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 (b) 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 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 have been provided or offered to the parent or legal guardian. 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, which 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 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 have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. 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 itself, 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 10850.3 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 227 of the Statutes of 1995, is amended to read:

10850.3. (a) Notwithstanding Section 10850, an authorized employee of a county welfare department may disclose confidential information concerning a public social services applicant or recipient to any law enforcement agency where a warrant has been issued for the

arrest of the applicant or recipient for the commission of a felony or a misdemeanor. Information that may be released pursuant to this section shall be limited to the name, address, telephone number, birth date, social security number, and physical description of the applicant for, or recipient of, public social services.

(b) A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the agency specifying that a warrant of arrest for the commission of a felony or misdemeanor has been issued against the applicant or recipient. This request may be made only by the head of the law enforcement agency, or by an employee of the agency so authorized and identified by name and title by the head of the agency in writing to the county welfare department. A county welfare department shall notify all applicants of public social services that release of confidential information from their records will not be protected if a felony or misdemeanor arrest warrant is issued against the applicant. A recipient of public social services shall be notified, at the time of renewal of his or her application for public social services, that a release of confidential information can be made if a felony or misdemeanor arrest warrant is issued against the recipient.

(c) This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving public social services.

(d) The provisions of this section shall be operative only to the extent permitted by federal law. The section shall not apply to, but shall exclude, the Medi-Cal program, established pursuant to Chapter 7 (commencing with Section 14000) and following.

SEC. 11. Section 10850.3 of the Welfare and Institutions Code, as added by Section 3 of Chapter 227 of the Statutes of 1995, is repealed.

SEC. 12. Section 16003 of the Welfare and Institutions Code is amended to read:

16003. (a) In order to promote the successful implementation of the statutory preference for foster care placement with a relative caretaker as set forth in Section 7950 of the Family Code, each community college district with a foster care education program shall make available orientation and training to the relative, or nonrelative extended family member caregiver, into whose care the county has placed a foster child pursuant to Section 1529.2 of the Health and Safety Code, including, but not limited to, courses that cover the following:

(1) The role, rights, and responsibilities of a relative or nonrelative extended family member caregiver caring for a child in foster care.

(2) An overview of the child protective system.

(3) The effects of child abuse and neglect on child development.

(4) Positive discipline and the importance of self-esteem.

(5) Health issues in foster care.

(6) Accessing education and health services that are available to foster children.

(7) Relationship and safety issues regarding contact with one or both of the birth parents.

(8) Permanency options for relative or nonrelative extended family member caregivers, including legal guardianship, the Kinship Guardianship Assistance Payment Program, and kin adoption.

(9) Information on resources available for those who meet eligibility criteria, including out-of-home care payments, the Medi-Cal program, in-home supportive services, and other similar resources.

(b) In addition to training made available pursuant to subdivision (a), each community college district with a foster care education program shall make training available to a relative or nonrelative extended family member caregiver that includes, but need not be limited to, courses that cover all of the following:

(1) Age-appropriate child development.

(2) Health issues in foster care.

(3) Positive discipline and the importance of self-esteem.

(4) Emancipation and independent living.

(5) Accessing education and health services available to foster children.

(6) Relationship and safety issues regarding contact with one or both of the birth parents.

(7) Permanency options for relative or nonrelative extended family member caregivers, including legal guardianship, the Kinship Guardianship Assistance Payment Program, and kin adoption.

(c) In addition to the requirements of subdivisions (a) and (b), each community college district with a foster care education program, in providing the orientation program, shall develop appropriate program parameters in collaboration with the counties.

(d) Each community college district with a foster care education program shall make every attempt to make the training and orientation programs for relative or nonrelative extended family member caregivers highly accessible in the communities in which they reside.

(e) When a child is placed with a relative or nonrelative extended family member caregiver, the county shall inform the caregiver of the availability of training and orientation programs and it is the intent of the Legislature that the county shall forward the names and addresses of relative or nonrelative extended family member caregivers to the appropriate community colleges providing the training and orientation programs.

(f) This section shall not be construed to preclude counties from developing or expanding existing training and orientation programs for

foster care providers to include relative or nonrelative extended family member caregivers.

SEC. 13. Section 16504.5 of the Welfare and Institutions Code is amended to read:

16504.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (b) of Section 11105 of the Penal Code, a child welfare agency may secure from an appropriate governmental agency the state summary criminal history information, as defined in subdivision (a) of Section 11105 of the Penal Code, through the California Law Enforcement Telecommunications System and the criminal history information from the Federal Bureau of Investigation pursuant to subdivision (d) of Section 309, and subdivision (a) of Section 1522 of the Health and Safety Code for the following purposes:

(1) To conduct an investigation pursuant to Section 11166.3 of the Penal Code or an investigation involving a child in which the child is alleged to come within the jurisdiction of the juvenile court under Section 300.

(2) To assess the appropriateness and safety of placing a child who has been detained or is a dependent of the court, in the approved home of a relative pursuant to Section 309 or 361.4, or the approved home of a nonrelative extended family member as described in Section 362.7.

(3) To attempt to locate a parent or guardian pursuant to Section 311 of a child who is the subject of dependency court proceedings.

(b) Any time that a child welfare agency initiates a criminal background check through the California Law Enforcement Telecommunications System, the agency shall ensure that a state and federal level fingerprint check is initiated within five judicial days of the check, unless the whereabouts of the subject of the check are unknown or the subject of the check refuses to submit to the fingerprint check. The Department of Justice shall provide the requesting agency a copy of all criminal history information regarding an individual that it maintains pursuant to subdivision (b) of Section 11105 of the Penal Code.

(c) Law enforcement personnel shall cooperate with requests for criminal history information authorized pursuant to this section and shall provide the information to the requesting entity in a timely manner. The Department of Justice shall forward fingerprint requests for federal level criminal history information to the Federal Bureau of Investigation pursuant to this section.

(d) Any law enforcement officer or person authorized by this section to receive the information who obtains the information in the record and knowingly provides the information to a person not authorized by law to receive the information is guilty of a misdemeanor as specified in Section 11142 of the Penal Code.

(e) Information obtained pursuant to this section shall not be used for any purposes other than those described in subdivision (a).

(f) Nothing in this section shall preclude a relative or other person living in a relative's home from refuting any of the information obtained by law enforcement if the individual believes the criminal records check revealed erroneous information.

SEC. 14. 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 919

An act to add and repeal Section 1203.1bc of the Penal Code, relating to probation costs.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1203.1bc is added to the Penal Code, to read:

1203.1bc. (a) Subject to the provisions of Section 1203.1b, in addition to the costs discussed therein, the court may order a defendant described in any of the following to pay the reasonable costs of pretrial monitoring, or any pretrial or postsentence report:

(1) A defendant convicted of violating of Health and Safety Code Section 11352, 11375 or 11379.

(2) A defendant convicted of violating Section 186.22, or any felony provision for which punishment is enhanced pursuant to subdivision (b) of Section 186.22, if the court finds the crime was committed for financial gain.

(3) A defendant convicted of committing two or more related felonies, a material element of which is fraud or embezzlement.

(b) These costs shall be considered costs under Section 1203.1b for all purposes, including determining the defendant's ability to pay.

(c) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. It is the intent of the Legislature that this act increase local revenues by permitting courts to order defendants to repay specified local costs that are not currently subject to reimbursement.

SEC. 3. Pursuant to Section 17579 of the Government Code, the Legislature finds that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts within the meaning of Section 17556 of the Government Code.

CHAPTER 920

An act to add Section 305.5 to the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. The Legislature finds and declares:

(a) The impact of drug abuse and addiction on our nation's children is particularly onerous. The National Institute of Drug Abuse and Addiction in its Sixth Triennial Report to Congress affirmed that an estimated $5^1/_2$ percent of women use some sort of illicit drug during pregnancy, resulting in approximately 221,000 babies who have the potential to be born drug-exposed. Further, studies throughout the nation indicate that the number of drug-exposed babies has dramatically increased in recent years, virtually doubling in states demographically similar to California.

(b) Although the full extent of the effects of prenatal drug exposure on a child is still not known, scientific studies have shown that babies born to mothers who use drugs during pregnancy are often delivered prematurely, have low birth weights and are generally smaller than infants not exposed in utero to drugs. The Center for Substance Abuse Research also reports that newborns affected by maternal substance abuse or addiction often require intensive, specialized, and lengthy hospital care, which increases the cost of medical services to infants.

(c) Many drug-exposed infants are placed in foster care when they are discharged from hospitals. Some studies have shown that the majority of babies discharged from hospitals to foster care as a result of maternal substance abuse or addiction were still in foster care three years later, and that the increasing placement of drug-exposed children in foster care is

coupled with poor growth outcomes in the physical, mental, and emotional development of these children.

(d) The placement of a drug-exposed infant in an adoptive home may provide a better alternative to placement of the infant in a foster home and may further the best interest of the child. Where the release of a drug-exposed infant to a prospective adoptive parent would pose no danger to the health and safety of the infant, the authority of a child protective services agency must be exercised with great care, in order to ensure that the newborn is not unnecessarily placed in foster care instead of the more nurturing environment of an adoptive home.

SEC. 2. Section 305.5 is added to the Welfare and Institutions Code, to read:

305.5. (a) Any peace officer may, without a warrant, take into temporary custody a minor who is in a hospital if the release of the minor to a prospective adoptive parent poses an immediate danger to the minor's health or safety.

(b) (1) Notwithstanding subdivision (a) and Section 305, a peace officer may not, without a warrant, take into temporary custody a minor who is in a hospital if all of the following conditions exist:

(A) The minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs.

(B) The minor is the subject of a petition for adoption and an adoption placement agreement signed by the placing birth parent or birth parents and filed with the court.

(C) The release of the minor to a prospective adoptive parent or parents does not pose an immediate danger to the minor.

(2) The prospective adoptive parents or their representative shall provide a copy of the filed petition for adoption and signed adoption placement agreement to the local child protective services agency or to the peace officer who is at the hospital to take the minor into temporary custody.

CHAPTER 921

An act to amend, add, and repeal Sections 19613 and 19613.3 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19613 of the Business and Professions Code, as amended by Section 11 of Chapter 198 of the Statues of 2001, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered pursuant to Section 19613.8 equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan for backstretch personnel pursuant to Section 19613.8. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program

for backstretch personnel, to be administered pursuant to Section 19613.8.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Owner'' means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) ''Trainer'' means a person currently licensed by the board as a trainer of a thoroughbred racehorse.

This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 19613 is added to the Business and Professions Code, to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered pursuant to Section 19613.8 equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan for backstretch personnel pursuant to Section 19613.8. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered pursuant to Section 19613.8.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Owner'' means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) ''Trainer'' means a person currently licensed by the board as an owner and trainer or as a trainer of a thoroughbred racehorse.

This section shall become operative on January 1, 2006. This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. Section 19613.3 of the Business and Professions Code is amended to read:

19613.3. (a) Except as provided in subdivision (b), (c), (d), and (e) relating to thoroughbred horsemen's organizations, each horsemen's organization, except an organization that solely represents owners, or an organization that solely represents trainers, shall provide for the representation of owners and trainers on its board of directors. The provisions setting forth the composition of the board of directors of each organization shall be in the bylaws of the organization and shall be submitted to the board. The bylaws and any changes thereto shall be approved by the board.

(b) Each thoroughbred horsemen's organization, except an organization that solely represents trainers, shall provide for the

representation of owners and owner-trainers, as defined in subdivision (c), on its board of directors. The provisions setting forth the composition of the board of directors of each organization shall be in the bylaws of the organization and shall be submitted to the board. The bylaws and any changes thereto shall be approved by the board.

(c) The organization representing owners shall provide in its bylaws that owners who are also licensed as trainers, and their spouses who are licensed as owners shall comprise a class of owner-trainers, which may elect three of its members to the board of directors of the organization representing owners. All other directors shall be owners as defined in Section 19613, and shall not be members of the class of owner-trainers.

(d) The board of directors of the thoroughbred owners' organization shall not exceed 15 persons, and all members of the board shall have equal standing. No person other than a duly elected or appointed member of the board of directors shall be entitled to vote on matters that are subject to the vote of the board.

(e) The organization representing thoroughbred trainers may, upon the effective date of this section, appoint three individuals who qualify as members of the class of owner-trainers as described in subdivision (c) to the board of directors of the organization representing thoroughbred owners. These appointees shall hold these positions until members of the class are elected to fill the positions, no later than July 1, 2003.

This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 4. Section 19613.3 is added to the Business and Professions Code, to read:

19613.3. Each horsemen's organization, except an organization that solely represents owners, or an organization that solely represents trainers, shall provide for the representation of owners and trainers on its board of directors. The provisions setting forth the composition of the board of directors of each organization shall be in the bylaws of the organization and shall be submitted to the board. The bylaws and any changes thereto shall be approved by the board. This section shall become operative on January 1, 2006.

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

In order to permit a prompt and orderly transition on the board of directors of the organization representing thoroughbred owners, it is necessary that this act take immediate effect.

CHAPTER 922

An act to amend Sections 19605.73 and 19613 of, and to add Section 19607.4 to, the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19605.73 of the Business and Professions Code is amended to read:

19605.73. (a) Racing associations, fairs, and the organization responsible for contracting with racing associations and fairs with respect to the conduct of racing meetings, may form a private, statewide marketing organization to market and promote thoroughbred and fair horse racing, and to obtain, provide, or defray the cost of workers' compensation coverage for stable employees and jockeys of thoroughbred trainers. The organization shall consist of the following members: two members, one from the northern zone and one from the combined central and southern zones, appointed by the thoroughbred racetracks; two members, one from the northern zone and one from the combined central and southern zones, appointed by the owners' organization responsible for contracting with associations and fairs with respect to the conduct of racing meetings; and two members, one from the northern zone and one from the combined central and southern zones, appointed by the organization representing racing and satellite fairs.

(b) The marketing organization formed pursuant to subdivision (a) shall annually submit to the board a statewide marketing and promotion plan and a thoroughbred trainers' workers' compensation defrayal plan for thoroughbred and fair horse racing that encompasses all geographical zones in the state, and which includes the manner in which funds were expended in the implementation of the plan for the previous calendar year. The plan shall be implemented as determined by the organization. The organization shall receive input from all interested industry participants and may utilize outside consultants in developing the annual marketing plan.

(c) In addition to the distributions specified in subdivisions (a) and (b) of Section 19605.7, and in Sections 19605.71 and 19605.72, for thoroughbred and fair meetings only, from the amount that would normally be available for commissions and purses, an amount equal to 0.4 percent of the total amount handled by each satellite wagering facility shall be distributed to the statewide marketing organization formed pursuant to subdivision (a) for the promotion of thoroughbred

and fair horse racing and to defray the cost of workers' compensation coverage for stable employees and jockeys of thoroughbred trainers. Not more than one-sixth of the total amount available annually pursuant to this subdivision shall be used to defray the cost of workers' compensation insurance. Any of the promotion funds that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any one year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(d) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed. Any moneys held by the organization shall, in the event this section is repealed, be distributed to the organization formed pursuant to Section 19608.2, for purposes of that section.

SEC. 2. Section 19607.4 is added to the Business and Professions Code, to read:

19607.4. (a) Notwithstanding any other provision of law, any amount up to an amount equal to the difference between the maximum deduction authorized pursuant to Sections 19607 and 19607.2 and the amount actually deducted, not to exceed four million dollars ($4,000,000) statewide annually, may be utilized to obtain, provide, or defray the cost of workers' compensation coverage for licensed thoroughbred stable employees and jockeys, and an amount not to exceed one million dollars ($1,000,000) statewide annually, may be paid to the thoroughbred welfare fund described in subdivision (b) of Section 19641 from the funds described in Sections 19607 and 19607.2, provided (1) there is a written agreement between the owners' organization described in subdivision (a) of Section 19613 and those racing associations and fairs that annually conduct in California at least 75 percent of the thoroughbred races regarding the utilization of those funds; and (2) the agreement is filed with the board.

(b) The agreement shall be binding upon the owners' organization and all of the racing associations and fairs that conduct thoroughbred races in California and the board shall have the authority to enforce the terms of the agreement. The board shall not, however, have the authority to impose an agreement upon the owners' organization or the group of racing associations or fairs described herein.

SEC. 3. Section 19613 of the Business and Professions Code, as amended by Section 11 of Chapter 198 of the Statutes of 2001, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting, and may

include obtaining, providing, or defraying the cost of workers' compensation coverage for stable employees and jockeys of licensed trainers.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered pursuant to Section 19613.8 equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan for backstretch personnel pursuant to Section 19613.8. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered pursuant to Section 19613.8.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services

rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Owner'' means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) ''Trainer'' means a person currently licensed by the board as an owner and trainer or as a trainer of a thoroughbred racehorse.

This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Section 19613 of the Business and Professions Code, as added by Section 11.5 of Chapter 198 of the Statutes of 2001, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting, and may include obtaining, providing, or defraying the cost of workers' compensation coverage for stable employees and jockeys of licensed trainers.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for

administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered by the trainers' organization equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan the trainers' organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board. Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred trainers' organization.

(e) Any association other than a fair that conducts a quarter horse racing meeting shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence, for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Owner'' means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) ''Trainer'' means a person currently licensed by the board as an owner and trainer or as a trainer of a thoroughbred racehorse.

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

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

On July 1, 2002, the cost of workers' compensation coverage for horse trainers rose by 30 to 60 percent. In order to immediately authorize use of specified funds to assist in offsetting the increased cost of workers' compensation coverage, so that horse trainers do not let their coverage lapse or leave the state, resulting in the state lacking sufficient numbers of properly insured horse trainers, it is necessary that this act take effect immediately.

CHAPTER 923

An act to amend, add, and repeal Section 19613 of, and to add Section 19612.7 to, the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 19612.7 is added to the Business and Professions Code, to read:

19612.7. With respect to a harness race meeting, in addition to any other distributions, a portion of the money allocated for purses pursuant to this chapter may be used to pay for obtaining, providing, or defraying the cost of workers' compensation coverage for stable employees and drivers of licensed standardbred trainers. This portion of the purse money, if any, shall be specified in a written agreement between the racing association that conducts the live harness race meeting and the organization representing the horsemen participating at the race meeting, and shall be jointly administered by the racing association and the organization representing the horsemen. This agreement is subject to the approval of the board.

SEC. 2. Section 19613 of the Business and Professions Code, as amended by Section 11 of Chapter 198 of the Statutes of 2001, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting, and may include obtaining, providing, or defraying the cost of workers' compensation coverage for stable employees and jockeys of licensed trainers.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered pursuant to Section 19613.8 equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan for backstretch personnel pursuant to Section 19613.8. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered pursuant to Section 19613.8.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Owner'' means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) ''Trainer'' means a person currently licensed by the board as a trainer of a thoroughbred racehorse.

This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 3. Section 19613 is added to the Business and Professions Code, to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting, and may include obtaining, providing, or defraying the cost of workers' compensation coverage for stable employees and jockeys of licensed trainers.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered pursuant to Section 19613.8 equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan for backstretch personnel pursuant to Section 19613.8. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion

as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered pursuant to Section 19613.8.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Owner'' means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) ''Trainer'' means a person currently licensed by the board as an owner and trainer or as a trainer of a thoroughbred racehorse.

This section shall become operative on January 1, 2006.

This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Sections 2 and 3 of this bill incorporate changes to Section 19613 of the Business and Professions Code, as amended by Section 11 of Chapter 198 of the Statutes of 2001, proposed by AB 2619 and AB 2931. Those sections shall only become operative if (1) both AB 2619 and AB 2931 are enacted and become effective on or before January 1, 2003, and (2) each of those bills amends Section 19613 of the Business and Professions Code, as amended by Section 11 of Chapter 198 of the Statutes of 2001, in which case Sections 2 and 3 of this bill shall become operative, for the dates provided in those sections, and shall prevail over the amendments to Section 19613, as amended by Section 11 of Chapter 198 of the Statutes of 2001, proposed by AB 2619, and AB 2931, and Section 19613, as proposed to be added by Section 2 of AB 2619 shall not become operative. However, if AB 2931 is enacted and becomes effective before January 1, 2003, the amendment to Section 19613 of the Business and Professions Code, as added by Section 11.5 of Chapter 198 of the Statutes of 2001, proposed by Section 4 of that bill shall be given effect.

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

On July 1, 2002, the cost of workers' compensation coverage for horse trainers rose by 30 to 60 percent. In order to immediately authorize use of specified funds to assist in offsetting the increased cost of workers' compensation coverage, so that horse trainers do not let their coverage lapse or leave the state, resulting in the state lacking sufficient numbers of properly insured horse trainers, it is necessary that this act take effect immediately. Also, in order to permit a prompt and orderly transition on the board of directors of the organization representing thoroughbred owners, it is necessary that this act take immediate effect.

CHAPTER 924

An act to add Sections 19533.6 and 19614.3 to the Business and Professions Code, relating to horse racing.

[Approved by Governor September 25, 2002. Filed with
Secretary of State September 26, 2002.]

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

SECTION 1. Section 19533.6 is added to the Business and Professions Code, to read:

19533.6. Notwithstanding Section 19533, the board may authorize any racing association licensed to conduct a live quarter horse racing meeting to also conduct mule racing at that racing meeting, subject to the following conditions:

(a) Mule races may only be conducted when a fair is not licensed to conduct live races with parimutuel wagering.

(b) The consent of the quarter horse horsemen's organization contracting with the association shall be obtained with respect to the inclusion of mule racing.

(c) The majority of the races conducted on any given racing day shall be quarter horse races.

(d) A quarter horse association may conduct mule races provided that the total number of Arabian and mule races run in a year do not exceed the total number of Arabian races run in the state in 2001.

(e) An Arabian race with seven or more entries shall not be replaced by mule race, without the consent of the organization that represents Arabian horsemen and horsewomen.

SEC. 2. Section 19614.3 is added to the Business and Professions Code, to read:

19614.3. (a) Notwithstanding any other provision of law, a racing association and the organization representing horsemen may agree to reduce the portion deducted from the parimutuel pool for purses and commissions, provided that the change only affect funds available for purses and commissions.

(b) Any collective bargaining agreement that is premised in part on the amount of commissions earned shall continue to be calculated based on the amount of commissions that would have been earned had this section not become law.

(c) An agreement by a horsemen's organization and a racing association to reduce the portion deducted from the parimutuel pool for purses and commissions is subject to the approval of the California Horse Racing Board, and may not be approved unless notice has been given to any labor organization that could be affected by the agreement.

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CHAPTER 925

An act to amend Section 1386 of, and to add Section 1375.7 to, the Health and Safety Code, and to add Section 10133.65 to the Insurance Code, relating to health care coverage.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1375.7 is added to the Health and Safety Code, to read:

1375.7. (a) This section shall be known and may be cited as the Health Care Providers' Bill of Rights.

(b) No contract issued, amended, or renewed on or after January 1, 2003, between a plan and a health care provider for the provision of health care services to a plan enrollee or subscriber shall contain any of the following terms:

(1) (A) Authority for the plan to change a material term of the contract, unless the change has first been negotiated and agreed to by the provider and the plan or the change is necessary to comply with state or federal law or regulations or any accreditation requirements of a private sector accreditation organization. If a change is made by amending a manual, policy, or procedure document referenced in the contract, the plan shall provide 45 business days' notice to the provider and the provider has the right to negotiate and agree to the change. If the plan and the provider cannot agree to the change to a manual, policy, or procedure document, the provider has the right to terminate the contract prior to the implementation of the change. In any event, the plan shall provide at least 45 business days' notice of its intent to change a material term, unless a change in state or federal law or regulations or any accreditation requirements of a private sector accreditation organization require a shorter timeframe for compliance. However, if the parties mutually agree, the 45 business day notice requirement may be waived. Nothing in this subparagraph limits the ability of the parties to mutually agree to the proposed change at any time after the provider has received notice of the proposed change.

(B) If a contract between a provider and a plan provides benefits to enrollees or subscribers through a preferred provider arrangement, the contract may contain provisions permitting a material change to the contract by the plan if the plan provides at least 45 business days' notice to the provider of the change and the provider has the right to terminate the contract prior to the implementation of the change.

(2) A provision that requires a health care provider to accept additional patients beyond the contracted number or in the absence of a number if, in the reasonable professional judgment of the provider, accepting additional patients would endanger patients' access to, or continuity of, care.

(3) A requirement to comply with quality improvement or utilization management programs or procedures of a plan, unless the requirement is fully disclosed to the health care provider at least 15 business days prior to the provider executing the contract. However, the plan may make a change to the quality improvement or utilization management programs or procedures at any time if the change is necessary to comply with state or federal law or regulations or any accreditation requirements of a private sector accreditation organization. A change to the quality improvement or utilization management programs or procedures shall be made pursuant to paragraph (1).

(4) A provision that waives or conflicts with any provision of this chapter. A provision in the contract that allows the plan to provide professional liability or other coverage or to assume cost of defending the provider in an action relating to professional liability or other action is not in conflict with, or in violation of, this chapter.

(5) A requirement to permit access to patient information in violation of federal or state laws concerning the confidentiality of patient information.

(c) Any contract provision that violates subdivision (b) shall be void, unlawful, and unenforceable.

(d) The department shall compile the information submitted by plans pursuant to subdivision (h) of Section 1367 of the Health and Safety Code into a report and submit the report to the Governor and the Legislature by March 15 of each calendar year.

(e) Nothing in this section shall be construed or applied as setting the rate of payment to be included in contracts between plans and health care providers.

(f) For purposes of this section the following definitions apply:

(1) ''Health care provider'' means any professional person, medical group, independent practice association, organization, health facility, or other person or institution licensed or authorized by the state to deliver or furnish health services.

(2) ''Material'' means a provision in a contract to which a reasonable person would attach importance in determining the action to be taken upon the provision.

SEC. 2. 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 that 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 that 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 or Section 1375.7 of the Health and Safety 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. 3. Section 10133.65 is added to the Insurance Code, to read:

10133.65. (a) This section shall be known and may be cited as the Health Care Providers' Bill of Rights.

(b) No contract issued, amended, or renewed on or after January 1, 2003, between a health insurer and a health care provider for the provision of covered benefits at alternative rates of payment to an insured shall contain any of the following terms:

(1) A provision that requires a health care provider to accept additional patients beyond the contracted number or in the absence of a number if, in the reasonable professional judgment of the provider, accepting additional patients would endanger patients' access to, or continuity of, care.

(2) A requirement to comply with quality improvement or utilization management programs or procedures of a health insurer, unless the requirement is fully disclosed to the health care provider at least 15 business days prior to the provider executing the contract. However, the health insurer may make a change to the quality improvement or utilization management programs or procedures at any time if the change is necessary to comply with state or federal law or regulations or any accreditation requirements of a private sector accreditation organization. A change to the quality improvement or utilization management programs or procedures shall be made pursuant to subdivision (c).

(3) A provision that waives or conflicts with any provision of the Insurance Code.

(4) A requirement to permit access to patient information in violation of federal or state laws concerning the confidentiality of patient information.

(c) If a contract is with a health insurer that negotiates and arranges for alternative rates of payment with the provider to provide benefits to insureds, the contract may contain provisions permitting a material change to the contract by the health insurer if the health insurer provides at least 45 business days' notice to the provider of the change, and the provider has the right to terminate the contract prior to implementation of the change.

(d) Any contract provision that violates subdivision (b) or (c) shall be void, unlawful, and unenforceable.

(e) The Department of Insurance shall annually compile all provider complaints that it receives under this section, and shall report to the Legislature and the Governor the number and nature of those complaints by March 15 of each calendar year.

(f) Nothing in this section shall be construed or applied as setting the rate of payment to be included in contracts between health insurers and health care providers.

(g) For purposes of this section, the following definitions apply:

(1) ''Health care provider'' means any professional person, medical group, independent practice association, organization, health facility, or

other person or institution licensed or authorized by the state to deliver or furnish health care services.

(2) ''Health insurer'' means any admitted insurer writing health insurance, as defined in Section 106, that enters into a contract with a provider to provide covered benefits at alternative rates of payment.

(3) ''Material'' means a provision in a contract to which a reasonable person would attach importance in determining the action to be taken upon the provision.

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 926

An act to add Chapter 15 (commencing with Section 121340) to Part 4 of Division 105 of the Health and Safety Code, relating to communicable diseases.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

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

(a) (1) The federal Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, as amended October 20, 2000, requires every state to have an HIV reporting system in effect that meets standards to be recommended by the Institute of Medicine and implemented by the Secretary of the United States Department of Health and Human Services, by July 1, 2004. Any state failing to meet these standards could lose its eligibility to receive federal Ryan White funds for treatment, social services, housing, prevention, and various other services for persons with HIV. Funding would continue for only the minority of cases reported involving persons with AIDS. California's failure to have an HIV reporting system that meets these standards could result in the loss of a significant amount of funding for the state.

(2) The federal Centers for Disease Control and Prevention has established surveillance guidelines for HIV that include criteria for

completeness, including risk information, timeliness, and nonduplication, which guidelines are likely to be seriously considered for implementation by the Institute of Medicine.

(3) The State Department of Health Services proposed, and the Legislature funded, a system of nonname HIV reporting in the 2000–01 fiscal year. Despite the available funding, this system is not planned to take effect until July 2002. The proposed reporting system is similar to one that failed in the State of Texas, and may not prove to be capable of meeting federal standards to ensure continued federal HIV/AIDS-related funding for California.

(4) A backup reporting system is needed to go into effect promptly, to protect California's public health and continued federal funding, should the proposed nonname reporting system prove unlikely to meet federal standards.

(b) It is the intent of the Legislature to provide contingent authorization to the State Department of Health Services to design and implement a system of HIV reporting that will meet federal requirements and avoid the loss to California and its residents of tens of millions of dollars or more in federal HIV/AIDS-related funding.

SEC. 2. Chapter 15 (commencing with Section 121340) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 15. HIV REPORTING SYSTEMS

121340. (a) The State Department of Health Services, in consultation with the California Conference of Local Health Officers, the California Medical Association, HIV treatment providers, and public health and other stakeholders, shall determine, no later than December 31, 2005, whether California's HIV reporting system has achieved compliance with standards and criteria necessary to ensure continued federal funding for California under the federal Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 (Public Law 101-381), as amended October 20, 2000 (Public Law 106-345).

(b) The department shall inform the appropriate committees of the Legislature of its findings under subdivision (a) by December 31, 2005.

(c) The department shall also report to the appropriate committees of the Legislature all written communications from the Centers for Disease Control and Prevention to the state received before December 31, 2005, that indicate that California's HIV reporting system has not or will not meet the federal standards and criteria for an HIV reporting system pursuant to the Ryan White CARE Act.

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CHAPTER 927

An act to amend Sections 394 and 697.320 of the Code of Civil Procedure, to amend Sections 3766, 4054, 4506, 7575, 17306, 17400, 17422, 17430, 17432, 17526, 17600, 17602, 17704, and 17801 of, and to repeal Section 17700 of, the Family Code, to amend Section 11165.7 of the Penal Code, and to amend Section 11476.2 of the Welfare and Institutions Code, relating to child support.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 394 of the Code of Civil Procedure is amended to read:

394. (a) An action or proceeding against a county, or city and county, a city, or local agency, may be tried in the county, or city and county, or the county in which the city or local agency is situated, unless the action or proceeding is brought by a county, or city and county, a city, or local agency, in which case it may be tried in any county, or city and county, not a party thereto and in which the city or local agency is not situated. Except for actions initiated by the local child support agency pursuant to Section 17400, 17402, 17404, or 17416 of the Family Code, any action or proceeding brought by a county, city and county, city, or local agency within a certain county, or city and county, against a resident of another county, city and county, or city, or a corporation doing business in the latter, shall be, on motion of either party, transferred for trial to a county, or city and county, other than the plaintiff, if the plaintiff is a county, or city and county, and other than that in which the plaintiff is situated, if the plaintiff is a city, or a local agency, and other than that in which the defendant resides, or is doing business, or is situated. Whenever an action or proceeding is brought against a county, city and county, city, or local agency, in any county, or city and county, other than the defendant, if the defendant is a county, or city and county, or, if the defendant is a city, or local agency, other than that in which the defendant is situated, the action or proceeding must be, on motion of that defendant, transferred for trial to a county, or city and county, other than that in which the plaintiff, or any of the plaintiffs, resides, or is doing business, or is situated, and other than the plaintiff county, or city and county, or county in which that plaintiff city or local agency is situated, and other than the defendant county, or city and county, or county in which the defendant city or local agency is situated; provided, however, that any action or proceeding against the city, county, city and county, or local agency for injury occurring within the city, county, or city and

county, or within the county in which the local agency is situated, to person or property or person and property caused by the negligence or alleged negligence of the city, county, city and county, local agency, or its agents or employees, shall be tried in that county, or city and county, or if a city is a defendant, in the city or in the county in which the city is situated, or if a local agency is a defendant, in the county in which the local agency is situated. In that action or proceeding, the parties thereto may, by stipulation in writing, or made in open court, and entered in the minutes, agree upon any county, or city and county, for the place of trial thereof. When the action or proceeding is one in which a jury is not of right, or in case a jury is waived, then in lieu of transferring the cause, the court in the original county may request the chairperson of the Judicial Council to assign a disinterested judge from a neutral county to hear that cause and all proceedings in connection therewith. When the action or proceeding is transferred to another county for trial, a witness required to respond to a subpoena for a hearing within the original county shall be compelled to attend hearings in the county to which the cause is transferred. If the demand for transfer is made by one party and the opposing party does not consent thereto, the additional costs of the nonconsenting party occasioned by the transfer of the cause, including living and traveling expenses of the nonconsenting party and material witnesses, found by the court to be material, and called by the nonconsenting party, not to exceed five dollars ($5) per day each in excess of witness fees and mileage otherwise allowed by law, shall be assessed by the court hearing the cause against the party requesting the transfer. To the extent of that excess, those costs shall be awarded to the nonconsenting party regardless of the outcome of the trial. This section shall apply to actions or proceedings now pending or hereafter brought.

(b) For the purposes of this section, ''local agency'' shall mean any governmental district, board, or agency, or any other local governmental body or corporation, but shall not include the State of California or any of its agencies, departments, commissions, or boards.

SEC. 1.5. Section 697.320 of the Code of Civil Procedure is amended to read:

697.320. (a) A judgment lien on real property is created under this section by recording an abstract, a notice of support judgment, an interstate lien form promulgated by the federal Secretary of Health and Human Services pursuant to Section 652(a)(11) of Title 42 of the United States Code, or a certified copy of either of the following money judgments with the county recorder:

(1) A judgment for child, family, or spousal support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under paragraph (1) of subdivision (a) or by recording an interstate lien form, as described in subdivision (a), continues during the period the judgment remains enforceable. Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under paragraph (2) of subdivision (a) continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under paragraph (2) of subdivision (a) may be extended any number of times by recording, during the time the judgment lien is in existence, a certified copy of the judgment in the manner provided in this section for the initial recording; this rerecording has the effect of extending the duration of the judgment lien created under paragraph (2) of subdivision (a) until 10 years from the date of the rerecording.

SEC. 2. Section 3766 of the Family Code is amended to read:

3766. (a) The employer, or other person providing health insurance, shall take steps to commence coverage, consistent with the order for the health insurance coverage assignment, within 30 days after service of the assignment order upon the obligor under Section 3764 unless the employer or other person providing health insurance coverage receives an order issued pursuant to Section 3765 to quash the health insurance coverage assignment. The employer, or the person providing health insurance, shall commence coverage at the earliest possible time and, if applicable, consistent with the group plan enrollment rules.

(b) If the obligor has made a selection of health coverage prior to the issuance of the court order, the selection shall not be superseded unless the child to be enrolled in the plan will not be provided benefits or coverage where the child resides or the court order specifically directs other health coverage.

(c) If the obligor has not enrolled in an available health plan, there is a choice of coverage, and the court has not ordered coverage by a specific plan, the employer or other person providing health insurance shall enroll the child in the plan that will provide reasonable benefits or coverage where the child resides. If that coverage is not available, the employer or other person providing health insurance shall, within 20 days, return the assignment order to the attorney or person initiating the assignment.

(d) If an assignment order is served on an employer or other person providing health insurance and no coverage is available for the supported child, the employer or other person shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

SEC. 2.5. Section 4054 of the Family Code is amended to read:

4054. (a) The Judicial Council shall periodically review the statewide uniform guideline to recommend to the Legislature appropriate revisions.

(b) The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date. The review shall also include an analysis of guidelines and studies from other states, and other research and studies available to or undertaken by the Judicial Council.

(c) Any recommendations for revisions to the guideline shall be made to ensure that the guideline results in appropriate child support orders, to limit deviations from the guideline, or otherwise to help ensure that the guideline is in compliance with federal law.

(d) The Judicial Council may also review and report on other matters, including, but not limited to, the following:

(1) The treatment of the income of a subsequent spouse or nonmarital partner.

(2) The treatment of children from prior or subsequent relationships.

(3) The application of the guideline in a case where a payer parent has extraordinarily low or extraordinarily high income, or where each parent has primary physical custody of one or more of the children of the marriage.

(4) The benefits and limitations of a uniform statewide spousal support guideline and the interrelationship of that guideline with the state child support guideline.

(5) Whether the use of gross or net income in the guideline is preferable.

(6) Whether the guideline affects child custody litigation or the efficiency of the judicial process.

(7) Whether the various assumptions used in computer software used by some courts to calculate child support comport with state law and should be made available to parties and counsel.

(e) The initial review by the Judicial Council shall be submitted to the Legislature and to the Department of Child Support Services on or before December 31, 1993, and subsequent reviews shall occur at least every four years thereafter unless federal law requires a different interval.

(f) In developing its recommendations, the Judicial Council shall consult with a broad cross-section of groups involved in child support issues, including, but not limited to, the following:

(1) Custodial and noncustodial parents.

(2) Representatives of established women's rights and fathers' rights groups.

(3) Representatives of established organizations that advocate for the economic well-being of children.

(4) Members of the judiciary, district attorney's offices, the Attorney General's office, and the Department of Child Support Services.

(5) Certified family law specialists.

(6) Academicians specializing in family law.

(7) Persons representing low-income parents.

(8) Persons representing recipients of assistance under the CalWORKs program seeking child support services.

(g) In developing its recommendations, the Judicial Council shall seek public comment and shall be guided by the legislative intent that children share in the standard of living of both of their parents.

SEC. 3. Section 4506 of the Family Code is amended to read:

4506. (a) An abstract of a judgment ordering a party to pay spousal, child, or family support to the other party shall be certified by the clerk of the court where the judgment was entered and shall contain all of the following:

(1) The title of the court where the judgment is entered and the cause and number of the proceeding.

(2) The date of entry of the judgment and of any renewal of the judgment.

(3) Where the judgment and any renewals are entered in the records of the court.

(4) The name and last known address of the party ordered to pay support.

(5) The name and address of the party to whom support payments are ordered to be paid.

(6) The social security number, birth date, and driver's license number of the party who is ordered to pay support. If any of those numbers are not known to the party to whom support payments are to be paid, that fact shall be indicated on the abstract of the court judgment.

(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(8) The date of issuance of the abstract.

(9) Any other information deemed reasonable and appropriate by the Judicial Council.

(b) The Judicial Council may develop a form for an abstract of a judgment ordering a party to pay child, family, or spousal support to another party which contains the information required by subdivision (a).

(c) Notwithstanding any other provision of law, when a support obligation is being enforced pursuant to Title IV-D of the Social Security Act, the agency enforcing the obligation may record a notice of support judgment. The notice of support judgment shall contain the same

information as the form adopted by the Judicial Council pursuant to subdivision (b) and Section 4506.1. The notice of support judgment shall have the same force and effect as an abstract of judgment certified by the clerk of the court where the judgment was entered. The local child support agency or other Title IV-D agency shall not be subject to any civil liability as a consequence of causing a notice of support judgment to be recorded.

(d) As used in this section, ''judgment'' includes an order for child, family, or spousal support.

SEC. 3.3. Section 7575 of the Family Code is amended to read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the Department of Child Support Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The Department of Child Support Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the Department of Child Support Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the voluntary declaration of paternity. A copy of the return receipt shall be attached to the rescission form when filed with the Department of Child Support Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths. The department shall, upon written request, provide to a court or commissioner a copy of any rescission form filed with the department that is relevant to proceedings before the court or commissioner.

(b) (1) Notwithstanding Section 7573, if the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity.

(2) (A) The notice of motion for genetic tests under this section may be filed not later than two years from the date of the child's birth by a local child support agency, the mother, the man who signed the voluntary declaration as the child's father, or in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630 or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity.

(B) The local child support agency's authority under this subdivision is limited to those circumstances where there is a conflict between a voluntary acknowledgement of paternity and a judgment of paternity or a conflict between two or more voluntary acknowledgments of paternity.

(3) The notice of motion for genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.

(c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil Procedure. If the action or motion to set aside a judgment is required to be filed within a specified time period under Section 473 of the Code of Civil Procedure, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes an initial order for custody, visitation, or child support based upon a voluntary declaration of paternity.

(2) The parent or local child support agency seeking to set aside the voluntary declaration of paternity shall have the burden of proof.

(3) Any order for custody, visitation, or child support shall remain in effect until the court determines that the voluntary declaration of paternity should be set aside, subject to the court's power to modify the orders as otherwise provided by law.

(4) Nothing in this section is intended to restrict a court from acting as a court of equity.

(5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the genetic tests, are that the person who executed the voluntary declaration of paternity is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.

(6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.

SEC. 3.5. Section 17306 of the Family Code is amended to read:

17306. (a) The Legislature finds and declares all of the following:

(1) While the State Department of Social Services has had statutory authority over the child support system, the locally elected district

attorneys have operated their county programs with a great deal of autonomy.

(2) District attorneys have operated the child support programs with different forms, procedures and priorities, making it difficult to adequately evaluate and modify performance statewide.

(3) Problems collecting child support reflect a fundamental lack of leadership and accountability in the collection program. These management problems have cost California taxpayers and families billions of dollars.

(b) The director shall develop uniform forms, policies and procedures to be employed statewide by all local child support agencies. Pursuant to this subdivision, the director shall:

(1) Adopt uniform procedures and forms.

(2) Establish standard caseworker to case staffing ratios, adjusted as appropriate to meet the varying needs of local programs.

(3) Establish standard attorney to caseworker ratios, adjusted as appropriate to meet the varying needs of local programs.

(4) Institute a consistent statewide policy on the appropriateness of closing cases to ensure that, without relying solely on federal minimum requirements, all cases are fully and pragmatically pursued for collections prior to closing.

(5) Evaluate the best practices for the establishment, enforcement, and collection of child support, for the purpose of determining which practices should be implemented statewide in an effort to improve performance by local child support agencies. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(6) Evaluate the best practices for the management of effective child support enforcement operations for the purpose of determining what management structure should be implemented statewide in an effort to improve the establishment, enforcement, and collection of child support by local child support agencies, including an examination of the need for attorneys in management level positions. In evaluating the best practices, the director shall review existing practices in better performing counties within California, as well as practices implemented by other state Title IV-D programs nationwide.

(7) Set priorities for the use of specific enforcement mechanisms for use by both the local child support agency and the Franchise Tax Board. As part of establishing these priorities, the director shall set forth caseload processing priorities to target enforcement efforts and services in a way that will maximize collections and avoid welfare dependency.

(8) Develop uniform training protocols, require periodic training of all child support staff, and conduct training sessions as appropriate.

(9) Review and approve annual budgets submitted by the local child support agencies to ensure each local child support agency operates an effective and efficient program that complies with all federal and state laws, regulations, and directives, including the directive to hire sufficient staff.

(c) The director shall submit any forms intended for use in court proceedings to the Judicial Council for approval at least six months prior to the implementation of the use of the forms.

(d) In adopting the forms, policies, and procedures, the director shall consult with the California Family Support Council, the California State Association of Counties, labor organizations, custodial and noncustodial parent advocates, child support commissioners, family law facilitators, and the appropriate committees of the Legislature.

(e) (1) Notwithstanding the provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, through December 31, 2004, the department may implement the applicable provisions of this division through family support division letters or similar instructions from the director.

The department shall adopt regulations implementing the forms, policies, and procedures established pursuant to this section not later than July 1, 2002. The director may delay implementation of any of these regulations in any county for any time as the director deems necessary for the smooth transition and efficient operation of a local child support agency, but implementation shall not be delayed beyond the time at which the transition to the new county department of child support services is completed. The department may adopt regulations to implement this division in accordance with the Administrative Procedure Act. The adoption of any emergency regulation filed with the Office of Administrative Law on or before December 31, 2004, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. These emergency regulations shall remain in effect for no more than 180 days.

(2) It is the intent of the Legislature that the amendments to paragraph (1) of this subdivision made by Assembly Bill 3032 of the 2001–02 Regular Session shall be retroactive to June 30, 2002.

SEC. 3.7. Section 17400 of the Family Code is amended to read:

17400. (a) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The

local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) Notwithstanding Sections 25203 and 26529 of the Government Code, attorneys employed within the local child support agency may direct, control, and prosecute civil actions and proceedings in the name of the county in support of child support activities of the Department of Child Support Services and the local child support agency.

(c) Actions brought by the local child support agency to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The local child support agency's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(d) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 17404. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the support obligor as known to the local child support agency. If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed in an amount that results in a court order equal to the minimum basic standard of adequate care for Region I provided in Sections 11452 and 11452.018 of the Welfare and Institutions Code unless information concerning the support obligor's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the support obligor that the proposed judgment will become effective if he or she

fails to file an answer with the court within 30 days of service. Except as provided in paragraph (2) of subdivision (a) of Section 17402, if the proposed judgment is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the local child support agency or the Attorney General in all cases brought under this section or Section 17404.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 17432 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the local child support agency with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the local child support agency or the superior court clerk.

(e) In any action brought or enforcement proceedings instituted by the local child support agency pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the local child support agency at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(f) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the agencies established by this section a notice, in clear and simple language prescribed by the Director of Child Support Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals, whether or not they are recipients of public assistance.

(g) (1) In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under this code.

(2) The local child support agency shall file a motion for an order for temporary support within the following time limits:

(A) If the defendant is the mother, a presumed father under Section 7611, or any father where the child is at least six months old when the defendant files his or her answer, the time limit is 90 days after the defendant files an answer.

(B) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

(3) If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

(4) If the local child support agency fails to file a motion for an order for temporary support within time limits specified in this section, the local child support agency shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no motion is filed, when a final judgment is entered.

(5) Except as provided in Section 17304, nothing in this section prohibits the local child support agency from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the Department of Child Support Services.

(6) Nothing in this section shall otherwise limit the ability of the local child support agency from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(h) As used in this article, ''enforcing obligations'' includes, but is not limited to, (1) the use of all interception and notification systems operated by the department for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the local child support agency of an initial order for child support that may include medical support or that is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, and (5) the transfer of child support delinquencies to the Franchise Tax Board under subdivision (c) of Section 17500 in support of the local child support agency.

(i) As used in this section, ''out of wedlock'' means that the biological parents of the child were not married to each other at the time of the child's conception.

(j) (1) The local child support agency is the public agency responsible for administering wage withholding for current support for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(2) Nothing in this section shall limit the authority of the local child support agency granted by other sections of this code or otherwise granted by law, except to the extent that the law is inconsistent with the transfer of delinquent child support to the Franchise Tax Board.

(k) In the exercise of the authority granted under this article, the local child support agency may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under this code, or other proceeding in which child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the local child support agency may request any relief that is appropriate that the local child support agency is authorized to seek.

(*l*) The local child support agency shall comply with all regulations and directives established by the department that set time standards for responding to requests for assistance in locating noncustodial parents,

establishing paternity, establishing child support awards, and collecting child support payments.

(m) As used in this article, medical support activities that the local child support agency is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(n) (1) Notwithstanding any other law, venue for an action or proceeding under this division shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the local child support agency, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477 of the Welfare and Institutions Code.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(o) The local child support agency of one county may appear on behalf of the local child support agency of any other county in an action or proceeding under this part.

SEC. 4. Section 17422 of the Family Code is amended to read:

17422. (a) The state medical insurance form required in Article 1 (commencing with Section 3750) of Chapter 7 of Part 1 of Division 9 shall include, but shall not be limited to, all of the following:

(1) The parent or parents' names, addresses, and social security numbers.

(2) The name and address of each parent's place of employment.

(3) The name or names, addresses, policy number or numbers, and coverage type of the medical insurance policy or policies of the parents, if any.

(4) The name, CalWORKs case number, social security number, and Title IV-E foster care case number or Medi-Cal case numbers of the parents and children covered by the medical insurance policy or policies.

(b) (1) In any action brought or enforcement proceeding instituted by the local child support agency under this division for payment of child or spousal support, a completed state medical insurance form shall be obtained and sent by the local child support agency to the State Department of Health Services in the manner prescribed by the State Department of Health Services.

(2) Where it has been determined under Section 3751 that health insurance coverage is not available at no or reasonable cost, the local child support agency shall seek a provision in the support order that provides for health insurance coverage should it become available at no or reasonable cost.

(3) Health insurance coverage shall be considered reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. As used in this section, ''health insurance coverage'' also includes providing for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(c) (1) The local child support agency shall request employers and other groups offering health insurance coverage that is being enforced under this division to notify the local child support agency if there has been a lapse in insurance coverage. The local child support agency shall be responsible for forwarding information pertaining to the health insurance policy secured for the dependent children for whom the local child support agency is enforcing the court-ordered medical support to the custodial parent.

(2) The local child support agency shall periodically communicate with the State Department of Health Services to determine if there have been lapses in health insurance coverage for public assistance applicants and recipients. The State Department of Health Services shall notify the local child support agency when there has been a lapse in court-ordered insurance coverage.

(3) The local child support agency shall take appropriate action, civil or criminal, to enforce the obligation to obtain health insurance when there has been a lapse in insurance coverage or failure by the responsible parent to obtain insurance as ordered by the court.

(4) The local child support agency shall inform all individuals upon their application for child support enforcement services that medical support enforcement services are available.

SEC. 5. Section 17430 of the Family Code is amended to read:

17430. (a) Notwithstanding any other provision of law, in any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, a judgment shall be entered without hearing, without the presentation of any other evidence or further notice to the defendant, upon the filing of proof of service by the local child support agency evidencing that more than 30 days have passed since the simplified summons and complaint, proposed judgment, blank answer, blank income and expense declaration, and all notices required by this division were served on the defendant.

(b) If the defendant fails to file an answer with the court within 30 days of having been served as specified in subdivision (d) of Section 17400, or at any time before the default judgment is entered, the proposed judgment filed with the original summons and complaint shall be conformed by the court as the final judgment and a copy provided to the local child support agency, unless the local child support agency has filed a declaration and amended proposed judgment pursuant to subdivision (c).

(c) If the local child support agency receives additional financial information within 30 days of service of the complaint and proposed judgment on the defendant and the additional information would result in a support order that is different from the amount in the proposed judgment, the local child support agency shall file a declaration setting forth the additional information and an amended proposed judgment. The declaration and amended proposed judgment shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. The defendant's time to answer or otherwise appear shall be extended to 30 days from the date of service of the declaration and amended proposed judgment.

(d) Upon entry of the judgment, the clerk of the court shall provide a conformed copy of the judgment to the local child support agency. The local child support agency shall mail by first-class mail, postage prepaid, a notice of entry of judgment by default and a copy of the judgment to the defendant to the address where he or she was served with the summons and complaint and last known address if different from that address.

SEC. 6. Section 17432 of the Family Code is amended to read:

17432. (a) In any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, the court may, on any terms that may be just, relieve the defendant from that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the Code of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in subdivision (d) of Section 17400 and that were entered after the entry of the default of the defendant under Section 17430. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

(c) The court may set aside the child support order contained in a judgment described in subdivision (b) if the defendant's income was substantially different for the period of time during which judgment was effective compared with the income the defendant was presumed to have. A ''substantial difference'' means that amount of income that would result in an order for support that deviates from the order entered by default by 20 percent or more. If the difference between the defendant's actual income and the presumed income would result in an order for support that deviates from the order entered by default by less than 20 percent, the court may set aside the child support order only if the court states, in writing or on the record, that the defendant is experiencing an extreme financial hardship due to the circumstances enumerated in Section 4071 and that a set aside of the default judgment is necessary to accommodate those circumstances.

(d) Application for relief under this section shall be accompanied by a copy of the answer or other pleading proposed to be filed together with an income and expense declaration or simplified financial statement and tax returns for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

(e) The burden of proving that the actual income of the defendant deviated substantially from the presumed income shall be on the defendant.

(f) A motion for relief under this section shall be filed within 90 days of the first collection of money by the local child support agency or the obligee. The 90-day time period shall run from the date that the local child support agency receives the first collection or from the date that the defendant is served with notice of the collection, whichever date occurs first. If service of the notice is by mail, the date of service shall be as specified in Section 1013 of the Code of Civil Procedure.

(g) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the defendant, and other equitable factors that the court deems appropriate.

(h) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines

currently in effect. The new order shall have the same commencement date as the order set aside.

SEC. 6.5. Section 17526 of the Family Code is amended to read:

17526. (a) Upon request of an obligor or obligee, the local child support agency shall review the amount of arrearages alleged in a statement of arrearages that may be submitted to the local child support agency by an applicant for child support enforcement services. The local child support agency shall complete the review in the same manner and pursuant to the same timeframes as a complaint submitted pursuant to Section 17800. In the review, the local child support agency shall consider all evidence and defenses submitted by either parent on the issues of the amount of support paid or owed.

(b) The local child support agency may, in its discretion, suspend enforcement or distribution of arrearages if it believes there is a substantial probability that the result of the administrative review will result in a finding that there are no arrearages.

(c) Any party to an action involving child support enforcement services of the local child support agency may request a judicial determination of arrearages. The party may request an administrative review of the alleged arrearages prior to requesting a judicial determination of arrearages. The local child support agency shall complete the review in the same manner and pursuant to the same timeframes specified in subdivision (a). Any motion to determine arrearages filed with the court shall include a monthly breakdown showing amounts ordered and amounts paid, in addition to any other relevant information.

(d) A county that submits a claim for reimbursement as a state-mandated local program of costs incurred with respect to the administrative review of alleged child support arrearages under this section shall be ineligible for state subventions or, to the extent permitted by federal law, state-administered federal subventions, for child support in the amount of any local costs under this section.

SEC. 7. Section 17600 of the Family Code is amended to read:

17600. (a) The Legislature finds and declares all of the following:

(1) The Legislative Analyst has found that county child support enforcement programs provide a net increase in revenues to the state.

(2) The state has a fiscal interest in ensuring that county child support enforcement programs perform efficiently.

(3) The state does not provide information to counties on child support enforcement programs, based on common denominators that would facilitate comparison of program performance.

(4) Providing this information would allow county officials to monitor program performance and to make appropriate modifications to improve program efficiency.

(5) This information is required for effective management of the child support program.

(b) (1) Except as provided in paragraph (2), commencing with the 1998–99 fiscal year, and for each fiscal year thereafter, each county that is participating in the state incentive program described in Section 17704 shall provide to the department, and the department shall compile from this county child support information, quarterly and annually, all of the following performance-based data, as established by the federal incentive funding system, provided that the department may revise the data required by this paragraph in order to conform to the final federal incentive system data definitions:

(A) One of the following data relating to paternity establishment, as required by the department, provided that the department shall require all counties to report on the same measurement:

(i) The total number of children in the caseload governed by Part D (commencing with Section 451) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.), as of the end of the federal fiscal year, who were born to unmarried parents for whom paternity was established or acknowledged, and the total number of children in that caseload, as of the end of the preceding federal fiscal year, who were born to unmarried parents.

(ii) The total number of minor children who were born in the state to unmarried parents for whom paternity was established or acknowledged during a federal fiscal year, and the total number of children in the state born to unmarried parents during the preceding federal fiscal year.

(B) The number of cases governed by Part D (commencing with Section 451) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.) during the federal fiscal year and the total number of those cases with support orders.

(C) The total dollars collected during the federal fiscal year for current support in cases governed by Part D (commencing with Section 451) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.) and the total number of dollars owing for current support during that federal fiscal year in cases governed by those provisions.

(D) The total number of cases for the federal fiscal year governed by Part D (commencing with Section 451) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.) in which payment was being made toward child support arrearages and the total number of cases for that fiscal year governed by these federal provisions that had child support arrearages.

(E) The total number of dollars collected and expended during a federal fiscal year in cases governed by Part D (commencing with Section 451) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).

(F) The total amount of child support dollars collected during a federal fiscal year, and, if and when required by federal law, the amount of these collections broken down by collections distributed on behalf of current recipients of federal Temporary Assistance for Needy Families block grant funds or federal foster care funds, on behalf of former recipients of federal Temporary Assistance for Needy Families block grant funds or federal foster care funds, or on behalf of persons who have never been recipients of these federal funds.

(2) A county may apply for an exemption from any or all of the reporting requirements of paragraph (1) for the 1998–99 state fiscal year or any quarter of that fiscal year, as well as for the first quarter of the 1999–2000 fiscal year, by submitting an application for the exemption to the department at least three months prior to the commencement of the fiscal year or quarter for which the exemption is sought. A county shall provide a separate justification for each data element under paragraph (1) for which the county is seeking an exemption and the cost to the county of providing the data. The department may not grant an exemption for more than one year. The department may grant a single exemption only if both of the following conditions are met:

(A) The county cannot compile the data being sought through its existing automated system or systems.

(B) The county cannot compile the data being sought through manual means or through an enhanced automated system or systems without significantly harming the child support collection efforts of the county.

(c) Except as provided in paragraph (6), before implementation of the statewide automated system, in addition to the information required by subdivision (b), the department shall collect, on a monthly basis, from each county that is participating in the state incentive program described in Section 17704, information on the local child support agency beginning with the 1998–99 fiscal year, and for each subsequent fiscal year, shall report semiannually on all of the following measurements:

(1) For each of the following support collection categories, the number of cases with support collected shall include only the number of cases actually receiving a collection, not the number of payments received. For purposes of determining the number of cases with an order of current support and the number of cases in which current support is being collected, cases with a medical support order that do not have an order for current support shall not be counted.

(A) The number of cases with an order for current support.

(B) The number of cases with collections of current support.

(C) The number of cases with an order for arrears.

(D) The number of cases with arrears collections.

(2) The number of alleged fathers or obligors who were served with a summons and complaint to establish paternity or a support order. In

order to be counted under this paragraph, the alleged father or obligor shall be successfully served with process. An alleged father shall be counted under this paragraph only once if he is served with process simultaneously for both a paternity and a support order proceeding for the same child or children. For purposes of this paragraph, a support order shall include a medical support order.

(3) The number of children requiring paternity establishment and the number of children for whom paternity has been established during the period. Paternity may only be established once for each child. Any child for whom paternity is not at issue shall not be counted in the number of children for whom paternity has been established. For this purpose, paternity is not at issue if the parents were married and neither parent challenges paternity or a voluntary paternity declaration has been executed by the parents prior to the local child support agency obtaining the case and neither parent challenges paternity.

(4) The number of cases requiring that a support order be established and the number of cases that had a support order established during the period. A support order shall be counted as established only when the appropriate court has issued an order for child support, including an order for temporary child support, or an order for medical support.

(5) The total cost of administering the local child support agency, including the federal, state, and county share of the costs, and the federal and state incentives received by each county. The total cost of administering the program shall be broken down by the following:

(A) The direct costs of the program, broken down further by total employee salaries and benefits, a list of the number of employees broken down into at least the following categories: attorneys, administrators, caseworkers, investigators, and clerical support; contractor costs; space charges; and payments to other county agencies. Employee salaries and numbers need only be reported in the annual report.

(B) The indirect costs, showing all overhead charges.

(6) A county may apply for an exemption from any or all of the reporting requirements of this subdivision for a fiscal year by submitting an application for the exemption to the department at least three months prior to the commencement of the fiscal year or quarter for which the exemption is sought. A county shall provide a separate justification for each data element under this subdivision for which the county is seeking an exemption and the cost to the county of providing the data. The department may not grant an exemption for more than one year. The department may grant a single exemption only if both of the following conditions are met:

(A) The county cannot compile the data being sought through its existing automated system or systems.

(B) The county cannot compile the data being sought through manual means or through an enhanced automated system or systems without significantly harming the child support collection efforts of the county.

(d) After implementation of the statewide automated system, in addition to the information required by subdivision (b), the Department of Child Support Services shall collect, on a monthly basis, from each county that is participating in the state incentive program described in Section 17704, information on the county child support enforcement program beginning with the 1998–99 fiscal year or a later fiscal year, as appropriate, and for each subsequent fiscal year, and shall report semiannually on all of the following measurements:

(1) For each of the following support collection categories, the number of cases with support collected shall include only the number of cases actually receiving a collection, not the number of payments received.

(A) (i) The number of cases with collections for current support.

(ii) The number of cases with arrears collections only.

(iii) The number of cases with both current support and arrears collections.

(B) For cases with current support only due:

(i) The number of cases in which the full amount of current support owed was collected.

(ii) The number of cases in which some amount of current support, but less than the full amount of support owed, was collected.

(iii) The number of cases in which no amount of support owed was collected.

(C) For cases in which arrears only were owed:

(i) The number of cases in which all arrears owed were collected.

(ii) The number of cases in which some amount of arrears, but less than the full amount of arrears owed, were collected.

(iii) The number of cases in which no amount of arrears owed were collected.

(D) For cases in which both current support and arrears are owed:

(i) The number of cases in which the full amount of current support and arrears owed were collected.

(ii) The number of cases in which some amount of current support and arrears, but less than the full amount of support owed, were collected.

(iii) The number of cases in which no amount of support owed was collected.

(E) The total number of cases in which an amount was due for current support only.

(F) The total number of cases in which an amount was due for both current support and arrears.

(G) The total number of cases in which an amount was due for arrears only.

(H) For cases with current support due, the number of cases without orders for medical support and the number of cases with an order for medical support.

(2) The number of alleged fathers or obligors who were served with a summons and complaint to establish paternity or a support order, and the number of alleged fathers or obligors for whom it is required that paternity or a support order be established. In order to be counted under this paragraph, the alleged father or obligor shall be successfully served with process. An alleged father shall be counted under this paragraph only once if he is served with process simultaneously for both a paternity and a support order proceeding for the same child or children. For purposes of this paragraph, a support order shall include a medical support order.

(3) The number of new asset seizures or successful initial collections on a wage assignment for purposes of child support collection. For purposes of this paragraph, a collection made on a wage assignment shall be counted only once for each wage assignment issued.

(4) The number of children requiring paternity establishment and the number of children for whom paternity has been established during the period. Paternity may only be established once for each child. Any child for whom paternity is not at issue shall not be counted in the number of children for whom paternity has been established. For this purpose, paternity is not at issue if the parents were married and neither parent challenges paternity or a voluntary paternity declaration has been executed by the parents prior to the local child support agency obtaining the case and neither parent challenges paternity.

(5) The number of cases requiring that a support order be established and the number of cases that had a support order established during the period. A support order shall be counted as established only when the appropriate court has issued an order for child support, including an order for temporary child support, or an order for medical support.

(6) The total cost of administering the local child support agency, including the federal, state, and county share of the costs and the federal and state incentives received by each county. The total cost of administering the program shall be broken down by the following:

(A) The direct costs of the program, broken down further by total employee salaries and benefits, a list of the number of employees broken down into at least the following categories: attorneys, administrators, caseworkers, investigators, and clerical support; contractor costs; space charges; and payments to other county agencies. Employee salaries and numbers need only be reported in the annual report.

(B) The indirect costs, showing all overhead charges.

(7) The total child support collections due, broken down by current support, interest on arrears, and principal, and the total child support collections that have been collected, broken down by current support, interest on arrears, and principal.

(8) The actual case status for all cases in the county child support enforcement program. Each case shall be reported in one case status only. If a case falls within more than one status category, it shall be counted in the first status category of the list set forth below in which it qualifies. The following shall be the case status choices:

(A) No support order, location of obligor parent required.

(B) No support order, alleged obligor parent located and paternity required.

(C) No support order, location and paternity not at issue but support order must be established.

(D) Support order established with current support obligation and obligor is in compliance with support obligation.

(E) Support order established with current support obligation, obligor is in arrears and location of obligor is necessary.

(F) Support order established with current support obligation, obligor is in arrears, and location of obligor's assets is necessary.

(G) Support order established with current support obligation, obligor is in arrears and no location of obligor or obligor's assets is necessary.

(H) Support order established with current support obligation, obligor is in arrears, the obligor is located, but the local child support agency has established satisfactorily that the obligor has no income or assets and no ability to earn.

(I) Support order established with current support obligation and arrears, obligor is paying the current support and is paying some or all of the interest on the arrears, but is paying no principal.

(J) Support order established for arrears only and obligor is current in repayment obligation.

(K) Support order established for arrears only, obligor is not current in arrears repayment schedule and location of obligor is required.

(L) Support order established for arrears only, obligor is not current in arrears repayment schedule and location of obligor's assets is required.

(M) Support order established for arrears only, obligor is not current in arrears repayment schedule, and no location of obligor or obligor's assets is required.

(N) Support order established for arrears only, obligor is not current in arrears repayment, and the obligor is located, but the local child support agency has established satisfactorily that the obligor has no income or assets and no ability to earn.

(O) Support order established for arrears only and obligor is repaying some or all of the interest, but no principal.

(P) Other, if necessary, to be defined in the regulations promulgated under subdivision (e).

(e) Upon implementation of the statewide automated system, or at the time that the department determines that compliance with this subdivision is possible, whichever is earlier, each county that is participating in the state incentive program described in Section 17704 shall collect and report, and the department shall compile for each participating county, information on the county child support program in each fiscal year, all of the following data, in a manner that facilitates comparison of counties and the entire state, except that the department may eliminate or modify the requirement to report any data mandated to be reported pursuant to this subdivision if the department determines that the local child support agencies are unable to accurately collect and report the information or that collecting and reporting of the data by the local child support agencies will be onerous:

(1) The number of alleged obligors or fathers who receive CalWORKs benefits, food stamp benefits, and Medi-Cal benefits.

(2) The number of obligors or alleged fathers who are in state prison or county jail.

(3) The number of obligors or alleged fathers who do not have a social security number.

(4) The number of obligors or alleged fathers whose address is unknown.

(5) The number of obligors or alleged fathers whose complete name, consisting of at least a first and last name, is not known by the local child support agency.

(6) The number of obligors or alleged fathers who filed a tax return with the Franchise Tax Board in the last year for which a data match is available.

(7) The number of obligors or alleged fathers who have no income reported to the Employment Development Department during the third quarter of the fiscal year.

(8) The number of obligors or alleged fathers who have income between one dollar ($1) and five hundred dollars ($500) reported to the Employment Development Department during the third quarter of the fiscal year.

(9) The number of obligors or alleged fathers who have income between five hundred one dollars ($501) and one thousand five hundred dollars ($1,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(10) The number of obligors or alleged fathers who have income between one thousand five hundred one dollars ($1,501) and two

thousand five hundred dollars ($2,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(11) The number of obligors or alleged fathers who have income between two thousand five hundred one dollars ($2,501) and three thousand five hundred dollars ($3,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(12) The number of obligors or alleged fathers who have income between three thousand five hundred one dollars ($3,501) and four thousand five hundred dollars ($4,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(13) The number of obligors or alleged fathers who have income between four thousand five hundred one dollars ($4,501) and five thousand five hundred dollars ($5,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(14) The number of obligors or alleged fathers who have income between five thousand five hundred one dollars ($5,501) and six thousand five hundred dollars ($6,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(15) The number of obligors or alleged fathers who have income between six thousand five hundred one dollars ($6,501) and seven thousand five hundred dollars ($7,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(16) The number of obligors or alleged fathers who have income between seven thousand five hundred one dollars ($7,501) and nine thousand dollars ($9,000) reported to the Employment Development Department during the third quarter of the fiscal year.

(17) The number of obligors or alleged fathers who have income exceeding nine thousand dollars ($9,000) reported to the Employment Development Department during the third quarter of the fiscal year.

(18) The number of obligors or alleged fathers who have two or more employers reporting earned income to the Employment Development Department during the third quarter of the fiscal year.

(19) The number of obligors or alleged fathers who receive unemployment benefits during the third quarter of the fiscal year.

(20) The number of obligors or alleged fathers who receive state disability benefits during the third quarter of the fiscal year.

(21) The number of obligors or alleged fathers who receive workers' compensation benefits during the third quarter of the fiscal year.

(22) The number of obligors or alleged fathers who receive Social Security Disability Insurance benefits during the third quarter of the fiscal year.

(23) The number of obligors or alleged fathers who receive Supplemental Security Income/State Supplementary Program for the

Aged, Blind and Disabled benefits during the third quarter of the fiscal year.

(f) The department, in consultation with the Legislative Analyst's office, the Judicial Council, the California Family Support Council, and child support advocates, shall develop regulations to ensure that all local child support agencies report the data required by this section uniformly and consistently throughout California.

(g) The department shall provide the information for all participating counties for the 2000–01 fiscal year to each member of a county board of supervisors, county executive officer, local child support agency, and the appropriate policy committees and fiscal committees of the Legislature by December 31, 2001. The department shall provide the information for each subsequent fiscal year no later than nine months following the end of the fiscal year. The department shall provide data semiannually no later than three months following the end of the reporting period and no later than nine months following the end of the fiscal year. The department shall present the information in a manner that facilitates comparison of county performance.

(h) For purposes of this section, ''case'' means a noncustodial parent, whether mother, father, or putative father, who is, or eventually may be, obligated under law for support of a child or children. For purposes of this definition, a noncustodial parent shall be counted once for each family that has a dependent child he or she may be obligated to support.

(i) This section shall be operative only for as long as Section 17704 requires participating counties to report data to the department.

SEC. 8. Section 17602 of the Family Code is amended to read:

17602. (a) Not later than January 1, 2001, the department shall adopt performance standards, in consultation with local child support agencies, that each local child support agency is required to comply with on a quarterly basis. The performance standards shall include, at a minimum, measurements for each of the following:

(1) Percent of cases with a court order for current support.

(2) Percent of cases with collections of current support.

(3) Average amount collected per case for all cases with collections.

(4) Percent of cases with an order for arrears.

(5) Percent of cases with arrears collections.

(6) Percent of alleged fathers or obligors who were served with a summons and complaint to establish paternity or a support order during the period.

(7) Percent of children for whom paternity has been established during the period.

(8) Percent of cases that had a support order established during the period.

(9) Total child support dollars collected per one dollar ($1) of total expenditure.

(10) Any other measurements that the director determines to be an appropriate determination of a local child support agency's performance.

(b) In determining the performance measures in subdivision (a), the department shall consider the total amount of uncollected child support arrearages that are realistically collectible. The director shall analyze, in consultation with local child support agencies and child support advocates, the current amount of uncollected child support arrearages statewide and in each county to determine the amount of child support that may realistically be collected. The director shall consider, in conducting the analysis, factors that may influence collections, including demographic factors such as welfare caseload, levels of poverty and unemployment, rates of incarceration of obligors, and age of delinquencies. The director shall use this analysis to establish program priorities as provided in paragraph (7) of subdivision (b) of Section 17306.

(c) The department shall use the performance-based data, and the criteria for that data, as set forth in Section 17600 to determine a local child support agency's performance measures for the quarter.

(d) The director shall adopt a three phase process to be used statewide when a local child support agency is out of compliance with the performance standards adopted pursuant to subdivision (a), or the director determines that the local child support agency is failing in a substantial manner to comply with any provision of the state plan, the provisions of this code, the requirements of federal law, the regulations of the department, or the cooperative agreement. The director shall adopt policies as to the implementation of each phase, including requirements for measurement of progress and improvement which shall be met as part of the performance improvement plan specified in paragraphs (1) and (2), in order to avoid implementation of the next phase of compliance. The director shall not implement any of these phases until July 1, 2001, or until six months after a local child support agency has completed its transition from the office of the district attorney to the new county department of child support services, whichever is later. The phases shall include the following:

(1) Phase I: Development of a performance improvement plan that is prepared jointly by the local child support agency and the department, subject to the department's final approval. The plan shall provide performance expectations and goals for achieving compliance with the state plan and other state and federal laws and regulations that must be reviewed and assessed within specific timeframes in order to avoid execution of Phase II.

(2) Phase II: Onsite investigation, evaluation and oversight of the local child support agency by the department. The director shall appoint program monitoring teams to make site visits, conduct educational and training sessions, and help the local child support agency identify and attack problem areas. The program monitoring teams shall evaluate all aspects of the functions and performance of the local child support agency, including compliance with state and federal laws and regulations. Based on these investigations and evaluations, the program monitoring team shall develop a final performance improvement plan and shall oversee implementation of all recommendations made in the plan. The local child support agency shall adhere to all recommendations made by the program monitoring team. The plan shall provide performance expectations and compliance goals that must be reviewed and assessed within specific timeframes in order to avoid execution of Phase III.

(3) Phase III: The director shall assume, either directly or through agreement with another entity, responsibility for the management of the child and spousal support enforcement program in the county until the local child support agency provides reasonable assurances to the director of its intention and ability to comply. During the period of state management responsibility, the director or his or her authorized representative shall have all of the powers and responsibilities of the local child support agency concerning the administration of the program. The local child support agency shall be responsible for providing any funds as may be necessary for the continued operation of the program. If the local child support agency fails or refuses to provide these funds, including a sufficient amount to reimburse any and all costs incurred by the department in managing the program, the Controller may deduct an amount certified by the director as necessary for the continued operation of the program by the department from any state or federal funds payable to the county for any purpose.

(e) The director shall report in writing to the Legislature semiannually, beginning July 1, 2001, on the status of the state child support enforcement program. The director shall submit data semiannually to the Legislature, the Governor, and the public, on the progress of all local child support agencies in each performance measure, including identification of the local child support agencies that are out of compliance, the performance measures that they have failed to satisfy, and the performance improvement plan that is being taken for each.

SEC. 9. Section 17700 of the Family Code is repealed.

SEC. 10. Section 17704 of the Family Code is amended to read:

17704. (a) For the 1998–99 fiscal year the department shall pay to each county a child support incentive payment. Every county shall

receive the federal child support incentive. A county shall receive the state child support incentive if it elects to do both of the following:

(1) Comply with the reporting requirements of Section 17600 while federal financial participation is available for collecting and reporting data.

(2) Comply with federal and state child support laws and regulations, or has a corrective action plan certified by the department pursuant to Section 17702. The combined federal and state incentive payment shall be 13.6 percent of distributed collections. If the amount appropriated by the Legislature for the state incentives is less than the amount necessary to satisfy each county's actual incentives pursuant to this section, each county shall receive its proportional share of incentives.

(b) (1) Beginning July 1, 1999, the department shall pay to each county a child support incentive for child support collections. Every county shall receive the federal child support incentive. The combined federal and state incentive payments shall be 13.6 percent of distributed collections. In addition to the federal child support incentive, each county may also receive a state child support incentive. Subject to subdivision (c), a county shall receive the state child support incentive if it elects to do both of the following:

(A) Comply with the reporting requirements of Section 17600 while federal financial participation is available for collecting and reporting data.

(B) Be in compliance with federal and state child support laws and regulations, or have a performance improvement plan certified by the department pursuant to Section 17702.

(2) (A) For purposes of paragraph (1), the federal incentive component shall be each county's share of the child support incentive payments that the state receives from the federal government, based on the county's collections.

(B) (i) Effective July 1, 1999, and annually thereafter, state funds appropriated for child support incentives shall first be used to fund the administrative costs incurred by local child support agencies in administering the child support program, excluding automation costs as set forth in Section 10085 of the Welfare and Institutions Code, after subtracting all federal financial participation for administrative costs and all federal child support incentives received by the state and passed on to the local child support agencies. The department shall allocate sufficient resources to each local child support agency to fully fund the remaining administrative costs of its budget as approved by the director pursuant to paragraph (9) of subdivision (b) of Section 17306, subject to the appropriation of funding in the annual Budget Act. No later than January 1, 2000, the department shall identify allowable administrative costs that may be claimed for reimbursement from the state, which shall

be limited to reasonable amounts in relation to the scope of services and the total funds available. If the total amount of administrative costs claimed in any year exceeds the amount appropriated in the Budget Act, the amount provided to local child support agencies shall be reduced by the percentage necessary to ensure that projected General Fund expenditures do not exceed the amount authorized in the Budget Act.

(ii) Effective July 1, 2001, and annually thereafter, after allowable administrative costs are funded under clause (i), the department shall use any remaining unallocated incentive funds appropriated from the prior fiscal year which are hereby reappropriated to implement an incentive program that rewards up to 10 local child support agencies in each year, based on their performance or increase in performance on one or more of the federal performance standards set forth in Section 458 of the federal Social Security Act (42 U.S.C. Sec. 658), or state performance standards set forth in subdivision (a) of Section 17602, as determined by the department. The department shall determine the number of local agencies that receive state incentive funds under this program, subject to a maximum of 10 agencies and shall determine the amount received by each local agency based on the availability of funds and each local child support agency's proportional share based on the performance standard or standards used.

(iii) Any funds received pursuant to this subdivision shall be used only for child support enforcement activities.

(c) (1) Beginning October 1, 1999, any county whose performance on one or more of the federal performance standards set forth in Section 458 of the federal Social Security Act (42 U.S.C. Sec. 658), or the state performance standards set forth in subdivision (a) of Section 17602, as determined by the department, is in the bottom quartile of all counties and whose rate of improvement over the prior year is less than the rate of improvement of the top quartile of counties in terms of their rates of improvement shall receive its state incentive only upon accepting technical assistance from the department, as set forth in paragraph (2).

(2) The department, in consultation with experts from other counties, as appropriate, shall conduct a program review of the county's child support program, which shall include a review of the county's management practices, and provide technical assistance. If the county chooses to receive its state incentives under this section, the county shall comply with the recommendations of this review.

(d) Each county shall continue to receive its federal child support incentive funding whether or not it elects to participate in the state child support incentive funding program.

(e) The department shall provide incentive funds pursuant to this section only during any fiscal year in which funding is provided for that purpose in the Budget Act.

SEC. 10.5. Section 17801 of the Family Code is amended to read:

17801. (a) A custodial or noncustodial parent who is dissatisfied with the local child support agency's resolution of a complaint shall be accorded an opportunity for a state hearing when any one or more of the following actions or failures to take action by the department or the local child support agency is claimed by the parent:

(1) An application for child support services has been denied or has not been acted upon within the required timeframe.

(2) The child support services case has been acted upon in violation of state or federal law or regulation or department letter ruling, or has not yet been acted upon within the required timeframe, including services for the establishment, modification, and enforcement of child support orders and child support accountings.

(3) Child support collections have not been distributed or have been distributed or disbursed incorrectly, or the amount of child support arrears, as calculated by the department or the local child support agency is inaccurate. The amount of the court order for support, including current support and arrears, is not subject to a state hearing under this section.

(4) The child support agency's decision to close a child support case.

(b) Prior to requesting a hearing pursuant to subdivision (a), the custodial or noncustodial parent shall exhaust the complaint resolution process required in Section 17800, unless the local child support agency has not, within the 30-day period required by that section, submitted a written resolution of the complaint. If the custodial or noncustodial parent does not receive that timely written resolution he or she may request a hearing pursuant to subdivision (a).

(c) A hearing shall be provided under subdivision (a) when the request for a hearing is made within 90 days after receiving the written notice of resolution required in Section 17800 or, if no written notice of resolution is provided within 30 days from the date the complaint was made, within 90 days after making the complaint.

(d) (1) A hearing under subdivision (a) shall be set to commence within 45 days after the request is received by the state hearing office, and at least 10 days prior to the hearing, all parties shall be given written notice of the time and place of the hearing. Unless the time period is waived by the complainant, the proposed hearing decision shall be rendered by the state hearing office within 75 days after the request for a state hearing is received by the state hearing office. The department shall have 15 days from the date the proposed decision is rendered to act upon the decision. When a hearing is postponed, continued, or reopened with the consent of the complainant, the time for issuance of the decision, and action on the decision by the department, shall be extended

for a period of time consistent with the postponement, continuance, or reopening.

(2) For purposes of this subdivision, the ''state hearing office'' refers to the division of the office or agency designated by the department to carry out state hearings, that conducts those state hearings.

(e) To the extent not inconsistent with this section, hearings under subdivision (a) shall be provided in the same manner in which hearings are provided in Sections 10950 to 10967 of the Welfare and Institutions Code and the State Department of Social Services' regulations implementing and interpreting those sections.

(f) Pendency of a state hearing shall not affect the obligation to comply with an existing child support order.

(g) Any child support determination that is subject to the jurisdiction of the superior court and that is required by law to be addressed by motion, order to show cause, or appeal under this code shall not be subject to a state hearing under this section. The director shall, by regulation, specify and exclude from the subject matter jurisdiction of state hearings provided under subdivision (a), grievances arising from a child support case in the superior court which must, by law, be addressed by motion, order to show cause, or appeal under this code.

(h) The local child support agency and the Franchise Tax Board shall comply with, and execute, every decision of the director rendered pursuant to this section.

(i) The director shall contract with the State Department of Social Services or the Office of Administrative Hearings for the provision of state hearings in accordance with this section.

(j) This section shall be implemented only to the extent that there is federal financial participation available at the child support funding rate set forth in Section 655(a)(2) of Title 42 of the United States Code.

SEC. 10.7. 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 local child support agency caseworker, unless the investigator, inspector, or caseworker 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 volunteer 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 that 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.

(34) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(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 their employees specified in subdivision (a) in the duties of mandated reporters 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. 11. Section 11476.2 of the Welfare and Institutions Code is amended to read:

11476.2. On a monthly basis, the local child support agency shall provide to any CalWORKs recipient or former recipient for whom an assignment pursuant to subdivision (a) of Section 11477 is currently effective, a notice of the amount of assigned support payments made on behalf of the recipient or former recipient or any other family member for whom public assistance is received.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 928

An act to add Sections 1366.1 and 1375.3 to the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1366.1 is added to the Health and Safety Code, to read:

1366.1. (a) The department shall adopt regulations on or before July 1, 2003, that establish an extended geographic accessibility standard for access to health care providers served by a health care service plan in counties with a population of 500,000 or less, and that, as of January 1, 2002, have two or fewer health care service plans providing coverage to the entire county in the commercial market.

(b) This section shall not apply to specialized health care service plans or health care service plan contracts that provide benefits to enrollees through any of the following:

(1) Preferred provider contracting arrangements.

(2) The Medi-Cal program.
(3) The Healthy Families Program.
(4) The federal Medicare program.

(c) At least 30 days before a health care service plan files a notice of material modification of its license with the department to withdraw from a county with a population of 500,000 or less, the health care service plan shall hold a public meeting in the county from which it is intending to withdraw, and shall do all of the following:

(1) Provide notice announcing the public meeting at least 30 days prior to the public meeting to all affected enrollees, health care providers with which it contracts, the members of the board of supervisors of the affected county, the members of the city councils of cities in the affected county, and members of the Legislature who represent the affected county.

(2) Provide notice announcing the public meeting at least 15 days prior to the public meeting in a newspaper of general circulation within the affected county.

(3) At the public meeting, allow testimony, which may be limited to a certain length of time by the health care service plan, of all interested parties.

(4) File with the department for review, no less than 30 days prior to the date of mailing or publication, the notices required under paragraphs (1) and (2).

(d) The department may require a health care service plan that has filed to withdraw from a portion of a county with a population of less than 500,000, to hold a hearing for affected enrollees.

(e) A representative of the department shall attend the public meeting described in this section.

SEC. 2. Section 1375.3 is added to the Health and Safety Code, to read:

1375.3. (a) A health care service plan shall meet and confer with the director and his or her designated representatives at least 10 business days prior to filing a petition commencing a case for bankruptcy under Title 11 of the United States Code, except under extraordinary circumstances. If extraordinary circumstances preclude a meet and confer with the director within the 10-day time period prior to the filing of a petition for bankruptcy, the plan shall meet and confer with the department at least 24 hours prior to filing the petition. A plan shall notify the department concurrently upon filing the petition. These meetings shall be deemed confidential.

(b) At the director's request, a plan shall provide within the time period specified by the department, information to assist in ensuring continuity of care and uninterrupted access to health care services for

plan subscribers and enrollees. The information may include, but is not limited to, the following:

(1) A list of all providers with which the plan contracts and material information regarding the contracts including, but not limited to, the grounds for termination of the contract and the term remaining on the contract.

(2) A list of employer groups who subscribe with the plan.

(3) A list of the enrollees of the plan.

(4) A list of enrollees undergoing current treatment and a description of the authorized treatment for the enrollee.

(5) A list of all brokers and agents involved in the negotiation of subscriber contracts.

(6) A list of all enrollees who contract as individual subscribers for coverage by the plan.

(c) Notwithstanding subdivision (a), nothing in this section shall preclude the director from exercising powers and duties authorized under this chapter.

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 929

An act to add Section 1639.01 to the Health and Safety Code, relating to tissue banks.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1639.01 is added to the Health and Safety Code, to read.

1639.01. (a) Notwithstanding Section 1639, the state department shall adopt, on or before July 1, 2004, rules and regulations governing licensed tissue banks engaged in the collection of human musculoskeletal tissue, skin, and veins for transplantation in humans. The regulations shall be substantially based upon the criteria used by

tissue bank trade associations in their respective accreditation processes including, but not limited to, those of the Eye Bank Association of America and the American Association of Tissue Banks, and the scientific and technical data submitted by individual tissue banks.

(b) Regulations adopted by the state department, pursuant to subdivision (a), shall include minimum standards for all of the following:

(1) Safe preservation, transportation, storage, and handling of tissue acquired or used for transplantation.

(2) Testing of donors to determine compatibility when appropriate.

(3) Testing or assessment of donors to prevent the spread of disease through transplantation.

(4) Equipment.

(5) Methods.

(6) Personnel qualifications.

(7) Any other area concerning the operation or maintenance of a tissue bank, not inconsistent with this chapter, as may be necessary to carry out this chapter.

(c) On or before July 1, 2003, the department shall report to the appropriate policy and fiscal committees of the Legislature regarding the status of the proposed regulations.

CHAPTER 930

An act to amend and renumber Sections 47661 and 47661.5 of, and to add Section 42238.53 to, the Education Code, relating to charter schools.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 42238.53 is added to the Education Code, to read:

42238.53. (a) Sections 42238.51 and 42238.52 shall not apply to resident pupils in charter schools operating under the districtwide charter of a district that has converted all of its schools to charter status pursuant to Section 47606 and has elected not to be funded pursuant to Article 2 of Chapter 6 of Part 26 (commencing with Section 47633).

(b) For the purposes of this section, ''resident pupils'' means pupils who reside in, and are otherwise eligible to attend, a school in the specified district.

SEC. 2. Section 47661 of the Education Code is amended and renumbered to read:

42238.51. For purposes of paragraph (1) of subdivision (a) of Section 42238.5, a sponsoring school district's average daily attendance shall be computed as follows:

(a) Compute the sponsoring school district's regular average daily attendance in the current year, excluding all attendance of pupils in charter schools.

(b) Compute the sponsoring school district's second principal apportionment regular average daily attendance for the prior year, excluding all attendance of pupils who either attended a charter school in the prior year or who satisfy both of the following conditions:

(1) He or she attended one or more noncharter schools of the school district between July 1 and the last day of the second period, inclusive, in the prior year.

(2) He or she attended a charter school sponsored by the school district between July 1 and the last day of the second period, inclusive, in the current year.

(c) To the greater of the amounts computed pursuant to subdivisions (a) and (b), add the regular average daily attendance in the current year of all pupils attending charter schools sponsored by the district that are not funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.

(d) For the purposes of this section, a ''sponsoring school district'' shall mean a ''sponsoring local educational agency,'' as defined in Section 47632.

SEC. 3. Section 47661.5 of the Education Code is amended and renumbered to read:

42238.52. (a) Notwithstanding any other provision of law, the prior year average daily attendance for a school district determined pursuant to subdivision (b) of Section 42238.51 shall be increased by the prior year second principal apportionment average daily attendance of district residents only of any school that meets the following description:

(1) The school was a district noncharter school in any year prior to the prior year.

(2) The school was operated as a district-approved charter school in the prior year.

(3) The school is again operated as a district noncharter school in the current year.

(b) An adjustment to prior year average daily attendance pursuant to this section may not be made for the attendance of pupils who were not residents of the school district in the prior year.

(c) This section applies to the 2000–01 fiscal year and subsequent fiscal years.

CHAPTER 931

An act to amend Section 1941.1 of the Civil Code, and to amend Sections 17961, 17980, and 124130 of, and to add Sections 17920.10, 105251, 105252, 105253, 105254, 105255, 105256, and 105257 to, the Health and Safety Code, relating to lead abatement.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 1941.1 of the Civil Code is amended to read:

1941.1. A dwelling shall be deemed untenantable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics or is a residential unit described in Section 17920.3 or 17920.10 of the Health and Safety Code:

(a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.

(b) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.

(c) A water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.

(d) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.

(e) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.

(f) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.

(g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being

responsible for the clean condition and good repair of the receptacles under his or her control.

(h) Floors, stairways, and railings maintained in good repair.

SEC. 1.5. Section 17920.10 is added to the Health and Safety Code, to read:

17920.10. (a) Any building or portion thereof including any dwelling unit, guestroom, or suite of rooms, or portion thereof, or the premises on which it is located, is deemed to be in violation of this part as to any portion that contains lead hazards. For purposes of this part, ''lead hazards'' means deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbing lead-based paint without containment, if one or more of these hazards are present in one or more locations in amounts that are equal to or exceed the amounts of lead established for these terms in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations or by this section and that are likely to endanger the health of the public or the occupants thereof as a result of their proximity to the public or the occupants thereof.

(b) In the absence of new regulations adopted by the State Department of Health Services in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) further interpreting or clarifying the terms ''deteriorated lead-based paint,'' ''lead-based paint,'' ''lead-contaminated dust,'' ''containment,'' or ''lead-contaminated soil,'' regulations in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations adopted by the State Department of Health Services pursuant to Sections 105250 and 124150 shall interpret or clarify these terms. If the State Department of Health Services adopts new regulations defining these terms, the new regulations shall supersede the prior regulations for the purposes of this part.

(c) In the absence of new regulations adopted by the State Department of Health Services in accordance with the rulemaking provisions of the Administrative Procedure Act defining the term ''disturbing lead-based paint without containment'' or modifying the term ''deteriorated lead-based paint,'' for purposes of this part ''disturbing lead-based paint without containment'' and ''deteriorated lead-based paint'' shall be considered lead hazards as described in subdivision (a) only if the aggregate affected area is equal to or in excess of one of the following:

(1) Two square feet in any one interior room or space.

(2) Twenty square feet on exterior surfaces.

(3) Ten percent of the surface area on the interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

(d) Notwithstanding subdivision (c), ''disturbing lead-based paint without containment'' and ''deteriorated lead-based paint'' shall be considered lead hazards, for purposes of this part, if it is determined that an area smaller than those specified in subdivision (c) is associated with a person with a blood lead level equal to or greater than 10 micrograms per deciliter.

(e) If the State Department of Health Services adopts regulations defining or redefining the terms ''deteriorated lead-based paint,'' ''lead-contaminated dust,'' ''lead-contaminated soil,'' ''disturbing lead-based paint without containment,'' ''containment,'' or ''lead-based paint,'' the effective date of the new regulations shall be deferred for a minimum of three months after their approval by the Office of Administrative Law and the regulations shall take effect on the next July 1 or January 1 following that three-month period. Until the new definitions apply, the prior definition shall apply.

SEC. 2. Section 17961 of the Health and Safety Code is amended to read:

17961. (a) The housing or building department or, if there is no building department acting pursuant to this section, the health department of every city, county, or city and county, or any environmental agency authorized pursuant to Section 101275, shall enforce within its jurisdiction all of this part, the building standards published in the State Building Standards Code, and the other rules and regulations adopted pursuant to this part pertaining to the maintenance, sanitation, ventilation, use, or occupancy of apartment houses, hotels, or dwellings. The health department or the environmental agency may, in conjunction with a local housing or building department acting pursuant to this section, enforce within its jurisdiction all of this part, the building standards published in the State Building Standards Code, and the other rules and regulations adopted pursuant to this part pertaining to the maintenance, sanitation, ventilation, use, or occupancy of apartment houses, hotels, or dwellings. Each department and agency, as applicable, shall coordinate enforcement activities with each other and interested departments and agencies in order to avoid unnecessary duplication.

(b) Notwithstanding subdivision (a), the health department of every city, county, or city and county, or any environmental agency authorized pursuant to Section 101275 may, in addition to the local building department, if any, enforce within its jurisdiction the provisions of Section 17920.10 and shall coordinate enforcement activities with other interested departments and agencies in order to avoid unnecessary duplication.

(c) The State Department of Health Services may enforce Section 17920.10 if any local agency or department specified in subdivisions (a) and (b) enters into a written agreement, approved and published pursuant to local government procedures, with the State Department of Health Services to enforce that section, or provides the State Department of Health Services with a written request to enforce that section for a specific case following the identification of a lead poisoned child in that jurisdiction.

SEC. 3. Section 17980 of the Health and Safety Code is amended to read:

17980. (a) If any building is constructed, altered, converted, or maintained in violation of any provision of, or of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to, this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall, after 30 days' notice to abate the nuisance, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building or a building described in Section 17920.10, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done as scheduled.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the enforcement agency, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

(c) (1) Notwithstanding subdivision (b) and notwithstanding local ordinances, tenants in a residential building shall be provided notice of any violation described in subdivision (a) that affects the health and safety of the occupants and that violates Section 1941.1 of the Civil Code, an order of the code enforcement agency issued after inspection of the premises declaring the dwelling to be in violation of any provision described in subdivision (a), the enforcement agency's decision to repair or demolish, or the issuance of a building or demolition permit following the abatement order of an enforcement agency.

(2) Notice pursuant to this subdivision shall be provided to each affected residential unit by the enforcement agency that issued the order or notice, in the manner prescribed by subdivision (a) of Section 17980.6.

(d) All notices issued by the enforcement agency to correct violations or to abate nuisances shall contain a provision notifying the owner that, in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year. In addition, in Los Angeles County, the notice shall contain a provision notifying the owner that within 10 days of recordation of a notice of substandard conditions or similar document, the owner is required to comply with Section 17997.

(e) The enforcement agency may charge the owner of the building for its postage or mileage cost for sending or posting the notices required to be given by this section.

SEC. 4. Section 105251 is added to the Health and Safety Code, to read:

105251. For purposes of this chapter, the following definitions shall apply:

(a) The following terms shall have the same meaning as contained in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations adopted by the State Department of Health Services pursuant to Sections 105250 and 124160: ''abatement,'' ''accredited training provider,'' ''certificate,'' ''course completion form,'' ''DHS-approved course,'' ''lead hazard,'' ''lead hazard evaluation,'' ''lead related construction work,'' ''public building,'' and ''residential building.''

(b) ''Department'' means the State Department of Health Services.

(c) ''Local enforcement agency'' means the health department, environmental agency, housing department, or building department of any city, county, or city and county.

SEC. 5. Section 105252 is added to the Health and Safety Code, to read:

105252. (a) It is unlawful for any person to offer lead-related construction courses to meet department certificate requirements unless that person is an accredited training provider as specified in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations, as adopted pursuant to Sections 105250 and 124160.

(b) It is unlawful for any person to issue, or offer to issue, a lead-related construction course completion form to any person except upon successful completion by that person of a DHS-approved course.

(c) The department or any local enforcement agency may, consistent with Section 17972, enter, inspect, and photograph any premises or facilities, and inspect and copy any business record, where any accredited training provider, or any person who offers lead-related construction courses or issues lead-related construction course completion forms, conducts business to determine whether the person is complying with this section.

(d) It is unlawful for any person who is an accredited training provider or who offers lead-related construction courses or issues lead-related construction completion forms, to refuse entry or inspection, the taking of photographs or other evidence, or access to copying of any record as authorized by this section, or to conceal or withhold evidence.

(e) A violation of this section shall be punishable by imprisonment for not more than six months in the county jail, a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 6. Section 105253 is added to the Health and Safety Code, to read:

105253. (a) Any person issued a certificate by the department to conduct lead-related construction work, abatement, or lead hazard evaluation, shall comply with regulations as specified in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations, as adopted pursuant to Sections 105250 and 124160.

(b) It is unlawful for any person to do either of the following:

(1) Falsely represent himself or herself as possessing a certificate issued by the department to conduct lead-related construction work, abatement, or lead hazard evaluation.

(2) Submit false information or documentation to the department in order to obtain or renew a certificate to conduct lead-related construction work, abatement, or lead hazard evaluation.

(c) The department or any local enforcement agency may, consistent with Section 17972, enter, inspect, and photograph any premises or facilities, and inspect and copy any business record, where any person issued a certificate by the department to perform lead-related construction work conducts business to determine whether the person is complying with this section.

(d) A violation of this section shall be punishable by imprisonment for not more than six months in the county jail, a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 7. Section 105254 is added to the Health and Safety Code, to read:

105254. (a) The following persons engaged in the following types of lead construction work shall have a certificate:

(1) Persons who receive pay for doing lead hazard evaluations, including, but not limited to, lead inspections, lead risk assessments, or lead clearance inspections, in residential or public buildings.

(2) Persons preparing or designing plans for the abatement of lead-based paint or lead hazards from residential or public buildings.

(3) Persons doing any work designed to reduce or eliminate lead hazards on a permanent basis (to last 20 years or more) from residential or public buildings.

(4) Persons inspecting for lead or doing lead abatement activities in a public elementary school, preschool, or day care center.

(5) Persons doing lead-related construction work in a residential or public building that will expose a person to airborne lead at or above the eight-hour permissible exposure limit of 50 micrograms per cubic meter.

(b) Persons performing routine maintenance and repairs in housing are not required to have a certificate if they are not performing any of the activities listed under subdivision (a).

(c) The department may adopt regulations to modify certification requirements for persons engaged in lead construction work based on changes to state or federal law, or programmatic need.

(d) The department or any local enforcement agency may, consistent with Section 17972, enter, inspect, and photograph any premises where abatement or a lead hazard evaluation is being conducted or has been ordered, enter the place of business of any person who conducts abatement or lead hazard evaluations, and inspect and copy any business record of any person who conducts abatement or lead hazard evaluations to determine whether the person is complying with this section.

(e) A violation of this section shall be punishable by imprisonment for not more than six months in the county jail, a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 8. Section 105255 is added to the Health and Safety Code, to read:

105255. (a) No person shall perform lead-related construction work on any residential or public building in a manner that creates a lead hazard.

(b) The department and any local enforcement agency may, consistent with Section 17972, enter, inspect, and photograph any premises where lead-related construction work is being performed, enter the place of business of any person who performs lead-related construction work, and inspect and copy any business record of any person who performs lead-related construction work to determine whether the person is complying with this section and any regulations specified in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations adopted by the State Department of Health Services pursuant to Sections 105250 and 124160.

(c) Notwithstanding any other provision of law, whenever the department or a local enforcement agency determines that a condition at a location or premises, or the activity of any person at the location or premises, is creating or has created a lead hazard at the location or premises, the department or the local enforcement agency may order the owner of the location or premises to abate or otherwise correct, at the option of the owner, the lead hazard, and may order the person whose activity is creating or has created the lead hazard, to cease and desist and shall give that owner or person a reasonable opportunity to correct.

(d) It is unlawful for any person to refuse or disobey any order issued pursuant to subdivision (c).

(e) A violation of subdivision (d) shall be punishable by a fine not to exceed one thousand dollars ($1,000). Any penalties under this section shall be in addition to any other penalty or remedy provided by law.

SEC. 9. Section 105256 is added to the Health and Safety Code, to read:

105256. (a) Notwithstanding any other provision of law, whenever the department or a local enforcement agency determines that a condition at a location or premises, or the activity of any person at the location or premises, is creating or has created a lead hazard at the location or premises, the department or the local enforcement agency may order the owner of the location or premises to abate the lead hazard, and may order the person whose activity is creating or has created the lead hazard, to cease and desist.

(b) It is unlawful for any person to refuse to obey any order issued pursuant to this section.

(c) A violation of this section shall be an infraction punishable by a fine not to exceed one thousand dollars ($1,000). Any penalties under this section shall be in addition to any other penalty or remedy provided by law.

SEC. 10. Section 105257 is added to the Health and Safety Code, to read:

105257. Notwithstanding subdivision (f) of Section 1464 of the Penal Code, any state penalties paid for the violation of this chapter shall be deposited into the General Fund.

SEC. 11. Section 124130 of the Health and Safety Code is amended to read:

124130. (a) A laboratory that performs a blood lead analysis on a specimen of human blood drawn in California shall report the information specified in this section to the department for each analysis on every person tested.

(b) The analyzing laboratory shall report all of the following:

(1) The test results in micrograms of lead per deciliter.

(2) The name of the person tested.

(3) The person's birth date if the analyzing laboratory has that information, or if not, the person's age.

(4) The person's address if the analyzing laboratory has that information, or if not, a telephone number by which the person may be contacted.

(5) The name, address, and telephone number of the health care provider that ordered the analysis.

(6) The name, address, and telephone number of the analyzing laboratory.

(7) The accession number of the specimen.

(8) The date the analysis was performed.

(c) The analyzing laboratory shall report all of the following information that it possesses:

(1) The person's gender.

(2) The name, address, and telephone number of the person's employer, if any.

(3) The date the specimen was drawn.

(4) The source of the specimen, specified as venous, capillary, arterial, cord blood, or other.

(d) The analyzing laboratory may report to the department other information that directly relates to the blood lead analysis or to the identity, location, medical management, or environmental management of the person tested.

(e) If the result of the blood lead analysis is a blood lead level equal to or greater than 10 micrograms of lead per deciliter of blood, the report required by this section shall be submitted within three working days of the analysis. If the result is less than 10 micrograms per deciliter, the report required by this section shall be submitted within 30 calendar days.

(f) Commencing January 1, 2003, a report required by this section shall be submitted by hand, courier, postal mail, facsimile, or electronic transfer. Commencing January 1, 2005, a report required by this section shall be submitted by electronic transfer.

(g) All information reported pursuant to this section shall be confidential, as provided in Section 100330, except that the department may share the information for the purpose of surveillance, case management, investigation, environmental assessment, environmental remediation, or abatement with the local health department, environmental health agency authorized pursuant to Section 101275, or building department. The local health department, environmental health agency, or building department shall otherwise maintain the confidentiality of the information in the manner provided in Section 100330.

(h) The director may assess a fine up to five hundred dollars ($500) against any laboratory that knowingly fails to meet the reporting requirements of this section.

(i) A laboratory shall not be fined or otherwise penalized for failure to provide the patient's birth date, age, address, or telephone number if the result of the blood lead analysis is a blood lead level less than 25 micrograms of lead per deciliter of blood, and if all of the following circumstances exist:

(1) The test sample was sent to the laboratory by another medical care provider.

(2) The laboratory requested the information from the medical care provider who obtained the sample.

(3) The medical care provider that obtained the sample and sent it to the laboratory failed to provide the patient's birth date, age, address, or telephone number.

SEC. 12. 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 932

An act to add Section 47613.2 to the Education Code, relating to charter schools.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 47613.2 is added to the Education Code, to read:

47613.2. Notwithstanding Sections 47613.1 and 47661, for the 2000–01 fiscal year, the revenue limit of an elementary school district may be determined using either the current or prior year second principal apportionment average daily attendance, whichever is greater, if all the schools in the district were converted to charter schools in the 2000–01 fiscal year and the district continued to be funded through the base revenue limit method.

CHAPTER 933

An act to amend Section 226 of the Labor Code, relating to employer payroll records.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. 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.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) 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.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) 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.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is 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 is entitled to an award of costs and reasonable attorney's fees.

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven hundred fifty dollar ($750) penalty from the employer.

(g) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

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

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 934

An act to amend Section 232 of, and to add Section 232.5 to, the Labor Code, relating to private employment.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 26, 2002.]

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

SECTION 1. Section 232 of the Labor Code is amended to read:

232. No employer may do any of the following:

(a) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages.

(b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages.

(c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.

SEC. 2. Section 232.5 is added to the Labor Code, to read:

232.5. No employer may do any of the following:

(a) Require, as a condition of employment, that an employee refrain from disclosing information about the employer's working conditions.

(b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose information about the employer's working conditions.

(c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer's working conditions.

(d) This section is not intended to permit an employee to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege without the consent of his or her employer.

CHAPTER 935

An act to amend Sections 17071.75, 17072.13, 17072.18, 17072.20, 17072.35, 17074.15, 17074.16, 17077.45, 17078.20, 17078.30, and 17213.1 of, to add Sections 17070.46, 17070.73, 17073.25, and 17180.5 to, and to add Article 12 (commencing with Section 17078.50) to Chapter 12.5 of Part 10 of, the Education Code, to add Section 53097.3 to the Government Code, and to amend Sections 51451.5, 51453, and 51455 of, and to add Section 51453.5 to, the Health and Safety Code, relating to school facilities, and making an appropriation therefor.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 17070.46 is added to the Education Code, to read:

17070.46. (a) For projects funded under this chapter, the following state agencies are deemed not to be the lead agency for the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code):

(1) The board.

(2) The Department of General Services.

(3) The Office of the State Architect.

(4) The Office of Public School Construction.

(5) The State Department of Education, except as appropriate for projects relating to the California School for the Deaf and the California School for the Blind.

(b) This section is declaratory of existing law.

SEC. 2. Section 17070.73 is added to the Education Code, to read:

17070.73. (a) A school district may claim the entire pupil attendance of a charter school that is physically located within its geographical jurisdiction, within the per-pupil eligibility calculation in support of a project for school facilities pursuant to this chapter.

(b) A school district shall not include the attendance of pupils attending a charter school that is physically located outside of the geographical jurisdiction of the school district, within the per-pupil eligibility calculation in support of an application for a project pursuant to this chapter.

(c) The requirements and conditions for funding charter school facilities in this section and in Article 12 (commencing with Section 17078.50) are intended to regulate only the funding of facilities under this chapter, and are not intended to expand, narrow, or raise any inference regarding, the nature or scope of any other law that is applicable to charter school governance, organization, or operation.

(d) Subdivisions (a) and (b) apply only to projects funded with the proceeds of state bonds approved by the voters after January 1, 2002.

SEC. 3. Section 17071.75 of the Education Code, as amended by Chapter 33 of the Statutes of 2002, is amended to read:

17071.75. After a one-time initial report of existing school building capacity has been completed, a school district's ongoing eligibility for new construction funding shall be determined by making all of the following calculations:

(a) Each school district that applies to receive funding for new construction shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection by the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for which facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the school district's baseline capacity pursuant to subdivision (a) of Section 17071.25.

(f) For a school district with an enrollment of 2,500, or less, an adjustment in enrollment projections shall not result in a loss of ongoing eligibility to that school district for a period of three years from the date of the approval of eligibility by the board.

SEC. 4. Section 17072.13 of the Education Code is amended to read:

17072.13. In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide site acquisition and hazardous materials evaluation and response action funding for proposed new schoolsites as follows:

(a) (1) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response action costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action in connection with hazardous substances at that site. Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent of the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 50 percent of $1^1/_2$ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(b) (1) The board may provide funding for up to 100 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) and for up to 100 percent of the other response action costs for the site. The funding provided pursuant to this subdivision may not exceed 100 percent of the total evaluation and response action costs, including, but not limited to, the costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action, as determined by the

Department of Toxic Substances Control, in connection with hazardous substances at that site, pursuant to standards adopted by the board.

(2) The board may provide funding pursuant to this subdivision only if the State Department of Education certifies that the site is the best available site considering all of the following factors in relation to other available sites:

(A) The total costs of the project, including, but not limited to, costs of evaluation and response action.

(B) The desirability of the site, considering its proximity to pupils and suitability for meeting the educational and safety needs of the school district.

(C) The time required to fully complete the project in relation to the current and projected need for school facilities.

(3) For projects eligible for funding under this subdivision, the total state share of the site acquisition costs, including evaluation and response action, shall not exceed 100 percent of $1^1/_2$ times the appraised value of the uncontaminated site. However, the board may exceed this maximum for projects that demonstrate circumstances of extreme need.

(c) A school district with a proposed site that meets the environmental hardship criteria set forth in paragraph (1) may apply to the board for site acquisition, including, but not limited to, evaluation and response action, funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education.

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

(A) The preparation and implementation of a response action for the site, to be approved by the Department of Toxic Substances Control pursuant to Section 17213, is estimated by the Department of Toxic Substances Control to take six months or more to complete.

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

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

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

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

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

(d) The cost incurred by the school districts when complying with any requirement identified in this section are allowable costs for purposes of an applicant under this chapter and may be reimbursed in accordance with this section.

(e) The State Allocation Board shall develop regulations that allow school districts with financial hardship site acquisition, including, but not limited to, evaluation and response action, funding prior to ownership of the site or evidence that the site is in escrow.

SEC. 5. Section 17072.18 of the Education Code is amended to read:

17072.18. (a) (1) The board may provide evaluation and response action funding for response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action in connection with hazardous substances at an existing schoolsite, in the same manner as provided in Section 17072.13.

(2) Funding as set forth in paragraph (1) may be provided to a school district that has not applied for, or received, funds from the board for the acquisition of a new schoolsite, but which has incurred, or will incur, response costs necessary for the development of the existing schoolsite, if the school district is otherwise eligible for funding under this chapter.

(b) A school district may apply for funding pursuant to this section prior to having construction plans for that site approved by the Division of the State Architect or by the State Department of Education if the school district is otherwise eligible for funding under this chapter.

SEC. 6. Section 17072.20 of the Education Code is amended to read:

17072.20. (a) An applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.

(b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided

pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.

(c) The board shall verify and adjust, as necessary, and approve the district's application.

SEC. 7. Section 17072.35 of the Education Code is amended to read:

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

SEC. 8. Section 17073.25 is added to the Education Code, to read:

17073.25. (a) Notwithstanding any provision of law to the contrary, the State Department of Education shall be eligible for modernization grants pursuant to this article for facilities of the California School for the Deaf (Chapter 1 (commencing with Section 59000) of Part 32) and the California School for the Blind (Chapter 2 (commencing with Section 59100) of Part 32).

(b) The department shall be eligible for per-pupil funding under this article to the same extent and in the same manner as a school district, except that the hardship provisions shall not apply. However, notwithstanding the 60 percent maximum funding for modernization projects, as set forth in Section 17074.16, the project shall be funded at 100 percent of the project costs, subject to per-pupil eligibility.

(c) The board shall establish a process specifically tailored to consideration of the unique aspects of applications presented by of the department pursuant to this section.

(d) This section shall apply only to projects for expenditure of the proceeds of state bonds approved by the voters after January 1, 2002.

SEC. 9. Section 17074.15 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17074.15. (a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 80-percent share, and the school district has provided its 20-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 20-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application filed on or before April 29, 2002, regardless of the source of state bond funding.

SEC. 10. Section 17074.16 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17074.16. (a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 60-percent share, and the school district has provided its 40-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 40-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application that was filed after April 29, 2002.

SEC. 11. Section 17077.45 of the Education Code is amended to read:

17077.45. (a) The board shall establish standards for determining the amount of the supplemental grant funding to be made available for each project under this article.

(1) For a project application qualifying for funding under paragraph (1) or (2) of subdivision (b) of Section 17077.40, the supplemental grant shall be in the form of an adjustment to the per-pupil eligibility of the project. This per-pupil eligibility adjustment shall be calculated to cover costs associated with the project that are uniquely related to the joint-use nature of the project, including, but not limited to, any increased costs associated with planning the joint-use aspect of the project.

(2) For a project application qualifying under paragraph (3) of subdivision (b), the supplemental grant may be provided without regard to the existence of per-pupil eligibility pursuant to this chapter, and may be expressed on per-square-foot cost basis, on a per-pupil cost basis, or on a per-project cost basis.

(b) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards established pursuant to subdivision (a) only if the excess is paid completely by local or joint-use partner sources.

(c) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purpose of this article. The board shall not release funds to a qualifying applicant until the project plans have received all approval required pursuant to this chapter, including, but not limited to, the approval of the Division of the State Architect. If the project does not receive all necessary plan approvals within one year of the date of the apportionment, the board shall rescind the apportionment.

(d) If the total funding for the purposes of this article is not sufficient to fund all of the joint-use projects for funding under this article, the board shall fund projects eligible under paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order. The board may establish other priority standards within that order, as necessary.

(e) Except as expressly provided in this article, projects funded pursuant to this article shall comply with all other requirements of this chapter, except for Article 11 (commencing with Section 17078.10), which shall apply only to projects under this article if they also qualify for funding under Article 11 (commencing with Section 17078.10).

SEC. 12. Section 17078.20 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17078.20. (a) The board shall disseminate information to school districts regarding the availability of funding pursuant to this article and the appropriate deadlines for applications.

(b) Applicants for funding pursuant to this article shall submit preliminary applications to the board.

(c) The preliminary applications shall be submitted by May 1, 2003, for projects to be funded with the proceeds of bonds approved by the voters at the November 5, 2002, statewide general election.

(d) Preliminary applications shall be accepted by the board during the period between 60 days before and 120 days after, the 2004 direct primary election, or the 2004 statewide general election, as appropriate for projects to be funded with the proceeds of bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate.

(e) If funds are insufficient to fully fund all of the preliminary applicants, the board shall apportion first to those projects that would house pupils from source schools with the highest pupil density levels relative to the State Department of Education standards.

SEC. 13. Section 17078.30 of the Education Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

17078.30. (a) (1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election that are not included in a preliminary apportionment for an application that is received by the deadline specified in subdivision (c) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the November 5, 2002, statewide general election pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(b) (1) A portion of the funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate, that are not included in a preliminary apportionment for an

application that is received by the deadline specified in subdivision (d) of Section 17078.20 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

(2) The amount of funds that shall be made available to the board for purposes other than this article, pursuant to this subdivision, shall be calculated as follows:

(A) Add the total amount preliminarily apportioned to 15 percent of that amount.

(B) Take the number calculated pursuant to subparagraph (A) and subtract that number from the amount originally reserved for the purposes of this article.

(C) The number calculated pursuant to subparagraph (B) shall thereafter be available to the board for any new construction purpose under any other article of this chapter.

(3) All funds reserved for the purposes set forth in this article from the proceeds of state bonds approved by the voters at the 2004 direct primary election, or the 2004 statewide general election, as appropriate, pursuant to a preliminary apportionment that are not included within a final apportionment within the timeframes permitted by Section 17078.25 shall thereafter be available to the board for apportionment for any new construction purpose under any other article of this chapter.

SEC. 14. Article 12 (commencing with Section 17078.50) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 12. Charter Schools

17078.50. (a) It is the intent of the Legislature that this article be implemented as a pilot program to determine the optimum method for providing school facilities funding for charter schools.

(b) This article shall apply only to projects that are funded from the proceeds of bonds authorized pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 100620, if approved by the voters.

(c) The State Allocation Board and the California School Finance Authority shall jointly report to the Legislature by July 1, 2003, regarding all of the following:

(1) The implementation of this article, including, but not limited to, a description of the projects funded pursuant to this article.

(2) A description of the process whereby the board provides funding for charter school facilities under provisions of this chapter other than this article.

(3) Recommendations, if any, regarding statutory changes needed to facilitate and streamline the process.

(d) The Legislature intends to consider the report pursuant to subdivision (c) when determining the best mechanism for providing future state financial assistance for charter school facilities, including, but not limited to, assistance funded with the proceeds of the state bonds authorized pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 100820.

17078.52. (a) There is hereby established the Charter Schools Facilities Program to provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils.

(b) The Charter School Facilities Account is hereby established within the 2002 State School Facilities Fund established pursuant to subdivision (b) of Section 17070.40. The proceeds of bonds as set forth in subparagraph (A) of paragraph (1) of subdivision (a) of Section 100620, as set forth in Chapter 33 of the Statutes of 2002, if approved by the voters, shall be deposited into the Charter School Facilities Account for the purposes of this article. Notwithstanding Section 13340 of the Government Code, funds deposited into the account are hereby continuously appropriated for the purposes of this article.

(c) As used in this article, the following terms have the following meanings:

(1) ''Authority'' means the California School Finance Authority established pursuant to Section 17172.

(2) ''Account'' means the Charter School Facilities Account established within the 2002 State School Facilities Fund pursuant subdivision (b).

(3) ''Preliminary apportionment'' means an apportionment made for eligible applicants under this article in advance of full compliance with all of the application requirements otherwise required for an apportionment pursuant to this chapter. The process for making preliminary apportionments under this article shall be substantially identical to the process established for critically overcrowded schools pursuant to Sections 17078.22 to 17078.30, inclusive.

(4) ''Financially sound'' means a charter school that has demonstrated, over a period of time determined by the authority, but not less than than 24 months immediately preceding the submission of the application, that it is a financially capable concern, as measured by criteria established by the authority.

(d) The board shall, from time to time, transfer funds within the account to the California School Finance Authority Fund for the purposes of this article pursuant to the request of the authority as set forth in this article.

17078.53. (a) The initial preliminary applications for projects to be funded pursuant to this article shall be submitted to the board by March 31, 2003.

(b) Thereafter, the board may establish subsequent application periods as needed.

(c) Preliminary applications may be submitted by eligible applicants as set forth in this article by either of the following:

(1) A school district on behalf of a charter school that is physically located within the geographical jurisdiction of the school district.

(2) A charter school on its own behalf if the charter school has notified both the superintendent and the governing board of the school district in which it is physically located of its intent to do so in writing at least 30 days prior to submission of the preliminary application.

(d) The board, after consideration of the recommendations of the authority regarding whether a charter school is financially sound, shall approve the preliminary application and shall make the preliminary apportionment for funding pursuant to this article.

(e) The board shall establish a process to ensure that pupil attendance in a charter school that is physically located within the geographical jurisdiction of a school district is counted as per-pupil eligibility for that school district and to ensure that the same per-pupil attendance is not so counted for any other school district or other applicant under this chapter.

17078.54. (a) An eligible project under this article shall include funding, as permitted by this chapter, for new construction of a school facility for charter school pupils, as set forth in this article. A new construction project may include, but is not limited to, the cost of purchasing and retrofitting an existing building, but shall not exceed the amounts set forth in subdivision (b).

(b) The maximum amount of the funding pursuant to this article shall be determined by calculating the charter school's per-pupil grant amount plus other allowable costs as set forth in this chapter. Funding shall be provided by the authority for new facility construction as set forth in Section 17078.58.

(c) To be funded under this article, a project shall comply with all of the following:

(1) (A) It shall meet all the requirements regarding public school construction, plan approvals, toxic substance review, site selection, and site approval, as would any noncharter school project of a school district under this chapter, including, but not limited to, regulations adopted by the State Architect pursuant to Section 17280.5 relating to the retrofitting of existing buildings, as applicable.

(B) Notwithstanding any provision of law to the contrary, including, but not limited to subparagraph (A), the board, after consulting with the relevant regulatory agencies, shall, to the extent feasible, adopt regulations establishing a process for projects to be subject to a streamlined method for obtaining regulatory approvals for all requirements described in subparagraph (A), except for the requirements

of the Field Act as defined in Section 17281 which shall be complied within the same manner as any other project under this chapter.

(2) It shall fund only new construction to be physically located within the geographical jurisdiction of a school district that has demonstrated construction grant eligibility as determined pursuant to Section 17072.10, and subdivision (e) of Section 17078.53, for at least the number of pupils set forth in the per-pupil grant request contained in the application.

(d) Facilities funded pursuant to this article shall have a 50 percent local share matching obligation that may be paid by the applicant through lease payments in lieu of the matching share, or as otherwise set forth in this article, including, but not limited to, Section 17078.58.

(e) The authority may charge its administrative costs against the Charter School Facilities Account, which shall be subject to the approval of the Department of Finance and which shall not exceed 2.5 percent of the account.

17078.56. (a) The board, in consultation with the authority, shall approve projects pursuant to this article as otherwise set forth in this chapter, and shall make preliminary apportionments only to financially sound applicants in accordance with all of the following criteria:

(1) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various geographical regions of the state.

(2) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of urban, rural, and suburban regions of the state.

(3) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of large, medium, and small charter schools throughout the state.

(4) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various grade levels of pupils served by charter school applicants throughout the state.

(b) While ensuring that the requirements of subdivision (a) are met when considering all approved projects under this article as a whole, the board shall, within each factor of the criteria set forth in subdivision (a), give a preference to charter schools in overcrowded school districts, charter schools in low-income areas, and charter schools operated by not-for-profit entities.

17078.57. (a) The authority, in consultation with the board, shall adopt regulations establishing uniform terms and conditions that shall apply equally to all projects for funding in accordance with Section 17078.58, including, but not limited to, all of the following:

(1) The process for determining the manner in which the applicant will pay its local matching share, including the method for determining any lease payments to be made in lieu of the local matching share. The regulations shall comply with all of the following criteria:

(A) The payment process set forth in Section 17199.4 may be used.

(B) The payment process shall permit lump-sum local matching payments and shall permit establishment of a schedule for lease payments to be made in lieu of the local matching share.

(C) The lease payment schedule shall be calculated by amortizing one-half of the total approved project costs, minus any lump-sum payments, over the entire payment period as set forth in Section 17078.58.

(D) The payment schedule for lease payments in lieu of the local matching funds pursuant to this section shall be based upon payment, within a reasonable period of time not to exceed a 30-year period, of one-half of the total eligible project costs, and shall be calculated in a manner that is designed to result in full payment of that portion, together with interest thereon at the rate paid on moneys in the Pooled Money Investment Account as of the date of disbursement of the funding.

(2) The method for determining whether a charter school is financially sound. In the case of a charter school chartered by a school district that is located outside of the school district that chartered it, the method developed by the authority shall include, but shall not be limited to, a site visit to the school facility currently being used by the charter school during hours when pupils are present and instruction is being provided.

(3) (A) Security provisions, including, but not limited to, the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.

(B) The authority shall adopt a mechanism whereby a person or entity who provides a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of as set forth in paragraph (5) of subdivision (b) of Section 17078.62.

(4) The method for integrating funding pursuant to this article with the authority's general procedures pursuant to subdivision (i) of Section 17180 for otherwise funding projects eligible for funding under this chapter, if appropriate.

(5) The process to be used for release of funds for approved projects pursuant to this article.

(b) The initial regulations shall be deemed to be emergency regulations.

17078.58. (a) Funding granted pursuant to this article may not exceed 100 percent of the total allowable project costs as determined by calculating double the per-pupil grant eligibility as set forth in Section 17072.10, and subdivision (e) of Section 17078.53, plus 100 percent of all other allowable construction project costs, as appropriate to the project, that would otherwise be available to school district projects as set forth in this chapter.

(b) The local share equivalent shall be collected in the form of lease payments or otherwise as set forth in this article.

(c) Lease payments in lieu of local share payments, and any other local share payments made pursuant to this article, shall be made to the State Allocation Board for deposit into the account. Funds deposited into the account pursuant to this section may be used by the board only for a purpose related to charter school facilities pursuant to this article.

17078.62. (a) As a first priority, the existing charter school shall be permitted to continue to use the facility until it is no longer needed by the charter school for charter school purposes.

(b) If the charter school occupying a facility funded pursuant to this article ceases to utilize the facility for a charter school purpose, all of the following apply:

(1) If the charter school is no longer using the facility because the school district in which the charter school is located has revoked or declined to renew the charter, the school district, as a necessary component of the first priority established in subdivision (a), shall not immediately occupy the facility, but shall allow a reasonable time, not to exceed six months, for completion of the review process contemplated in Section 47607 or 47607.5.

(2) As a second priority, any qualifying successor charter school shall be permitted to meet its facility needs by occupying the facility on equal terms as the prior charter school occupant.

(3) As a third priority, the school district in which the charter school is physically located may notify the authority and take possession of the facility and make the facility available for continued use as a public school facility.

(4) If the school district in which the charter school is physically located elects to take possession of a facility pursuant to paragraph (3), it shall pay the balance of the unpaid local matching share or demonstrate that it is willing and able to continue to make the lease payments in lieu of the local matching share on the same terms. However, the payments shall be reduced or eliminated, as appropriate, if the school district complies with all of the following:

(A) It demonstrates that it would have been eligible for hardship funding under Article 8 (commencing with Section 17075.10) at the

time that the application for funding the facility under this article was originally submitted.

(B) It certifies to the board that it will utilize the facilities for public school purposes for a period of at least five years from the date that it occupies the facility.

(5) If the school district declines to take possession pursuant to paragraph (3), or if the facility is subsequently no longer needed for public school purposes, the school district shall dispose of the facilities in a manner otherwise applicable to the disposal of surplus public schoolsites. Any unpaid local matching share shall be paid from the net proceeds, if any, of the disposition and shall be deposited into the account. To the extent that funds remain from the proceeds of the disposition after repayment of the local matching share, any security interest granted to a person or entity pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 17078.57 shall be satisfied.

(6) If the lease payments in lieu of the local matching share are fully paid, the school district shall continue to hold title to the facility, in trust, for the benefit of the state public school system. The school district shall permit continued use of the facility for charter school purposes as long as the facility is needed for those purposes.

17078.64. (a) In lieu of applying for funding under this article, a school district may elect to include facilities for a charter school that would be physically located within its geographical jurisdiction within its application for funding pursuant to the general provisions of this chapter, other than this article. However, the project would be outside the scope of this article, would not be subject to its provisions, and shall comply with this chapter in the same manner as any noncharter project. Moreover, any per-pupil eligibility that is used for that project shall not, also, support any project under this article.

(b) Except for those provisions in which the authority is expressly required or authorized to adopt regulations pursuant to this article, the board in consultation with the authority shall adopt regulations to implement this article. The initial regulations shall be deemed to be emergency regulations.

(c) This article is not applicable to projects funded with the proceeds of state general obligation bonds approved by the voters prior to January 1, 2002.

SEC. 15. Section 17180.5 is added to the Education Code, to read:

17180.5. (a) In addition to the powers authorized pursuant to Section 17180, the authority shall perform its duties under the Charter School Facilities Program to provide funding for facilities for charter school pupils as set forth in Article 12 (commencing with Section 17078.50) of Chapter 12.5.

(b) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 17197, with regard to the authority's implementation of funding for charter school facilities, Article 12 (commencing with Section 17078.50) shall control over conflicting provisions, if any, in this chapter.

SEC. 16. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the signed assessment, proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210, and the renewal fee shall be submitted to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall conduct its review and approval, within 30 calendar days of its receipt of that assessment, proof of qualifications, and the renewal fee. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 calendar days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental

assessment and shall notify, in writing, the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) (A) If the Department of Toxic Substances Control concludes after its review of a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the Department of Toxic Substances Control shall notify, in writing, the State Department of Education and the governing board of the school district of that decision and the basis for that decision. The school district shall submit to the State Department of Education the Phase I environmental assessment and requested additional information, if any, that was reviewed by the Department of Toxic Substances Control pursuant to that subparagraph. Submittal of the Phase I assessment and additional information, if any, to the State Department of Education shall be prior to the State Department of Education issuance of final site or plan approvals affect by that Phase I assessment.

(B) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an ''Environmental Oversight Agreement'' and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the

Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(i) A further investigation of the site is not required.

(ii) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a ''preliminary environmental assessment'' and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph (A) or (B):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment

and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001–02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001–02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing.

SEC. 17. Section 53097.3 is added to the Government Code to read:

53097.3. Notwithstanding any other provision of this article, no school district may render a city or county ordinance inapplicable to a charter school facility pursuant to this article, unless the facility is physically located within the geographical jurisdiction of that school district.

SEC. 18. Section 51451.5 of the Health and Safety Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

51451.5. The Homebuyer Down Payment Assistance Program of 2002 is hereby established, to provide assistance in the amount of the applicable school facility fee on affordable housing. The Homebuyer Down Payment Assistance Program of 2002 shall, with funds provided

by the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 (Part 68.1 (commencing with Section 100600) of the Education Code; and Part 68.2 (commencing with Section 100800) of the Education Code), provide the following assistance:

(a) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in an economically distressed area in the amount of school facility fees paid pursuant to Section 65995.5 or 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code, notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(1) The development project is located in a county with an unemployment rate that equals or exceeds 125 percent of the state unemployment rate.

(2) Five hundred or more residential structures have been constructed in the county during 2001.

(3) A building permit for an eligible residential structure in the project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(5) The sales price of the eligible residential structure does not exceed 175 percent of the median sales price of residential structures in the county during the average of the previous five years.

(b) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in the aggregate amount of school facility fees paid pursuant to one, all, or any combination of subdivision (b) of Section 65995, Section 65995.5, or Section 65995.7 of the Government Code for the eligible residential structure if all of the following conditions are met:

(1) The assistance is provided to a qualified first-time home buyer pursuant to Section 50068.5.

(2) The qualified first-time home buyer does not exceed the lower or moderate-income requirements in Section 50093.

(3) A building permit for an eligible residential structure in the project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

SEC. 19. Section 51453 of the Health and Safety Code, as added by Chapter 33 of the Statutes of 2002, is amended to read:

51453. Notwithstanding Section 51452, the sum of twenty-five million dollars ($25,000,000) which is made available pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 100620 of the Education Code, shall be transferred to the School Facilities Fee Assistance Fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the department for allocation for the agency for administrative costs and to make payments to purchasers of newly constructed residential structures pursuant to Section 51451.5 from that fund as follows:

(a) Twelve million five hundred thousand dollars ($12,500,000) shall be available for the program set forth in subdivision (a) of Section 51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (b) of Section 51451.5 at the discretion of the executive director of the agency.

(b) Twelve million five hundred thousand dollars ($12,500,000) shall be available for the program set forth in subdivision (b) of Section 51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (a) of Section 51451.5 at the discretion of the executive director of the agency.

(c) If after 48 months, more than 20 percent of the funds identified in subdivisions (a) and (b) are not expended, the executive director of the agency may make all or part of those funds available to the California Homebuyer's Downpayment Assistance Program, as authorized under Chapter 11 (commencing with Section 51500).

(d) All repayments of disbursed funds pursuant to this chapter or any interest earned from the investment in the Surplus Money Investment Fund or any other moneys accruing to the fund from whatever source shall be returned to the fund and is available for allocation by the agency to the program established pursuant to Section 51451.5.

SEC. 20. Section 51453.5 is added to the Health and Safety Code, to read:

51453.5. Notwithstanding Section 51452, the sum of twenty-five million dollars ($25,000,000) which is made available pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 100820 of the Education Code, shall be transferred to the School Facilities Fee Assistance Fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the department for allocation for the agency for administrative costs and to make payments to purchasers of newly constructed residential structures pursuant to Section 51451.5 from that fund, as follows:

(a) Twelve million five hundred thousand dollars ($12,500,000) shall be available for the program set forth in subdivision (a) of Section

51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (b) of Section 51451.5 at the discretion of the executive director of the agency.

(b) Twelve million five hundred thousand dollars ($12,500,000) shall be available for the program set forth in subdivision (b) of Section 51451.5, except that if less than 50 percent of these funds are expended within 24 months, all or part of those funds shall be available for the program set forth in subdivision (a) of Section 51451.5 at the discretion of the executive director of the agency.

(c) If after 48 months, more than 20 percent of the funds identified in subdivisions (a) and (b) are not expended, the executive director of the agency may make all or part of those funds available to the California Homebuyer's Downpayment Assistance Program, as authorized under Chapter 11 (commencing with Section 51500).

(d) All repayments of disbursed funds pursuant to this chapter or any interest earned from the investment in the Surplus Money Investment Fund or any other moneys accruing to the fund from whatever source shall be returned to the fund and is available for allocation by the agency to the program established pursuant to Section 51451.5.

SEC. 21. Section 51455 of the Health and Safety Code, as amended by Chapter 33 of the Statutes of 2002, is amended to read:

51455. (a) Except as provided in subdivision (b), Sections 51450, 51451, 51452, and 51454 shall not be operative on and after January 1, 2002.

(b) Except as provided in Section 51453 and 51453.5, the School Facilities Fee Assistance Fund established by Section 51452 and the programmatic authority necessary to operate the programs authorized by Section 51451 shall continue on and after January 1, 2002, only with respect to any repayment obligation pertaining to that assistance or to any regulatory agreement imposed as a condition of that assistance.

SEC. 22. 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. 23. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect

other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 936

An act to amend Sections 11165.7 and 11166 of the Penal Code, relating to reporting requirements, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. 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 local child support agency caseworker unless the investigator, inspector, or caseworker 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 volunteer 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 custodian of records of a clergy member, as specified in this section and subdivision (c) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(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 their employees specified in subdivision (a) in the duties of mandated reporters 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. 2. 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. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to 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.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section

11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(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, coworker, 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 electronic transmission 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 makes a telephone report under this subdivision.

(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 makes a telephone report under this subdivision.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In light of ongoing investigations into the abuse of children and the need to protect the children of California, it is necessary for these provisions to take effect immediately.

CHAPTER 937

An act to amend Section 21810 of, and to add Section 24018 to, the Vehicle Code, relating to transportation.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. It is the intent of the Legislature that the California Transportation Commissions shall work in conjunction with all transportation agencies to assist in accessing addition assistance for the purposes of this act and that the transportation agencies shall make the purchase and maintenance of two-way communication devices to secure the safety of both drivers and the public a priority.

SEC. 2. Section 21810 of the Vehicle Code is amended to read:

21810. (a) The driver of a vehicle overtaking a transit bus shall yield the right-of-way to the bus if all of the following conditions are present:

(1) The transit bus has entirely exited an active traffic lane to board or deboard passengers at a designated bus stop, and is attempting to reenter the lane from which it exited.

(2) Directional signals on the transit bus are flashing to indicate that the bus is preparing to merge with traffic.

(3) The transit bus is equipped with a yield right-of-way sign on the left rear of the bus. The sign shall be both of the following:

(A) Designed to warn a person operating a motor vehicle approaching the rear of the bus that the person is required to yield the right-of-way to the bus when the bus is entering traffic.

(B) Illuminated by a flashing light when the bus is signaling in preparation for entering a traffic lane after having stopped to receive or discharge passengers.

(b) Nothing in this section requires a transit agency to install the yield right-of-way sign described in paragraph (3) of subdivision (a).

(c) This section does not relieve the driver of a transit bus from the duty to drive the bus with due regard for the safety of all persons and property. Nothing in this section relieves the transit agency from complying with the standard of care for its passengers established by Section 2100 of the Civil Code.

(d) The provisions of this section are applicable to the Santa Cruz Metropolitan Transit District, the Orange County Transportation Authority, the Alameda-Contra Costa Transit District, and the Santa Clara County Transit District, if the governing board of the district approves a resolution, after a public hearing on the issue, requesting that this section be made applicable to it, and transmits a copy of the resolution to the commissioner.

(e) (1) Notwithstanding Section 7055.5 of the Government Code, on or before December 31, 2002, the commissioner, after consultation with the participating transit agencies, participating law enforcement, and the advisory committee established pursuant to paragraph (3) of subdivision (a) of Section 34501 of the Vehicle Code, shall report to the Legislature on the effectiveness of the right-of-way for transit vehicles established by this section, including, but not limited to, any impact on the highway and local road safety and the efficiency of transit operations. The report shall recommend whether or not the right-of-way established by this section should be made permanent on a local basis, and whether it would be effective if implemented on a statewide basis.

(2) The commissioner, in consultation with the participating transit agencies, the California Transit Association, the advisory committee, and the participating local law enforcement agencies, shall identify the information required for preparation of the report required under paragraph (1). This information may include, but need not be limited to, all of the following:

(A) The total number of traffic collisions causing fatalities or injuries, and the number causing only property damage.

(B) Traffic congestion issues.

(C) Public opinion issues.

(D) Efficiency of transit operations.

(E) The public education program required under subdivision (i).

(3) The commissioner may develop a format and schedule for reporting the information identified under paragraph (2), and the local law enforcement agencies, transit agencies, and the California Transit Association shall provide the commissioner with the information by using that format and in compliance with that schedule.

(f) Each transit agency participating in the program shall undertake a public education program to inform motorists of the requirements imposed by this section.

(g) The base fine for a violation of subdivision (a) is thirty-five dollars ($35).

(h) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 3. Section 24018 is added to the Vehicle Code, to read:

24018. (a) Every transit bus operated by a motor carrier, whether that motor carrier is a private company or a public agency, that provides public transportation services shall be equipped with a two-way communication device that enables the driver to contact the motor carrier in the event of an emergency. The two-way communication devices shall be maintained in good working order.

(b) For the purposes of this section, ''two-way communication device'' is a radio, cellular telephone, or other similar device permitting communication between the transit bus driver and personnel responsible for the safety of operations of the motor carrier, including, but not limited to, the motor carrier's dispatcher.

(c) This section does not apply to buses operated by a school district or on behalf of a school district.

(d) The commissioner shall upon request grant a nonrenewable one year extension to any motor carrier to comply with the requirements of this section.

(e) Nothing in this section shall require a motor carrier to replace an existing two-way communication device that currently meets the requirements of this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 938

An act to amend Section 130051.12 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) On September 11, 2001, terrorists hijacked four commercial airliners in the United States, crashing two of them into the World Trade Center, one into the Pentagon, and another in Pennsylvania.

(2) These acts took the lives of thousands of innocent individuals, destroyed the World Trade Center, and caused vast amounts of property and other economic damages.

(3) These events reveal the need for increased security in all areas and, in particular, in our vital transportation industry to minimize the possibility of future terrorists attacks.

(4) The Los Angeles County Metropolitan Transportation Authority provides bus and rail transportation in a 1,433 square mile service area where more than nine million people reside, nearly one-third of California's total population. Protecting the security of these transportation services and the passengers who use them is of the utmost importance.

(b) It is the intent of the Legislature to initiate measures to provide this protection in the service area of the Los Angeles County Metropolitan Transportation Authority.

SEC. 2. Section 130051.12 of the Public Utilities Code is amended to read:

130051.12. (a) The Los Angeles County Metropolitan Transportation Authority shall, at a minimum, reserve to itself exclusively, all of the following powers and responsibilities:

(1) Establishment of overall goals and objectives to achieve optimal transport service for the movement of goods and people on a countywide basis.

(2) Adoption of the aggregate budget for all organizational units of the authority.

(3) Designation of additional included municipal operators pursuant to subdivision (f) of Section 99285.

(4) Approval of final rail corridor selections.

(5) Final approval of labor contracts covering employees of the authority and organizational units of the authority.

(6) Establishment of the authority's organizational structure.

(7) Conducting hearings and the setting of fares for the operating organizational unit established pursuant to paragraph (2) of subdivision (a) of Section 130051.11.

(8) (A) Approval of transportation zones.

(B) In determining the cost-effectiveness of any proposed transportation zone, the authority may not approve or disapprove a transportation zone based upon consideration of rates of wages and other forms of compensation or hours and working conditions of employees of the proposed transportation zone.

(C) Any determination of efficiencies that may be derived from the approval of a transportation zone shall include consideration of maintaining the prevailing rate of wages, hours, and other terms and conditions of employment contained in current collective bargaining agreements applicable to the authority as required under subdivision (d) of Section 130051.11.

(D) A proposed transportation zone is not required to demonstrate lower operating costs than those of the existing operator or operators of the service to be transferred to the zone, but shall demonstrate that the net cost will not be greater than the current service.

(9) Approval of the issuance of any debt instrument with a maturity date that exceeds the end of the fiscal year in which it is issued.

(10) Approval of benefit assessment districts and assessment rates.

(11) Approval of contracts for transit equipment acquisition that exceed five million dollars ($5,000,000), and making the findings required by subdivision (c) of Section 130238.

(b) The Los Angeles County Metropolitan Transportation Authority shall in conjunction with the other municipal operators in the County of Los Angeles perform a security assessment once every five years to determine the safety and security measures required to protect the operation of their systems and their passengers.

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 939

An act to amend Section 32301 of the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 32301 of the Financial Code is amended to read:

32301. Except as otherwise provided in this division:

(a) The Nonprofit Corporation Law shall apply to the corporation. However, whenever any provision of the Nonprofit Corporation Law conflicts with any provision of this division, the provision of the Nonprofit Corporation Law shall not apply and the provision of this division shall apply.

(b) The Business and Industrial Development Corporation Law (Division 15 (commencing with Section 31000)) shall apply to this corporation. However, whenever any provision of the Business and Industrial Development Corporation Law conflicts with any provision of this division, the provision of the Business and Industrial Development Corporation Law shall not apply and the provision of this division shall apply.

(c) The Small Business Development Corporation Law (Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code) shall apply to the corporation, except that, to the extent of any conflict between those provisions and this division, the provisions of this division shall prevail.

(d) Whenever a conflict exists between any of the following acts, the conflict shall be resolved by applying the conflicting provision contained in the act in order of preference as listed in this subdivision, and the applicable provision shall prevail over the other conflicting provisions:

(1) The Business and Industrial Development Corporations Law (Division 15 (commencing with Section 31000)).

(2) The Small Business Development Corporation Law (Ch. 1 (commencing with Section 14000), Pt. 5, Div. 3, Corp. C.).

(3) The Nonprofit Corporation Law (Div. 2 (commencing with Section 5000) Pt. 1, Corp. C.).

(e) The State Assistance Fund for Enterprise, Business, and Industrial Development Corporation (SAFE-BIDCO), which was established by this division, meets the definition of a community development

financial institution for purposes of eligibility consistent with Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to take effect as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 940

An act to amend Section 660 of, and to add and repeal Section 660.1 of, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 660 of the Harbors and Navigation Code is amended to read:

660. (a) Any ordinance, law, regulation, or rule relating to vessels, which is adopted pursuant to provisions of law other than this chapter by any entity other than the department, including but not limited to any county, city, port authority, district, or any state agency other than the department, shall, notwithstanding any other provision of law, pertain only to time-of-day restrictions, speed zones, special-use areas, and sanitation and pollution control, and the measure shall not conflict with this chapter or the regulations adopted by the department. Except as provided in subdivision (d), any measure relating to boats or vessels adopted by any governmental entity other than the department shall be submitted to the department prior to adoption and at least 30 days prior to the effective date thereof.

(b) Upon request of the Director of Fish and Game, or his or her designee, the department shall restrict or prohibit, based on the request, recreational vessel activity in Agua Hedionda Lagoon in San Diego County if that vessel activity would hinder or jeopardize the efforts of the Department of Fish and Game to control or eradicate Caulerpa taxifolia. Notice of the restriction or prohibition shall be posted conspicuously, and, at a minimum, in areas where boats are launched into the waterway where the restriction or prohibition is in effect. The operator of a vessel who violates any restrictions or prohibition pursuant

to this subdivision is subject to a fine of not more than two hundred fifty dollars ($250).

(c) The department may make special rules and regulations governing the use of boats or vessels on any body of water within the territorial limits of two or more counties, cities, or other political subdivisions if no special rules or regulations exist or if the department determines that the local laws regulating the use of boats or vessels on that body of water is not uniform and that uniformity is practicable and necessary.

(d) (1) Any entity, including but not limited to any county, city, port authority, district, or state agency, otherwise authorized by law to adopt measures governing the use and equipment, and matters relating thereto, of boats or vessels, may adopt emergency rules and regulations that are not in conflict with the general laws of the state relating to boats and vessels using any waters within the jurisdiction of the entity if those emergency rules and regulations are required to insure the safety of persons and property because of disaster or other public calamity.

(2) The emergency rules and regulations adopted under paragraph (1) shall become effective immediately upon adoption and may remain in effect for not to exceed 60 days thereafter. The emergency rules and regulations shall be submitted to the department on or before their adoption.

(3) After submission of emergency rules and regulations adopted pursuant to paragraph (1) to the department, the department may authorize the adopting entity to make the emergency rules and regulations effective for the period of time greater than 60 days that is necessary in view of the disaster or circumstances.

SEC. 2. Section 660.1 is added to the Harbors and Navigation Code, to read:

660.1. (a) Upon request of the Director of Fish and Game, or his or her designee, the department shall restrict or prohibit, based on the request, recreational vessel activity on waters of the state if that vessel activity would hinder or jeopardize the efforts of the Department of Fish and Game to control or eradicate Caulerpa taxifolia. Notice of the restriction or prohibition shall be posted conspicuously, and, at a minimum, in areas where boats are launched into the waterway where the restriction or prohibition is in effect. The operator of a vessel who violates any restriction or prohibition pursuant to this subdivision is subject to fine of not more than two hundred fifty dollars ($250).

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, is enacted before January 1, 2004, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 941

An act to amend Section 60233.5 of the Water Code, relating to water.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

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

(a) The waters of the state are a limited and renewable resource subject to increasing demands.

(b) Groundwater resources are of critical importance to meeting the water supply needs of the more than 4 million people that live and work on the Southern Coastal Plain of Los Angeles County.

(c) The Central and West Coast Basins are adjudicated groundwater basins that currently supply almost 40 percent of the water supply used in the area.

(d) The Water Replenishment District of Southern California (district) was established in 1959 for the purpose of replenishing the groundwater supplies of the Central and West Coast Basins.

(e) The district's ratepayers, which include numerous cities, special districts, and retail water purveyors, have rights and interests in the Central and West Coast Basins. These ratepayers include many cities in western Los Angeles County, including the Cities of Cerritos, Commerce, Compton, Downey, Lakewood, Long Beach, Los Angeles, Manhattan Beach, Montebello, Pico Rivera, Santa Fe Springs, Torrance, and Whittier. These ratepayers are directly accountable to the public and are responsible for providing reliable, cost-effective potable water service to their communities.

(f) The State Auditor, in its May 2002 report, found weaknesses in the district's current strategic plan or capital improvement program that identifies and prioritizes the implementation of its capital improvement projects.

(g) Disputes have arisen between the district and its ratepayers regarding the development of a long-range plan for managing the

resources of the Central and West Coast Basins, including, but not limited to, the components of a capital improvement program to accomplish the statutory purpose of the district.

(h) The State Auditor also found that improved communications between the district and its ratepayers is essential to the district's ability to successfully carry out its statutory purpose.

(i) The Department of Water Resources serves as watermaster in both the Central and West Coast Basins and has requested that all interested parties work together in a facilitated process in an effort to develop a mutually agreeable long-range water management plan.

(j) It is intent of the Legislature to assist the district's ratepayers in creating a long-term solution to managing the resources of the Central and West Coast Basins and to ensure accountability to, and collaboration with, the district's ratepayers.

SEC. 2. Section 60233.5 of the Water Code is amended to read:

60233.5. (a) Notwithstanding any other provision of this division, 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 May 2002, relating to the district.

(3) The State Auditor shall prepare and submit to the Legislature, not later than June 30, 2004, a report that includes its findings and recommendations resulting from the audit performed pursuant to this subdivision.

(4) The cost for the audit shall be reimbursed by the district's ratepayers.

(c) (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, including, but not limited to, capital improvement programs, and any amendments thereto, undertaken pursuant to subdivision (d), 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 consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) 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.

(d) (1) The district shall develop a five-year capital improvement program (CIP).

(2) The district shall consult with the technical advisory committee for the purpose of implementing a procedure to periodically update its capital improvement plan, including the development of a standardized approach to identify technical, legal, and financial risks related to capital improvement projects.

(e) Nothing in this section is intended to alter the district's ultimate decisionmaking authority with regard to capital improvement projects.

(f) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 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 942

An act to amend Section 46206 of the Education Code, relating to instructional time.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 46206 of the Education Code is amended to read:

46206. (a) The State Board of Education may waive the fiscal penalties set forth in this article for a school district or county office of education that fails to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year, or both.

(b) For fiscal penalties incurred as a result of a shortfall on instructional time in the 2000–01 fiscal year or thereafter, a waiver may only be granted pursuant to subdivision (a) upon the condition that the school or schools in which the minutes, days, or both, were lost, maintain minutes and days of instruction equal to those lost and in addition to the

amount otherwise prescribed in this article for twice the number of years that it failed to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year following the year, or both, commencing not later than the school year following the year in which the waiver was granted and continuing for each succeeding school year until the condition is satisfied. Compliance with the condition shall be specifically verified in the report of the annual audit of the school district or county office of education for each year in which the additional time is to be maintained. If an audit report for a year in which the additional time is to be maintained does not verify that the time was provided, that finding shall be addressed as set forth in Section 41344.

(c) It is the intent of the Legislature that school districts and county offices of education make every effort to make up any instructional days and minutes lost during the school year in which the loss occurred, rather than seeking a waiver pursuant to the provisions of this section.

(d) The State Board of Education may grant a waiver pursuant to subdivision (a) without the condition provided in subdivision (b) to any school district that maintained a single session kindergarten class in the 1982–83 school year for more than the maximum number of 240 minutes permitted by state law and that, due to the school district's growth and facilities limitations, is required to operate two sessions of kindergarten per day in the same classroom.

CHAPTER 943

An act to amend Sections 33352 and 51220 of, to amend and renumber Section 51223.1 of, to add Sections 51210.2 and 60605.2 to, and to repeal Section 51223.5 of, the Education Code, relating to physical education.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 33352 of the Education Code is amended to read:

33352. (a) The State Department of Education shall exercise general supervision over the courses of physical education in elementary and secondary schools of the state; advise school officials, school boards, and teachers in the development and improvement of their

physical education and activity programs; and investigate the work in physical education in the public schools.

(b) The department shall ensure that the data collected through the Coordinated Compliance Review indicates the actual number of minutes of instruction in physical education actually provided by each school district, for the purpose of determining whether each school district is in compliance with the physical education requirements of Sections 51210, 51220, 51222, and 51223.

(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. 2. Section 51210.2 is added to the Education Code, to read:

51210.2. (a) The Legislature hereby finds and declares that the physical fitness and motor development of children in the public elementary schools is of equal importance to that of other elements of the curriculum.

(b) It is, therefore, the intent of the Legislature to encourage each school district maintaining an elementary school composed of any of grades 1 to 6, inclusive, to do one of the following:

(1) Employ a credentialed physical education teacher to provide instruction in physical education for each class of grades 1 to 6, inclusive, within any elementary school in the district for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.

(2) Provide each teacher providing instruction in physical education to any of grades 1 to 6, inclusive, within any elementary school in the district with yearly theoretical practical training in developmental physical education, as set forth in the Physical Education Framework adopted by the State Department of Education pursuant to Section 33350, except that any teacher who has successfully completed one college level course in elementary physical education shall not be subject to this paragraph.

SEC. 3. 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, as required by Section 51222.

(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 dance, music, theater, and visual arts, 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. 4. Section 51223.1 of the Education Code is amended and renumbered to read:

51210.1. (a) (1) The Legislature finds and declares all of the following:

(A) The Education Code currently mandates 200 minutes of physical education every 10 schooldays for pupils in elementary school. Recent studies have shown that the vast majority of children and youth are not physically fit.

(B) According to a March 1997 report by the Centers for Disease Control, the percentage of children and adolescents who are overweight has more than doubled in the last 30 years. Most of this increase occurred within the last 10 years.

(C) Nearly 40 percent of children of ages five to eight years have health conditions that significantly increase their risk of early heart disease.

(D) Some 70 percent of girls, and 40 percent of boys, who are from 6 to 12 years of age do not have enough muscle strength to do more than one pullup.

(E) Most children lead inactive lives. On the average, first through fourth graders spend two hours watching television on schooldays and spend close to three and one-half hours watching television on weekend days.

(2) It is, therefore, the intent of the Legislature that all children shall have access to a high-quality, comprehensive, and developmentally appropriate physical education program on a regular basis.

(b) (1) Each school district selected by the Superintendent of Public Instruction pursuant to paragraph (2) shall report to the Superintendent of Public Instruction in the Coordinated Compliance Review as to the extent of its compliance with subdivision (g) of Section 51210 for grades 1 to 6, inclusive, during that school year.

(2) The Superintendent of Public Instruction shall select not less than 10 percent of the school districts of the state to report compliance with the provisions set forth in paragraph (1). The school districts selected shall provide a random and accurate sampling of the state as a whole.

(c) For purposes of determining compliance with paragraphs (1) and (2) of subdivision (b), the Superintendent of Public Instruction shall not count the time spent in recesses and the lunch period.

(d) A school district that fails to comply with the existing statutory requirements shall issue a corrective action plan to the State Department of Education in accordance with the Coordinated Compliance Review process.

(e) This section shall not be applicable to high schools.

SEC. 5. Section 51223.5 of the Education Code is repealed.

SEC. 6. Section 60605.2 is added to the Education Code, to read:

60605.2. (a) No later than December 1, 2004, the State Board of Education shall adopt model content standards, pursuant to

recommendations developed by the Superintendent of Public Instruction, in the curriculum area of physical education.

(b) The model content standards are intended to provide a framework for programs that a school may offer in the instruction of physical education. Nothing in this section shall be construed to require a school to follow the model content standards.

CHAPTER 944

An act to add Section 56046 to the Education Code, relating to special education.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. (a) The Legislature finds and declares that the process for obtaining the appropriate variety and level of educational and related services for an individual with exceptional needs can be complex and heavily dependent upon the findings, opinions, and recommendations of teachers, school psychologists, and other professional and paraprofessional educators, and that parents and guardians can benefit greatly from assistance provided by individuals who are knowledgeable about the needs and strengths of the individual pupil and about the process as it relates to an individual pupil's needs under the federal Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

(b) The Legislature further finds and declares that employees and contractors of school districts, county offices of education, and special education local planning areas, have a right to provide information and to express good faith opinions to parents regarding their rights under the federal Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the federal Americans with Disabilities Act, as well as state laws regarding individuals with exceptional needs.

SEC. 2. Section 56046 is added to the Education Code, to read:

56046. (a) An employee of a school district, county office of education, or a special education local planning area may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any person, including, but not limited to, a teacher, a provider of designated instruction and services, a paraprofessional, an instructional aide, a behavioral aide, a

health aide, other educators or staff of the local educational agency, a private individual or entity under contract with the local educational agency, or a subordinate of the employee, for the purpose of interfering with the action of that person at any time, to assist a parent or guardian of a pupil with exceptional needs to obtain services or accommodations for that pupil.

(b) If a person described in subdivision (a), believes an employee or agent of a local educational agency is in violation of subdivision (a) because of using or attempting to use official authority or influence, that person may file a complaint under the Uniform Complaint Procedures as set forth in Title 5 of the California Code of Regulations. When a person files a complaint pursuant to this subdivision, the state shall intervene directly and the conditions for intervention in Section 4650 of Title 5 of the California Code of Regulations are not applicable.

(c) Nothing in this section shall be construed to limit or alter any right a person described in subdivision (a) may have to file a complaint pursuant to either a governing board-adopted grievance process or a collectively bargained grievance process.

(d) Nothing in this section shall be construed to do any of the following:

(1) Limit or alter the right or duty of a public school official to direct or discipline an employee or contractor.

(2) Prevent a local educational agency from enforcing a law or regulation regarding conflicts of interest, incompatible activities, or the confidentiality of pupil records.

(e) (1) For the purposes of this section, ''services or accommodations'' includes information that would assist a parent or guardian obtain a free appropriate education for his or her child as guaranteed by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or other services or accommodations guaranteed under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), as well as, under state laws regarding individuals with exceptional needs.

(2) For the purpose of this section, ''use of official authority or influence'' includes promising to confer or conferring any benefit, affecting or threatening to affect any reprisal, or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action. ''Use of official authority or influence'' does not include good faith advocacy by an employee of a public school agency, to any person including another agency employee or contractor, regarding the services,

if any, to be provided to a pupil under the laws referred to in paragraph (1).

(f) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) A school employee's or contractor's assistance offered to a parent or guardian of a pupil with exceptional needs to obtain services or accommodations for that pupil may not interfere with the school employee's or contractor's regular duties for the local educational agency.

CHAPTER 945

An act to amend Section 250 of the Evidence Code, and to amend Section 6252 of the Government Code, relating to electronic communication.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 250 of the Evidence Code is amended to read:

250. ''Writing'' means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

SEC. 2. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) ''State agency'' means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) ''Local agency'' includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) ''Person'' includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) ''Public agency'' means any state or local agency.

(e) ''Public records'' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. ''Public records'' in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) ''Writing'' means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(g) ''Member of the public'' means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

SEC. 2.5. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) ''State agency'' means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) ''Local agency'' includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) ''Person'' includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) ''Public agency'' means any state or local agency.

(e) ''Public records'' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. ''Public records'' in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) ''Writing'' means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters,

words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(g) ''Member of the public'' means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

SEC. 3. The Legislature finds and declares that the amendments to Section 250 of the Evidence Code and Section 6252 of the Government Code made by this act do not constitute a change in, but are declaratory of, existing law.

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. Section 2.5 of this bill incorporates amendments to Section 6252 of the Government Code proposed by both this bill and AB 2937. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 6252 of the Government Code, and (3) this bill is enacted after AB 2937, in which case Section 2 of this bill shall not become operative.

CHAPTER 946

An act to amend Sections 884, 45040, 67003, 67005, 67006, 67028, 67030, 67036.5, 67039, 67041, 67042, 67044, 67051, 67051.1, 67051.5, 67051.6, 67052, 67053, 67054, 67055, 67056, 67058, 67059, 67059.5, 67060, 67061, 67062, 67081, 67082, 67091, 67094, 67101, 67102, 67103, 67104, 67105, 67107, 67111, 67112, 67121, 67122, 67123, 67124, 67125, 67126, 67131, 67132, 67133, 67134, 67140, 67141, 67142, and 67143 of, to add Sections 67040.5 and 67112.5 to, and to repeal Sections 48004, 67024, 67026, 67027, 67031, 67032, 67032.5, 67033, 67036, 67045, 67051.3, 67055.5, 67055.6, 67092, 67093, 67106, 67121.5, 67131.5, and 67131.6 of, the Food and Agricultural Code, relating to agricultural products commissions, and making an appropriation therefor.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 884 of the Food and Agricultural Code is amended to read:

884. (a) If for any reason the commodity is not released to the rightful owner after being in the custody of the commissioner for 48 hours or, in the case of a highly perishable commodity, any shorter period of time that the commissioner deems necessary, the commissioner may either sell the commodity by public auction or by private sale at fair market value to a commercial packer of the commodity, or, after 72 hours from the time of seizure, may donate the commodity to a nonprofit charitable organization. If donated, the commodity shall not be sold by the receiving party. If sold, all of the proceeds derived from the sale of the commodity shall be held by the commissioner for a period of not less than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The commissioner may require the payment by the owner of an amount sufficient to cover the costs incurred for a storage and sale of the commodity, but not to exceed the sale price of the commodity. If, after retention of the proceeds for a period of at least six months, no demand is made or if proof of ownership is not supplied, the commissioner shall deposit the proceeds of the sale of the commodity in the general fund of the county.

(b) If the commodity is unfit for human consumption, the commissioner may destroy it.

SEC. 2. Section 45040 of the Food and Agricultural Code is amended to read:

45040. (a) If for any reason the avocados are not released to the rightful owner after being in the custody of the secretary for 48 hours or, in the case of highly perishable avocados, any shorter period of time that the secretary deems necessary, the secretary may either sell the avocados by private sale at fair grower market value or, after 72 hours from the time of seizure, donate the avocados to a nonprofit charitable organization. If donated, the avocados shall not be sold by the receiving party. If sold by the secretary, all of the proceeds derived from the sale of the commodity shall be held by the secretary for a period of not less than six months, during which time the lawful owner of the avocados may submit satisfactory proof of ownership and obtain possession of the proceeds. The secretary may require the payment by the owner of an amount sufficient to cover the costs incurred for storage and sale of the avocados, but not to exceed the sale price of the avocados. If, after retention of the proceeds for a period of at least six months, no demand is made or if proof of ownership is not supplied, the secretary shall

deposit the proceeds of the sale of the avocados with the California Avocado Commission.

(b) If the avocados are unfit for human consumption, the secretary may destroy them.

SEC. 2.5. Section 48004 of the Food and Agricultural Code is repealed.

SEC. 3. Section 67003 of the Food and Agricultural Code is amended to read:

67003. The establishment of a commission is imperative for the efficient development and management of a national and international advertising program which will ensure that the California avocado industry can compete successfully in the marketplace and increase revenues to avocado producers.

SEC. 4. Section 67005 of the Food and Agricultural Code is amended to read:

67005. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of avocados the opportunity to avail themselves of the benefits of collective action in the broad fields of advertising; promotion; production, nutrition, and marketing research; quality and maturity standards; the collection and dissemination of crop volume and related statistics; and public education.

SEC. 5. Section 67006 of the Food and Agricultural Code is amended to read:

67006. No action taken by the commission, or by any person in accordance with this chapter or with rules or regulations adopted under this chapter, is a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

SEC. 6. Section 67024 of the Food and Agricultural Code is repealed.

SEC. 7. Section 67026 of the Food and Agricultural Code is repealed.

SEC. 8. Section 67027 of the Food and Agricultural Code is repealed.

SEC. 9. Section 67028 of the Food and Agricultural Code is amended to read:

67028. (a) (1) ''Handler'' means any person who engages, in this state, in the operation of selling, marketing, or distributing avocados which he or she has produced or purchased or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.

(2) ''Handler'' also includes any person engaged as a processor in the business of processing avocados.

(b) When the handler is a corporation or a limited liability company, all of the directors, officers, managers, and members of the corporation or limited liability company in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments to which a corporate handler or a handler that is a limited liability company may be subject pursuant to this chapter shall include identical liability upon each individual director, officer, manager, or member of the corporation or limited liability company.

(c) (1) ''Handler'' does not include a cooperative bargaining association that recommends that its members market their avocados through specified handlers and which otherwise is not involved in the sale of avocados.

(2) ''Handler'' also does not include a retailer, except for a retailer who purchases or acquires from any producer, or handles on behalf of any producer, avocados which were not previously subjected to regulation by the commission.

SEC. 10. Section 67030 of the Food and Agricultural Code is amended to read:

67030. ''Handle'' means to engage in the business of a handler.

SEC. 11. Section 67031 of the Food and Agricultural Code is repealed.

SEC. 12. Section 67032 of the Food and Agricultural Code is repealed.

SEC. 13. Section 67032.5 of the Food and Agricultural Code is repealed.

SEC. 14. Section 67033 of the Food and Agricultural Code is repealed.

SEC. 15. Section 67036 of the Food and Agricultural Code is repealed.

SEC. 16. Section 67036.5 of the Food and Agricultural Code is amended to read:

67036.5. ''Person'' means an individual, partnership, corporation, limited liability company, or other business entity.

SEC. 17. Section 67039 of the Food and Agricultural Code is amended to read:

67039. ''Producer'' or ''grower'' means any person who is engaged within this state in the business of producing, or causing to be produced, avocados for market.

SEC. 18. Section 67040.5 is added to the Food and Agricultural Code, to read:

67040.5. ''Secretary'' means the Secretary of the Department of Food and Agriculture.

SEC. 19. Section 67041 of the Food and Agricultural Code is amended to read:

67041. The commission shall establish five districts within the state, each representing approximately 20 percent of the avocado production in California.

SEC. 20. Section 67042 of the Food and Agricultural Code is amended to read:

67042. Beginning in the 2000-01 marketing season, districts shall be reapportioned every fifth year in accordance with the following procedures:

(a) The commission shall determine the average number of pounds of fruit actually produced by producers in each United States Postal Service zip code area in California in the two crop years prior to a referendum conducted pursuant to Section 67131. The average number of pounds of fruit so determined and the poundage from each year shall be used only for purposes of this section.

(b) The commission shall, by adding the pounds in each zip code area, determine the total average number of pounds of avocados produced in California in the two prior crop years.

(c) The commission shall divide the total pounds by five and the resulting number shall be known as the ''pro rata poundage.''

(d) The commission shall determine if the poundage in any existing district, as specified in Section 67041, varies by more than 10 percent from the pro rata poundage. In the event that such variance exists, the commission shall draw new district lines so that no district shall vary by more than 10 percent from the pro rata poundage.

SEC. 21. Section 67044 of the Food and Agricultural Code is amended to read:

67044. In the event that the commission is required to redistrict under Section 67042 and is unable to agree upon district boundaries by a two-thirds vote, within 60 days following receipt of information received pursuant to Section 67042, the commission shall notify the secretary who shall, within 10 days of receiving the notification, appoint an arbitrator. The arbitrator shall, within 80 days, reapportion existing districts to comply with the requirements of Section 67042.

SEC. 22. Section 67045 of the Food and Agricultural Code is repealed.

SEC. 23. Section 67051 of the Food and Agricultural Code is amended to read:

67051. There is in the state government the California Avocado Commission. The commission shall be composed of 10 avocado producers who are not handlers, two elected from each district, four avocado handlers elected on a statewide basis, and one public member.

The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

The secretary shall be a nonvoting ex officio member of the commission.

SEC. 24. Section 67051.1 of the Food and Agricultural Code is amended to read:

67051.1. Notwithstanding Section 67051, any handler that handles 30 percent or more of the volume of avocados in the preceding marketing season, as annually determined by the secretary, may appoint one handler member to the commission. All other handlers shall nominate and elect the remaining handler members pursuant to this chapter. Any handler appointed to the commission pursuant to this section shall maintain his or her eligibility under this section during the entire term of office. Any vacancy caused by the ineligibility of the handler shall be filled in accordance with Section 67053.

SEC. 25. Section 67051.3 of the Food and Agricultural Code is repealed.

SEC. 26. Section 67051.5 of the Food and Agricultural Code is amended to read:

67051.5. The secretary may require the commission to correct or cease any activity or function which is determined by the secretary not to be in the public interest or is in violation of this chapter.

If the commission refuses or fails to cease the activities or functions or to make corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities of the commission until the time that the cessation or correction of activities or functions as required by the secretary have been accomplished.

Any written notice, to cease any activity which is the subject of a contract of the commission entered into by the commission prior to the notice, shall not be effective until after the period of notice for termination provided in the contract or 120 days, whichever is shorter.

Upon service of the written notice, the secretary shall notify the commission in writing, of the specific acts which he or she determines are not in the public interest or are in violation of this chapter.

SEC. 27. Section 67051.6 of the Food and Agricultural Code is amended to read:

67051.6. Either the commission or the secretary may bring an action for judicial relief in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

SEC. 28. Section 67052 of the Food and Agricultural Code is amended to read:

67052. Each member on the commission, except the ex officio member, shall have an alternate member, to be elected in the same

manner as the member. An alternate member shall, in the absence of the member for whom he or she is an alternate, sit in place of the member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the member when sitting on the commission.

SEC. 29. Section 67053 of the Food and Agricultural Code is amended to read:

67053. Any vacancy of a member position on the commission occurring for any reason including the failure of any member to continue in his or her position due to a change in status making him or her ineligible to serve, or through death, removal, or resignation, shall be filled, for the unexpired portion of the term, by the alternate member for that position. Any vacancy of an alternate member position on the commission occurring for any reason, including the alternate's move to the member position as described in Section 67052, or the failure of any alternate member to continue in his or her position due to a change in status making him or her ineligible to serve, or through death, removal, or resignation, shall be filled for the unexpired portion of the term by a majority vote of the commission. Any person filling a vacant member or alternate member position shall fulfill all the qualifications set forth in this article as required for the member or alternate member whose office he or she is to fill.

SEC. 30. Section 67054 of the Food and Agricultural Code is amended to read:

67054. (a) Producer members and their alternates on the commission shall have a financial interest in producing, or causing to be produced, avocados for market. In order to be elected a member or alternate, a producer shall, at the time of the election, have a financial interest in the production of avocados within the district in which the producer stands for election.

(b) A producer may stand for election in any district in which the producer has a financial interest in the production of avocados.

(c) A producer who chooses to stand for election in a particular district shall not stand for election in any other district for a period of four years from the date of his or her most recent election to the commission. However, this subdivision does not apply in an election to fill vacancies created by the reapportionment of districts pursuant to Section 67042.

(d) Handler members and their alternates shall have a financial interest in handling avocados for markets.

(e) The public member shall not have any financial interest in the avocado industry. Except for the nomination of another public member, the public member and his or her alternate on the commission shall have all the powers, rights, and privileges of any other member on the commission.

SEC. 31. Section 67055 of the Food and Agricultural Code is amended to read:

67055. The term of office of all members and alternates, except the ex officio member, shall be for two years from the date of their election and until their successors are qualified; provided, however, that of the first members of the commission from each district, one shall serve for one year, and one shall serve for two years, with the determination of term of each such member to be made by lot. Subsequent to the election of the first members and alternates of the commission, the terms of the members and alternates shall continue to be staggered, as provided in this section. Terms of office of each member and alternate shall be limited to four consecutive terms.

SEC. 32. Section 67055.5 of the Food and Agricultural Code is repealed.

SEC. 33. Section 67055.6 of the Food and Agricultural Code is repealed.

SEC. 34. Section 67056 of the Food and Agricultural Code is amended to read:

67056. The commission shall be and is hereby declared and created a corporate body. It has the power to sue and be sued, to contract and be contracted with, and has and possesses all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings, records, and acts, when certified by an officer, are admissible in evidence in all courts of the state, and are prima facie evidence of the truth of all statements therein.

SEC. 35. Section 67058 of the Food and Agricultural Code is amended to read:

67058. The commission shall have the power to appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

SEC. 36. Section 67059 of the Food and Agricultural Code is amended to read:

67059. Unless otherwise specified, a quorum of the commission shall be any 11 voting members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

SEC. 37. Section 67059.5 of the Food and Agricultural Code is amended to read:

67059.5. The secretary or his or her representatives shall be notified and may attend each meeting of the commission.

SEC. 38. Section 67060 of the Food and Agricultural Code is amended to read:

67060. No commission member or alternate or member of a committee who is a nonmember of the commission shall receive a salary.

Each commission member and alternate, except the ex officio member, and each member of a committee who is a nonmember of the commission shall receive a sum of not to exceed one hundred dollars ($100) per day, as established by the commission, for each day spent in actual attendance at or in traveling to and from meetings of the commission or committees of the commission, or on authorized assignment for the commission, together with the necessary traveling expenses and meal allowances, as approved by the commission.

SEC. 39. Section 67061 of the Food and Agricultural Code is amended to read:

67061. All moneys received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission, shall be deposited in such financial institutions as the commission may designate and shall be disbursed by order of the commission through a member, officer, or employee designated for that purpose. Any such person shall be bonded by a fidelity bond, executed by a surety company authorized to transact business as such in the State of California, in favor of the commission, conditioned upon the strict accounting of all funds of the commission in the penal sum of not less than five hundred thousand dollars ($500,000).

SEC. 40. Section 67062 of the Food and Agricultural Code is amended to read:

67062. The state is not liable for the acts of the commission or its contracts, except for state-directed supervision of the avocado inspection program, as specified in Chapter 9 (commencing with Section 44971) of Division 17, which is performed under an agreement that specifies that each of the parties shall be responsible and liable for that party's decisions made pursuant to the agreement, and that each of the parties shall not be held liable by the other party for the decisions made pursuant to the agreement. Payment of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. No member of the commission or alternate member, or any employee or agent thereof, shall be personally liable on the contracts of the commission nor shall a member, alternate member, or employee of the commission be responsible individually in any way to any producer or handler or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate member shall be held responsible individually for any act or omission of any member of the commission. The liability of the members shall be several and not joint, and no member shall be liable for the default of any other members.

SEC. 41. Section 67081 of the Food and Agricultural Code is amended to read:

67081. The secretary shall establish a list of producers in each district. In establishing the lists, the secretary shall require that handlers in the state submit the names, mailing addresses, district numbers, and handled volume of each producer from whom they purchased or handled avocados in the preceding marketing season. The request for information from handlers shall be in writing and shall be filed by the handlers within 90 days following receipt of the written request.

Any producer of avocados whose name does not appear upon the secretary's list of producers may have his or her name established on the list by filing with the commission a signed statement, identifying himself or herself as a producer. Failure to be on the list does not exempt the producer from paying assessments under this chapter.

SEC. 42. Section 67082 of the Food and Agricultural Code is amended to read:

67082. Subsequent to the first election of members under this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures adopted by the commission and concurred in by the secretary.

SEC. 43. Section 67091 of the Food and Agricultural Code is amended to read:

67091. The powers and duties of the commission include, but are not limited to, all of the following:

(a) Adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary rules, procedures, and orders to carry out this chapter and in the exercise of its powers and the performance of its duties, including the adoption of rules to regulate appeals from any rule, procedure, or order of the commission.

(b) Administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to or in connection with or deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter.

(c) Employ a person, to serve, at the pleasure of the commission, as president and chief executive officer of the commission and other personnel, including legal counsel.

(d) Establish offices, incur expenses, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments that may be necessary, at the discretion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(e) Keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts are subject to an annual independent audit by an auditing firm approved by the secretary. The independent

audit shall be made a part of an annual report to all producers and handlers of avocados, copies of which shall also be submitted to the Legislature. In addition, the secretary may, as he or she determines necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission.

(f) Promote the sale of avocados by advertising and other promotional means for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for avocados and to educate and instruct the public with respect to avocados and the uses of the several varieties and the healthful properties and nutritional value of avocados.

(g) Enter into cost-sharing advertising with other products considered, by the commission, to be fair and equitable to both parties.

(h) Educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling avocados; arrange for the performance of dealer service work providing display and other promotional materials; make market and inventory surveys and analyses; present facts to and negotiate with state, federal, and foreign agencies on matters which affect the avocado industry; and undertake any other activities which the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new markets for avocados.

(i) Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements that the commission may deem necessary for the promotion of the sale of avocados.

(j) Conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere respecting the inventory, marketing, and distribution of avocados. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate, and notwithstanding any other provision of law, may be maintained in confidence by the commission and not disseminated to any person not subject to this chapter.

(k) Accept and match contributions of private, local, state, or federal funds and make contributions of commission funds to other persons or to local, state, or federal agencies for purposes of promoting, enhancing, and maintaining the California avocado industry.

(*l*) Publish and distribute without charge, a bulletin or other communication for dissemination of information relating to inventory, marketing, and other information of value to the commission and the avocado industry to producers, handlers, and the public.

(m) Establish an assessment rate to defray operating costs of the commission.

(n) Establish an annual budget.

(o) Investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

(p) Carry out the requirements prescribed in Chapter 9 (commencing with Section 44971) of Division 17.

(q) To provide to the secretary, on a quarterly basis, a summary of the programs, activities, and costs under review for the next marketing season.

SEC. 44. Section 67092 of the Food and Agricultural Code is repealed.

SEC. 45. Section 67093 of the Food and Agricultural Code is repealed.

SEC. 46. Section 67094 of the Food and Agricultural Code is amended to read:

67094. (a) To prevent unfair trade practices which are detrimental to California's avocado industry, including, but not limited to, deception and misinformation, the commission shall collect and disseminate to any and all interested persons, handler f.o.b., market price information based on sales which have occurred.

(b) The identity of each handler reporting information and the information reported under this section shall be kept confidential and not made public under any circumstances. Information that gives industry totals, averages, and other similar data may be disclosed by the commission.

(c) The procedure for the collection and dissemination of the information pursuant to this section shall be approved by the secretary.

SEC. 47. Section 67101 of the Food and Agricultural Code is amended to read:

67101. The commission shall, not later than November 1 of each year, establish the assessment for the following marketing season beginning November 1st and ending October 31st. In no event shall the assessment exceed $6^1/_2$ percent of the gross dollar value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Expenditures for administrative purposes within the maximum assessment shall not exceed $2^1/_2$ percent of the gross dollar value of sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Assessments provided for in this section shall be upon the producer. The handler shall deduct that assessment from either amounts paid by him or her to the producer or amounts retained by him or her if the handler is also the producer, and the handler shall be a trustee of those funds until they are

paid to the commission at the time and in the manner prescribed by the commission.

In no event shall the combined assessment of the commission and any state marketing order exceed $6^1/_2$ percent of the gross value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers.

SEC. 48. Section 67102 of the Food and Agricultural Code is amended to read:

67102. This chapter does not apply to producers who produce avocados on a noncommercial basis for the producer's home use or where the avocado trees are used only for ornamental purposes. Producers from whom assessments are collected may apply for the refund of assessment payments following the close of any marketing season in which payments have been made, and the commission shall refund assessment payments if the producer demonstrates to the satisfaction of the commission that the avocados were produced for noncommercial purposes.

SEC. 49. Section 67103 of the Food and Agricultural Code is amended to read:

67103. Handlers shall keep a complete and accurate record of all avocados shipped by him or her and the name of the producer whose avocados were shipped. The records shall be in simple form and contain such information as the commission shall prescribe. The records shall be preserved by the handler for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

SEC. 50. Section 67104 of the Food and Agricultural Code is amended to read:

67104. All the proprietary information obtained by the commission or the secretary from handlers, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order in a judicial proceeding involving this chapter. Information on volume shipments, inventory, crop value, and any other information which is required for reports to governmental agencies and the commission, and other information which the handlers request from the commission that gives only totals, excluding individual handler information, may be disclosed by the commission so long as the information excludes individual handler data which shall be kept confidential as provided in this section.

SEC. 51. Section 67105 of the Food and Agricultural Code is amended to read:

67105. All assessments shall be paid to the commission by the handler first handling avocados who shall be primarily and personally liable for the payment of the assessment. Failure of the handler to collect

the assessment from any producer shall not exempt the handler from that primary liability. Any producer or handler subject to this section who fails to file a return or pay any assessment within the time required shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, $1^1/_2$-percent interest per month on the unpaid balance.

SEC. 52. Section 67106 of the Food and Agricultural Code is repealed.

SEC. 53. Section 67107 of the Food and Agricultural Code is amended to read:

67107. The commission shall reimburse the secretary for all expenditures incurred by the secretary carrying out his or her duties and responsibilities under this chapter, except for the expenses incurred for any action under Section 67051.6.

SEC. 54. Section 67111 of the Food and Agricultural Code is amended to read:

67111. It shall be a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment, for any person to do any of the following:

(a) Willfully to render or furnish a false report, statement, or record required by the commission.

(b) Willfully fail to render or furnish a report, statement, or record required by the commission.

(c) Secrete, destroy, or alter records required to be kept under this chapter.

SEC. 55. Section 67112 of the Food and Agricultural Code is amended to read:

67112. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon a petition filed with the appropriate superior court.

SEC. 56. Section 67112.5 is added to the Food and Agricultural Code, to read:

67112.5. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and to obtain injunctive relief or specific performance, with respect to this chapter and the rules and regulations adopted under this chapter.

(b) A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified

complaint that a named defendant has violated this chapter or any other rule or regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(c) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified by Section 485.010 is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or of inadequate remedy at law specified by Section 526 or 527 is not required.

(d) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding avocados until there is full compliance with and satisfaction of the judgment.

(e) The commission is entitled, upon a favorable judgment for the commission, to receive reimbursement for any reasonable attorney's fees and other actual related costs incurred in any action commenced by the commission for the enforcement of this chapter. Venue for actions commenced by the commission may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

SEC. 57. Section 67121 of the Food and Agricultural Code is amended to read:

67121. This chapter, except as necessary to conduct such vote, shall not become operative until the secretary finds, in a referendum conducted by the secretary in which at least 40 percent of the total number of producers, from the list established by the secretary, producing at least 40 percent of the total volume of avocados marketed during the last completed marketing season participate, either one of the following:

(a) Sixty-five percent or more of the producers certified by the secretary who voted in the referendum, voted in favor of this chapter, and the producers so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of this chapter and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

SEC. 58. Section 67121.5 of the Food and Agricultural Code is repealed.

SEC. 59. Section 67122 of the Food and Agricultural Code is amended to read:

67122. The secretary shall establish a period in which to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe any additional procedure as may be necessary to conduct the referendum.

SEC. 60. Section 67123 of the Food and Agricultural Code is amended to read:

67123. Nonreceipt of a ballot shall not invalidate the referendum.

SEC. 61. Section 67124 of the Food and Agricultural Code is amended to read:

67124. If the secretary finds that a favorable vote has been given as provided in Section 67122, he or she shall certify and give notice of that favorable vote to all producers and handlers whose names and addresses may be on file with the secretary. This chapter shall become operative on the 15th day after certification by the secretary and publication to producers and handlers.

SEC. 62. Section 67125 of the Food and Agricultural Code is amended to read:

67125. If the secretary finds that assent has not been given as provided in Section 67121, he or she shall so certify and declare all provisions of this chapter inoperative.

SEC. 63. Section 67126 of the Food and Agricultural Code is amended to read:

67126. Prior to holding the referendum, sureties shall post a bond or security, acceptable to the secretary, in an amount which the secretary shall determine to be sufficient to pay the cost of the referendum should the election determine that the operation of this chapter is to be suspended.

SEC. 64. Section 67131 of the Food and Agricultural Code is amended to read:

67131. Between November 1, 1980, and October 31, 1981, and every fifth year thereafter, the secretary shall cause a referendum to be conducted by the commission among producers to determine whether this chapter shall be reapproved and continued in effect. The operations of this chapter shall be reapproved and continued in effect if the secretary finds that a majority of the eligible growers voting in the referendum voted in favor of continuing the operations of this chapter. If the secretary finds that a favorable vote has been given, he or she shall so certify and this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, he or she shall so certify and declare this chapter and the commission suspended upon the expiration of the then-current

marketing season. Thereupon, the operations of the commission shall be wound up and funds distributed in the manner provided in Section 67133. No bond or security shall be required for the referendum.

SEC. 65. Section 67131.5 of the Food and Agricultural Code is repealed.

SEC. 66. Section 67131.6 of the Food and Agricultural Code is repealed.

SEC. 67. Section 67132 of the Food and Agricultural Code is amended to read:

67132. Upon the finding of 11 of the members of the commission that this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operations of the commission shall be suspended; provided, that the suspension shall not become effective until the expiration of the current marketing season. The secretary shall, upon receipt of the recommendation, or upon a petition filed with him or her requesting the suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding year, cause a referendum to be conducted among the listed producers to determine if the operation of this chapter and the operations of the commission shall be suspended, and shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The secretary is authorized to prescribe any additional procedure necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers, on a list established by the secretary marketing 40 percent of the total volume marketed by all producers during the last completed marketing season, participate in the referendum, the secretary shall suspend this chapter upon the expiration of the current marketing season, if he or she finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of the suspension, and the producers so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding season by all of the producers who voted in the referendum.

SEC. 68. Section 67133 of the Food and Agricultural Code is amended to read:

67133. After the effective date of suspension of this chapter and of the commission, the operations of the commission shall be wound up, and any asset of the commission shall be liquidated and the proceeds, along with any and all moneys remaining held by the commission, collected by assessment and not required to defray the expenses of winding up and terminating operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding current marketing season. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of a pro rata refund to those persons, any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to any existing state or federally authorized avocado program. If no program exists, the moneys shall be paid into the State Treasury as unclaimed trust moneys.

SEC. 69. Section 67134 of the Food and Agricultural Code is amended to read:

67134. Upon suspension of this chapter and the commission, a notice shall be posted on a public bulletin board to be maintained by the secretary in his or her office, and a copy of the notice shall be published in a newspaper of general circulation in each district. The commission shall mail a copy of the notice of suspension to all producers and handlers affected by the suspension whose names and addresses are on file.

SEC. 70. Section 67140 of the Food and Agricultural Code is amended to read:

67140. The commission may recommend to the secretary the adoption of avocado quality standards or engage in any other activity authorized pursuant to the California Marketing Act of 1937 (Chapter 1 (commencing with Section 58601) of Part 2 of Division 21) that is in accordance with the procedures specified in that act, unless otherwise specified in this article.

SEC. 71. Section 67141 of the Food and Agricultural Code is amended to read:

67141. Any standards or activities adopted pursuant to this article shall be implemented by the secretary at the beginning of the marketing season next succeeding the date in which they were approved by the secretary.

SEC. 72. Section 67142 of the Food and Agricultural Code is amended to read:

67142. Any standards or activities recommended by the commission and concurred in by the secretary, shall not be operative until approved in the manner specified in Section 67121.

SEC. 73. Section 67143 of the Food and Agricultural Code is amended to read:

67143. The commission shall serve as the advisory body to the secretary on all matters pertaining to this article.

SEC. 74. 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 947

An act to amend Sections 11614, 11713, and 11713.1 of, and to add Sections 11614.1 and 11713.16 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 11614 of the Vehicle Code is amended to read:

11614. No lessor-retailer licensed under this chapter may do any of the following in connection with any activity for which this license is required:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement that is untrue or misleading and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or make or disseminate, or cause to be made or disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle, or service so advertised, at the price stated therein, or as so advertised.

(b) Advertise, or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) Fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise any specific vehicle for sale without identifying the vehicle by its model, model year, and either its license number or that

portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California.

(e) Advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding thirty-five dollars ($35) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars ($35).

(f) (1) Fail to disclose, in an advertisement of a vehicle for sale, that there will be added to the advertised total price, at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, or any dealer documentary preparation charge.

(2) For purposes of paragraph (1), ''advertisement'' means any advertisement in a newspaper, magazine, direct mail publication, or handbill that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a lessor-retailer's Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(g) Advertise or otherwise represent, or knowingly allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. The terms ''no downpayment,'' ''zero down delivers,'' or similar terms shall not be advertised unless the vehicle will be sold to any qualified purchaser without a prior payment of any kind or trade-in.

(h) Refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and thirty-five dollars ($35) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) Engage in the business for which the licensee is licensed without having in force and effect a bond required by Section 11612.

(j) Engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and any branch office location required by this chapter.

(k) Permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(*l*) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) Represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.

(n) Advertise free merchandise, gifts, or services provided by a lessor-retailer contingent on the purchase of a vehicle. ''Free'' includes merchandise or services offered for sale at a price less than the lessor-retailer's cost of the merchandise or services.

(o) Advertise vehicles and related goods or services with the intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(p) Use the term ''rebate'' or similar words such as ''cash back'' in advertising the sale of a vehicle.

(q) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, ''cash price'' has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(r) Misrepresent the authority of a representative or agent to negotiate the final terms of a transaction.

(s) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(t) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the

manufacturer offers, including, but not limited to, a false statement that a vehicle is ''fully factory equipped.''

(u) Advertise any underselling claim, such as ''we have the lowest prices'' or ''we will beat any dealer's price,'' unless the lessor-retailer has conducted a recent survey showing that the lessor-retailer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claim. The substantiating records shall be made available to the department upon request.

(v) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(w) This section shall become operative on July 1, 2001.

SEC. 2. Section 11614.1 is added to the Vehicle Code, to read:

11614.1. No lessor-retailer licensed under this chapter may do any of the following in connection with any activity for which this license is required:

(a) Use a picture in connection with any advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

(b) Advertise a vehicle for sale that was used by the selling lessor-retailer in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as ''new.''

(c) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as ''used,'' ''previously owned,'' or a similar term that indicates that the vehicle is used, as defined in this code.

(d) Use the terms ''on approved credit'' or ''on credit approval'' in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

(e) Advertise an amount described by terms such as ''unpaid balance'' or ''balance can be financed'' unless the total sale price is clearly and conspicuously disclosed and is in close proximity to the advertised balance.

(f) Advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

(g) Advertise claims such as ''everyone financed,'' ''no credit rejected,'' or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

(h) Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. A statement such as ''$____ deliver,'' is an example of an advertised downpayment.

(i) Fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

SEC. 3. Section 11713 of the Vehicle Code is amended to read:

11713. No holder of any license issued under this article shall do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) (1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: ''All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer.''

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are

exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

(c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following the sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000). This subdivision does not apply to the sale of a leased vehicle to the lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.

(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer

is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. The terms ''no downpayment,'' ''zero down delivers,'' or similar terms shall not be advertised unless the vehicle will be sold to any qualified purchaser without a prior payment of any kind or trade-in.

(*l*) Participate in the sale of a vehicle required to be reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of the full sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.

(q) Consign for sale to another dealer a new vehicle.

(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

(s) Use a picture in connection with any advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

(t) Advertise a vehicle for sale that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the

vehicle. An advertisement shall not describe any of those vehicles as ''new.''

SEC. 4. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California. Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars ($45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: ''Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge.''

(3) For purposes of paragraph (1), ''advertisement'' means any advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer's Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars ($45) for the document preparation charge and not to exceed fifty dollars ($50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term ‘‘free’’ includes merchandise or services offered for sale at a price less than the seller’s cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as ''starting at,'' ''from,'' ''beginning as low as,'' or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term ''rebate'' or similar words such as ''cash back'' in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, ''cash price'' has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) Advertise a guaranteed trade-in allowance.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms ''invoice,'' ''dealer's invoice,'' ''wholesale price,'' or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser

initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a ''commercial purchaser'' means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is ''fully factory equipped.''

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as ''added mark-up.''

(r) Advertise any underselling claim, such as ''we have the lowest prices'' or ''we will beat any dealer's price,'' unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, ''incentive'' means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) As used in this section, the terms ''make'' and ''model'' have the same meaning as is provided in Section 565.3 of Title 49 of the Code of Federal Regulations.

SEC. 5. Section 11713.16 is added to the Vehicle Code, to read:

11713.16. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as ''used,'' ''previously owned,'' or a similar term that indicates that the vehicle is used, as defined in this code.

(b) Use the terms ''on approved credit'' or ''on credit approval'' in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

(c) Advertise an amount described by terms such as ''unpaid balance'' or ''balance can be financed'' unless the total sale price is clearly and conspicuously disclosed and in close proximity to the advertised balance.

(d) Advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments,

balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

(e) Advertise as the total sales price of a vehicle an amount that includes a deduction for a rebate. However, a dealer may advertise a separate amount that includes a deduction for a rebate provided that the advertisement clearly and conspicuously discloses, in close proximity to the amount advertised, the price of the vehicle before the rebate deduction and the amount of the rebate, each so identified.

(f) Advertise claims such as ''everyone financed,'' ''no credit rejected,'' or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

(g) Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. Statements such as ''$_____ delivers,'' ''$____ puts you in a new car'' are examples of advertised downpayments.

(h) Advertise the price of a new vehicle or class of new vehicles unless the vehicle or vehicles have all of the equipment listed as standard by the manufacturer or distributor or the dealer has replaced the standard equipment with equipment of higher value.

(i) Fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

SEC. 6. In order to avoid confusion and duplication, it is the intent of the Legislature that on and after the operative date of this act, Sections 260.01, 262.00, and 262.05 of Title 13 of the California Code of Regulations shall have no force and effect.

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 948

An act to amend Section 22325 of the Business and Professions Code, and to amend, repeal, and add Section 1936 of the Civil Code, relating to business.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 22325 of the Business and Professions Code is amended to read:

22325. (a) No automobile rental agency shall enter into a contract for the lease or rental of a motor vehicle unless it is disclosed both orally and in writing to the customer that the collision damage waiver offered by the agency may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

(b) As used in this section ''automobile rental agency'' means any person or entity engaged in the business of renting or leasing motor vehicles in this state.

(c) This section shall become inoperative on January 1, 2003, and shall remain inoperative until January 1, 2006, at which time it shall become operative unless a later enacted statute that is enacted before January 1, 2006, extends the inoperative date. However, this subdivision may not be construed to affect any litigation pending on or before January 1, 2003, alleging a violation of this section or any other provision of law as it read at the time the action was commenced.

SEC. 2. Section 1936 of the Civil Code is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) ''Rental company'' means any person or entity in the business of renting passenger vehicles to the public.

(2) ''Renter'' means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) ''Authorized driver'' means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) ''Customer facility charge'' means a fee required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) The fee shall be used to finance, design, and construct consolidated airport car rental facilities.

(ii) The fee shall be used to finance, design, construct, and provide common use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary and Committees on Transportation. In the case of a transportation system, the audit shall also consider the reasonable costs of providing the transit system or busing network. At the Burbank Airport, and at all other airports, the fees designated as a Customer Facility Charge may not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) The authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(5) ''Damage waiver'' means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) ''Estimated time for replacement'' means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as ''crash books.''

(7) ''Estimated time for repair'' means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(8) ''Membership program'' means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (r) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(9) ''Passenger vehicle'' means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred

dollars ($1,500). No administrative charge shall be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and may not assert or collect any claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to

provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign which shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides damage waiver shall, orally disclose to all renters,

except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract shall also state that damage waiver is optional.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions).

(A) When the above notice is printed in the contract or contractholder, the following shall be printed immediately following the notice:

"The cost of an optional damage waiver is $____ for every (day or week)."

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

''The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented.''

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an ''economy car,'' ''subcompact car,'' ''compact car,'' or any other term having similar meaning when offered for rental, or any other vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate may not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that is also either a vehicle of the next year's model year or not older than the previous year's model year, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model year, the rate may not exceed nine dollars ($9).

(i) On or after January 1, 2003, the manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, ''Consumer Price Index'' means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, or a special district.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common use transportation system is proportionate to the costs of the common use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided the airport requires off-airport customers to use the common use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or services and may not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports whose fees are governed by Section 1936.5 of the Civil Code, Section 50474.1 of the Government Code, or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or any other law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, shall not be subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or

leasing the vehicle, such as, but not limited to, required fuel or airport surcharges other than customer facility charges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If any person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided they are provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company shall not be responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(p) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or if the renter is not a resident of this state in the jurisdiction in which the renter resides.

(q) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(r) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g) including the terms and conditions of the rental agreement then in effect.

(ii) A Web site address, as well as a contact number or address, where the enrollee can learn of any changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed, in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the statement from the rearview mirror, it shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if he or she (not his or her employer) has previously accepted or declined the collision damage waiver and that he or she now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

''☐ If I previously accepted the collision damage waiver, I now decline it.

☐ If I previously declined the collision damage waiver, I now accept it.''

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make such a change, prior to leaving the lot, by returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from those disclosures that are required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(s) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

(t) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 3. Section 1936 is added to the Civil Code, to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) ''Rental company'' means any person or entity in the business of renting passenger vehicles to the public.

(2) ''Renter'' means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) ''Authorized driver'' means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(A) ''Customer facility charge'' means a fee required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) The fee shall be used to finance, design, and construct consolidated airport car rental facilities.

(ii) The fee shall be used to finance, design, construct, and provide common use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary and Committees on Transportation. In the case of a transportation system, the audit shall also consider the reasonable costs of providing the transit system or busing network. At the Burbank Airport, and at all other airports, the fees designated as a Customer Facility Charge may not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) The authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(4) ''Damage waiver'' means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(5) ''Estimated time for replacement'' means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as ''crash books.''

(6) ''Estimated time for repair'' means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(7) ''Passenger vehicle'' means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred

dollars ($1,500). No administrative charge shall be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and may not assert or collect any claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to

provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides damage waiver shall, on that part of the contract where the renter indicates his or her acceptance or declination of the damage waiver, indicate that the purchase of the damage waiver is optional.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

''NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions).''

(A) When the above notice is printed in the contract or contractholder, the following shall be printed immediately following the notice:

''The cost of an optional damage waiver is $____ for every (day or week).''

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

''The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented.''

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an ''economy car,'' ''subcompact car,'' ''compact car,'' or any other term having similar meaning when offered for rental, or any other vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate may not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that is also either a vehicle of the next year's model year or not older than the previous year's model year, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model year, the rate may not exceed nine dollars ($9).

(i) On or after January 1, 2003, the manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, ''Consumer Price Index'' means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, or a special district.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common use transportation system is proportionate to the costs of the common use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided the airport requires off-airport customers to use the common use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or services and may not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports whose fees are governed by Section 1936.5 of the Civil Code, Section 50474.1 of the Government Code, or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or any other law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, shall not be subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges other than customer facility charges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional

return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If any person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided they are provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company shall not be responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(p) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or if the renter is not a resident of this state in the jurisdiction in which the renter resides.

(q) Any waiver of any of the provisions of this section is void and unenforceable as contrary to public policy.

(r) This section shall become operative on January 1, 2002.

SEC. 4. Section 3 of this act shall become operative on January 1, 2006.

CHAPTER 949

An act to add Section 10540 to the Water Code, relating to water.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 10540 is added to the Water Code, to read:

10540. (a) A regional water management group may prepare and adopt a regional plan in accordance with this part.

(b) The plan may address qualified programs or projects or qualified reports or studies over which any local public agency that is a participant in that group has authority to undertake, including any of those matters described in subdivision (c).

(c) A regional water management group may address, among other things, any of the following matters in a regional plan:

(1) Groundwater management planning pursuant to Part 2.75 (commencing with Section 10750) or other specific authority.

(2) Any activity identified in Section 10753.7.

(3) Urban water management planning pursuant to Part 2.6 (commencing with Section 10610).

(4) The preparation of a water supply assessment required pursuant to Part 2.10 (commencing with Section 10910).

(5) Agricultural water management planning pursuant to Part 2.8 (commencing with Section 10800) or Part 2.9 (commencing with Section 10900).

(6) The planning, construction, or modification of a flood management project that meets the requirements for funding under Chapter 1 (commencing with Section 12570), Chapter 3 (commencing with Section 12800), or Chapter 4 (commencing with Section 12850), of Part 6.

(7) The planning, construction, or modification of a flood management project that meets the requirements for funding under Chapter 2 (commencing with Section 12310) of Part 4.8.

(8) The planning, construction, or modification of a flood management project approved pursuant to Chapter 2 (commencing with Section 12639) of Part 6.

(9) The planning, construction, or modification of a levee maintenance project that meets the requirements for funding under Part 9 (commencing with Section 12980) of this division, or Article 4 (commencing with Section 78540) of Chapter 4 of Division 24.

(10) The planning, construction, or modification of a water recycling project that meets the requirements for funding under Article 4 (commencing with Section 79135) of Chapter 7 of Division 26.

(11) The planning, construction, or modification of a publicly owned treatment works that meets the requirements of paragraph (1) of subdivision (a) of Section 13480.

(12) The planning, construction, or modification of a domestic water supply facility to meet safe drinking water standards in accordance with the Safe Drinking Water State Revolving Loan Fund Law of 1997 (Chapter 4.5 (commencing with Section 116760) of Part 12 of Division 104 of the Health and Safety Code).

(13) The planning, construction, or modification of a drainage water management unit, as that term is defined in subdivision (a) of Section 78640.

(14) A water recycling project that meets the requirements for funding under Article 4 (commencing with Section 79135) of Chapter 7 of Division 26.

(15) The implementation of a water conservation program that meets the definition of a voluntary cost effective capital outlay water conservation program pursuant to Section 78670.

(16) The planning, construction, or modification of a program or project that carries out any of the activities described in subdivision (c) of Section 79080 or reduces the impacts of nonnative plant species on water quality, water supply, or ecosystem health.

(17) The planning, construction, or modification of a program or project that desalts brackish or saline waters for use as an agricultural, domestic, or municipal water supply.

(18) The planning, construction, or modification of fish screens, or other fish passage improvements.

(d) This section shall become operative only if Senate Bill 1672 of the 2001–02 Regular Session is chaptered and becomes effective on or before January 1, 2003, and the act that adds this section is chaptered last, in which case this section shall prevail over Section 10540, as added by Senate Bill 1672.

CHAPTER 950

An act to add Article 2.5 (commencing with Section 19225) to Chapter 3 of Division 19 of the Elections Code, relating to voting systems.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. This act shall be known and may be cited as the ''Accessible Voting Technology Act of 2002.''

SEC. 2. Article 2.5 (commencing with Section 19225) is added to Chapter 3 of Division 19 of the Elections Code, to read:

Article 2.5. Accessible Voting Systems

19225. The Legislature finds and declares as follows:

(a) Microchip and digital technologies are increasingly changing the way Americans vote.

(b) State and political subdivisions are replacing antiquated voting methods and machines with computer and electronic-based voting systems, but nonvisual access, whether by speech, braille, or other appropriate means, is often overlooked in certifying and purchasing the latest voting technology.

(c) Voting technology and systems that allow the voter to access and select information solely through a visual means are a barrier to access by individuals who are blind or visually impaired, thereby discouraging

them from exercising the right to vote, the most fundamental right of citizenship in a free and democratic society.

(d) Software and hardware adaptations have been created so that voters can interact with voting technology and systems through both visual and nonvisual means allowing blind and visually impaired people to cast a secret ballot and independently verify their vote.

(e) In promoting full participation in the electoral process, the goals of the state and its political subdivisions must recognize the incontrovertible right of all citizens regardless of blindness or visual impairment to vote.

(f) This right must include the opportunity for individuals who are blind or visually impaired to cast and verify their ballots independently.

19226. As used in this article:

(a) ''Access'' means the ability to receive, use, select, and manipulate data and operate controls included in voting technology and systems.

(b) ''Nonvisual'' means synthesized speech, braille, and other output methods not requiring sight.

19227. (a) The Secretary of State shall adopt rules and regulations governing any voting technology and systems used by the state or any political subdivision that provide blind and visually impaired individuals with access that is equivalent to that provided to individuals who are not blind or visually impaired, including the ability for the voter to cast and verify all selections made by both visual and nonvisual means.

(b) At each polling place, at least one voting unit approved pursuant to subdivision (a) by the Secretary of State shall provide access to individuals who are blind or visually impaired.

(c) A local agency is not required to comply with subdivision (b) unless sufficient funds are available to implement that provision. Funds received from the proceeds of the Voting Modernization Bond Act of 2002 (Article 3 (commencing with Section 19230), from federal funds made available to purchase new voting systems, or from any other source except the General Fund, shall be used for that purpose.

19227.5. In requiring nonvisual access pursuant to this article, the Secretary of State shall obtain recommendations from representatives of blind consumer organizations, experts in accessible software and hardware design, and any other individual or organization the Secretary of State determines to be appropriate.

19228. Compliance with this article in regard to voting technology and systems purchased prior to the effective date of this article shall be achieved at the time of procurement of an upgrade or replacement of existing voting equipment or systems.

19229. (a) A person injured by a violation of this article may maintain an action for injunctive relief to enforce this article.

(b) An action for injunctive relief shall be commenced within four years after the cause of action accrues.

(c) For the purposes of this section, a cause of action for a continuing violation accrues at the time of the latest violation.

19229.5. This article does not apply to voting by absentee ballot.

SEC. 3. 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 951

An act to amend Section 14838.5 of, to add Section 14838.7 to, and to repeal Section 14859 of, the Government Code, to amend Sections 2002 and 2807 of the Penal Code, and to amend Section 10332 of the Public Contract Code, relating to state agencies.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars ($5,000), but less than one hundred thousand dollars ($100,000) , to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small businesses, including microbusinesses, or from disabled veterans business enterprises.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars ($5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 2. Section 14838.7 is added to the Government Code, to read:

14838.7. (a) Notwithstanding the advertising and bidding provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for construction, including the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any kind that has an estimated value of greater than five thousand dollars ($5,000) but less than the cost limit for State Contract Act projects, as specified in subdivision (b) of Section 10105 of the Public Contract Code, to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains written bid submittals from two or more certified small businesses, including microbusinesses, or from disabled veteran business enterprises.

(b) In implementing subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars ($5,000) for the public work construction project, a state agency shall obtain at least two written bid submittals from responsible contractors whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 3. Section 14859 of the Government Code is repealed.

SEC. 4. Section 2807 of the Penal Code is amended to read:

2807. (a) The authority is hereby authorized and empowered to operate industrial, agricultural, and service enterprises which will provide products and services needed by the state, or any political subdivision thereof, or by the federal government, or any department, agency, or corporation thereof, or for any other public use. Products may be purchased by state agencies to be offered for sale to inmates of the department and to any other person under the care of the state who resides in state-operated institutional facilities. Fresh meat may be purchased by food service operations in state-owned facilities and sold for onsite consumption.

(b) All things authorized to be produced under subdivision (a) shall be purchased by the state, or any agency thereof, and may be purchased

by any county, city, district, or political subdivision, or any agency thereof, or by any state agency to offer for sale to persons residing in state-operated institutions, at the prices fixed by the board. State agencies shall make maximum utilization of these products, and shall consult with the staff of the authority to develop new products and adapt existing products to meet their needs.

SEC. 5. Section 2002 of the Public Contract Code is amended to read:

2002. (a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may do any of the following in facilitating contract awards to small businesses:

(1) Provide for a small business preference in construction, the procurement of goods, or the delivery of services where responsibility and quality are equal. The preference to a small business shall be up to 5 percent of the lowest responsible bidder meeting specifications.

(2) Establish a subcontracting participation goal for small businesses on contracts and grant a preference, up to a maximum of 5 percent, to those bidders who meet the goal.

(3) Require bidders to make good faith efforts to meet a subcontracting participation goal for small business contracts. Bidders that fail to meet the goal shall demonstrate that they made good faith efforts to utilize small business contractors.

(b) The term ''small business,'' as used in this section, shall be defined by each local agency.

SEC. 6. Section 10332 of the Public Contract Code is amended to read:

10332. Any state agency that receives delegated authority to acquire goods shall be authorized, at a minimum, to make the following types of acquisitions:

(a) Acquisitions not exceeding the dollar value established pursuant to Section 10330.

(b) Acquisitions in any amount of goods available under an unexpired statewide or regional contract. Acquisitions of goods for which a valid statewide or regional contract is in effect may not be made, without the approval of the office, from a supplier other than the supplier with whom the state has a valid contract.

(c) Acquisitions in any amount of goods that state agencies are required, by Section 2807 of the Penal Code, to acquire from the Prison Industry Authority.

(d) Acquisitions not exceeding the dollar amount, established pursuant to Section 10330, of goods designated in price schedules that the office has established with suppliers. Acquisitions not exceeding the dollar amount, established pursuant to Section 10330, of goods

designated in price schedules may be made from a supplier other than the supplier specified on a price schedule if another supplier offers the same or equivalent goods at a price lower than the price established in the price schedule. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods specified on a price schedule.

(e) Acquisitions not exceeding the dollar value, established pursuant to Section 10330, of goods that are available from the state warehouses but which the state agency can acquire from another supplier at a price lower than the price charged by the department. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods available from the state warehouses.

CHAPTER 952

An act to add Section 1281.92 to the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 1281.92 is added to the Code of Civil Procedure, to read:

1281.92. (a) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if the company has, or within the preceding year has had, a financial interest, as defined in Section 170.5, in any party or attorney for a party.

(b) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the private arbitration company.

(c) This section shall operate only prospectively so as not to prohibit the administration of consumer arbitrations on the basis of financial interests held prior to January 1, 2003.

(d) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.

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

CHAPTER 953

An act to amend Section 10359 of the Public Contract Code, and to amend Sections 4612, 5001.6, 5005.6, 14315, 14316, and 14403 of, and to repeal Sections 5056, 5080.55, 5825, and 14314 of, the Public Resources Code, relating to resources.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 10359 of the Public Contract Code is amended to read:

10359. (a) Each state agency shall annually prepare a report pursuant to this section that includes a list of the consulting services contracts that it has entered into during the previous fiscal year. The listing shall include the following information:

(1) The name and identification of each contractor.

(2) The type of bidding entered into, the number of bidders, whether the low bidder was accepted, and if the low bidder was not accepted, an explanation of why another contractor was selected.

(3) The amount of the contract price.

(4) Whether the contract was a sole-source contract, and why the contract was a sole-source contract.

(5) Justification for entering into each consulting services contract.

(6) The purpose of the contract and the potential beneficiaries.

(7) The date when the initial contract was signed, and the date when the work began and was completed.

The report shall also include a separate listing of consultant contracts completed during that fiscal year, with the same information as above.

(b) The report this section requires shall also include a list of any contracts underway during that fiscal year on which any change was made regarding the following:

(1) The completion date of the contract.

(2) The amount of money to be received by the contractor, if it exceeds 3 percent of the original contract price.

(3) The purpose of the contract or duties of the contractor. A brief explanation shall be given if the change in purpose is significant.

(c) Copies of the annual report shall be sent within 60 working days after the end of the previous fiscal year to the Legislative Analyst, the Department of Finance, the Department of General Services, the Auditor General, the Joint Legislative Budget Committee, the Senate Appropriations Committee, and the Assembly Appropriations Committee.

(d) State agencies may not use the temporary budget allocation process as a means of circumventing the requirements of this section.

(e) Within one hundred twenty working days after the close of the fiscal year, the department shall furnish to the officials and committees listed in subdivision (c), a list of the departments and agencies that have not submitted the required report specified in this section.

(f) The department shall annually submit to the Legislature, the Legislative Analyst, the Department of Finance, and the Auditor General, a report describing the information furnished to the department pursuant to this section.

SEC. 2. Section 4612 of the Public Resources Code is amended to read:

4612. The director shall report to the board and the Legislature by January 15 of each year on the enforcement of, and the amount of penalties and fines imposed and collected pursuant to, this article, including, but not limited to, those penalties and fines imposed and collected pursuant to Sections 4601, 4601.1, and 4601.5. The report shall specifically identify the location and ownership of all properties where persons were cited for violations requiring corrective action by the department pursuant to Section 4607, the nature and cost of the corrective actions, and whether all related expenses incurred by the state have been reimbursed by the responsible party.

SEC. 3. Section 5001.6 of the Public Resources Code is amended to read:

5001.6. (a) Notwithstanding Section 5001.95, units of the state park system may be located within, and be a part of, a state seashore. However, the unit shall be managed in accordance with its classification as provided in Section 5019.62.

(b) The following state seashores are hereby established consisting of appropriate coastal lands described in this subdivision together with any other lands that may, from time to time, be acquired by the state as an addition to these state seashores:

(1) Del Norte State Seashore, consisting of lands lying between Pyramid Point and Point Saint George, particularly lands to assure public access to, and scenic protection of, Pyramid Point; beach and

dune lands, water-bottom and shoreline lands at Lake Earl, including Lake Talawa, all within Del Norte County.

(2) Clem Miller State Seashore, consisting of lands extending from the mouth of the Eel River to Pudding Creek at Fort Bragg, and including lands at Bear Harbor, Usal Creek, Cottoneva Creek, shore and upland additions to Westport-Union Landing State Beach, DeHaven Creek uplands, Ten Mile River estuary, and MacKerricher State Park, all within Humboldt and Mendocino Counties.

(3) Mendocino Coast State Seashore, consisting of lands extending from Jughandle Creek to the Gualala River, and including the Pygmy Forest Ecological Staircase, Russian Gulch State Park, Mendocino Headlands State Park, Van Damme State Park, Greenwood Creek Beach, Bowling Ball Beach and the Gualala River shoreline and estuary, all within Mendocino County.

(4) Sonoma Coast State Seashore, consisting of lands extending from the Gualala River to Bodega Head, and including the Kruse Rhododendron State Reserve, Salt Point State Park, Fort Ross State Historic Park, and Sonoma Coast State Beach, all within Sonoma County.

(5) Año Nuevo State Seashore, consisting of lands extending from Pillar Point to the City of Santa Cruz, and including the San Mateo Coast State Beaches, Año Nuevo State Reserve, Big Basin Redwoods State Park, and Natural Bridges State Beach, all within San Mateo and Santa Cruz Counties.

(6) (A) Monterey Bay State Seashore, consisting of lands extending from Natural Bridges State Beach south to Point Joe, including Lighthouse Fields, Twin Lakes, New Brighton State Beach, Seacliff, Manresa, Sunset, Zmudowski, Moss Landing, Salinas River, Marina, Monterey, and Asilomar, all within Santa Cruz and Monterey Counties.

(B) The department may establish a recreational trail system within the boundaries of the Monterey Bay State Seashore that is to be dedicated as the Sam Farr Recreational Trail System.

(7) San Luis Obispo State Seashore, consisting of lands extending from Cayucos to Lion's Head and including Cayucos State Beach, Morro Strand State Beach, Atascadero State Beach, Morro Bay State Park, Montana de Oro State Park, Avila State Beach, Pismo State Beach, Pismo Dunes State Vehicular Recreation Area and Point Sal State Beach, all within San Luis Obispo and Santa Barbara Counties.

(8) Santa Barbara Coast State Seashore, consisting of lands extending from Gaviota to Las Llagas Canyon, and including Gaviota State Park, Refugio State Beach, and El Capitan State Beach, all within Santa Barbara County.

(9) Point Mugu State Seashore, consisting of lands extending from Ormond Beach to San Nicholas Canyon, and including Mugu Lagoon,

Point Mugu State Park, and Leo Carrillo State Beach, all within Ventura and Los Angeles Counties.

(10) Capistrano Coast State Seashore, consisting of lands extending from Newport Beach to San Mateo Point, and including Corona Del Mar State Beach, Irvine Coast, Doheny State Beach, and San Clemente State Beach, all within Orange County.

(11) (A) San Diego Coast State Seashore, consisting of lands extending from San Onofre State Beach to La Jolla, and including San Onofre State Beach, Carlsbad State Beach, Robert C. Frazee State Beach, South Carlsbad State Beach, Leucadia State Beach, Moonlight State Beach, San Elijo State Beach, Cardiff State Beach, Torrey Pines State Beach, and Torrey Pines State Reserve, all within San Diego County.

(B) That section of Carlsbad State Beach within the San Diego Coast State Seashore that is located north of Agua-Hedionda Lagoon is hereby renamed Robert C. Frazee State Beach.

(c) The department shall determine the precise boundaries of each state seashore, may revise those boundaries from time to time, and shall identify additional lands appropriate for inclusion in state seashores.

(d) Section 5019.62 does not apply to lands lying within the boundaries of state seashores established pursuant to this section until those lands have been acquired by the state and designated as state park system lands that are a part of a state seashore.

SEC. 4. Section 5005.6 of the Public Resources Code is amended to read:

5005.6. The department has exclusive jurisdiction with respect to property salvage and recovery operations in and upon the lands of the state park system. The department may grant the privilege of conducting salvage and recovery operations in and upon those lands by the issuance of permits. The director may adopt rules and regulations in connection with applications for the permits and the operations to be conducted thereunder, as he or she deems necessary to protect the state park system and the interests of the public in the recovered property. The regulations may include, but may not be limited to, regulations on the percentage of recovered property to be retained by the state, authorization for retention by the state of any items of historical, cultural, or other value, authorized methods, and recordkeeping requirements for conduct of salvage operations.

The terms and conditions of any permit issued pursuant to this section shall be subject to the approval of the Director of Finance.

SEC. 5. Section 5056 of the Public Resources Code is repealed.

SEC. 6. Section 5080.55 of the Public Resources Code is repealed.

SEC. 7. Section 5825 of the Public Resources Code is repealed.

SEC. 8. Section 14314 of the Public Resources Code is repealed.

SEC. 9. Section 14315 of the Public Resources Code is amended to read:

14315. (a) Subject to the availability of assistance from the corps, a state agency that is considering the use of contracted labor shall give priority to the corps when the mission of the corps and the nature of the state agency's project are substantially consistent.

(b) State agencies shall notify the corps of potential contracts for services that fit within the parameters of the legislative intent set forth in Section 14000 and shall use the corps to the maximum extent feasible to carry out projects that promote the legislative intent as set forth in Section 14000. Because of the corps' commitment to the state's youth, in the exercise of a state agency's discretion when considering contracts for services, strong consideration shall be given to the use of corpsmembers over the use of other contracted labor.

(c) The corps may contract with any state agency for the performance of activities consistent with this division.

(d) Upon appropriation by the Legislature and execution of a contract pursuant to subdivision (b), the Controller may transfer money to the Collins-Dugan California Conservation Corps Reimbursement Account from other funds under the control of the contracting state agency, including, but not limited to, the following funds and accounts:

(1) Hazardous Waste Control Account in the General Fund.

(2) State Highway Account in the State Transportation Fund.

(3) Transportation Planning and Development Account in the State Transportation Fund.

(4) California Environmental License Plate Fund.

(5) Fish and Game Preservation Fund.

(6) Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(7) Unallocated Account in the Cigarette and Tobacco Products Surtax Fund.

(8) Habitat Conservation Fund.

(9) Motor Vehicle Fuel Account in the Transportation Tax Fund pursuant to Section 8352.6 of the Revenue and Taxation Code (OMV Fund).

(10) Oil Spill Prevention and Administration Fund.

(11) Integrated Waste Management Account in the Integrated Waste Management Fund.

(12) State Parks and Recreation Fund.

(13) Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund.

(14) Employment Training Fund.

(15) Harbors and Watercraft Revolving Fund.

(16) California Beverage Container Recycling Fund.

(e) Expenditures from the Collins-Dugan California Conservation Corps Reimbursement Account of amounts transferred pursuant to subdivision (d) shall be limited to purposes that are consistent with the requirements of each fund or account contributing each amount to the Collins-Dugan California Conservation Corps Reimbursement Account.

SEC. 10. Section 14316 of the Public Resources Code is amended to read:

14316. The Department of Finance may make a loan from the General Fund to the Collins-Dugan California Conservation Corps Reimbursement Account, in an amount not to exceed a cumulative total of one million five hundred thousand dollars ($1,500,000) to meet cashflow needs due to delays in collecting reimbursements. Any loan made by the Department of Finance pursuant to this section shall only be made if the corps has a valid contract or certification signed by a client agency that demonstrates that sufficient funds will be available to repay the loan. All money so transferred shall be repaid to the General Fund as soon as possible, but not later than one year from the date of the loan, with interest at the average rate earned by the Surplus Money Investment Fund.

SEC. 11. Section 14403 of the Public Resources Code is amended to read:

14403. (a) The corps shall cooperate with, and seek the cooperation of state and local workforce investment boards and youth councils, designated pursuant to the federal Workforce Investment Act (29 U.S.C. Sec. 2801 et seq.) to secure employment and training services for corpsmembers.

(b) These employment and training services may include job search assistance, skills training, transitional employment, or any other services provided under the federal Workforce Investment Act that would lead to employment for the corpsmember.

(c) Employment and training services may be provided to corpsmembers as a component of their work with the corps or upon their termination from the corps.

CHAPTER 954

An act relating to public employees' retirement.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. (a) Notwithstanding any other provision of law, the surviving spouse of a local member of the Public Employees' Retirement System may receive an allowance as described in subdivision (b) if all of the following criteria are met:

(1) The member had attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death and was a public safety officer killed in the line of duty on or after July 26, 2001, and before February 1, 2003.

(2) The surviving spouse is eligible to receive an allowance pursuant to Section 21546 of the Government Code or a special death benefit in lieu of that allowance and would have been eligible for the allowance described in Section 21548 of the Government Code if the member's contracting agency had, prior to the member's death, elected to be subject to that section by amendment to its contract in the manner prescribed for approval of contracts.

(3) The member's contracting agency was, at the time of the member's death, in the process of negotiating a contract amendment electing to be subject to Section 21548 of the Government Code.

(b) (1) The surviving spouse of a local member who meets all of the criteria of subdivision (a) may elect to receive, in lieu of an allowance under Section 21546 of the Government Code or a special death benefit, 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 a waiver under Section 21459 of the Government Code.

(2) If the member made a specific beneficiary designation under Section 21490 of the Government Code, the allowance under this section 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) 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 of the Government Code or in Sections 21541 and 21543 of the Government Code, as the case may be.

(4) If the death of the member occurred prior to the date this section becomes applicable to the contracting agency, the allowance payable to the surviving spouse pursuant to this section shall be increased by an amount, amortized over the surviving spouse's life expectancy, equal to the difference between the benefits the surviving spouse would have

received pursuant to this section if this section had been applicable on the date of the member's death and the death benefits actually received by the surviving spouse prior to the date this section became applicable.

(c) Any unfunded liability resulting from this section shall be paid by the employer.

(d) This section may not apply to any contracting agency nor to the employees of the 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.

(e) This section shall only apply to Butte County and only if that county amends its contract with the Public Employees' Retirement System as described in subdivision (d) on or before February 1, 2003.

CHAPTER 955

An act to add Sections 79420, 79423, 79453, and 79455 to the Water Code, relating to water.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 79420 is added to the Water Code,to read:

79420. (a) The authority may exercise all of the following powers:

(1) Sue or be sued.

(2) Delegate administrative functions to the staff of the authority.

(3) Request reports from state, federal, and local government agencies on issues related to the implementation of the California Bay-Delta Program.

(4) Receive funds, including funds from private and local government sources, and contributions from public and private sources, as well as state and federal appropriations.

(5) Enter into contracts consistent with existing contracting practices of the Department of General Services.

(6) Disburse funds through grants, public assistance, loans, and contracts to entities, including federally recognized Indian tribes, within the Bay-Delta Program regions, as described in subdivision (e) of Section 79401, to carry out the Bay-Delta Program goals and objectives.

(7) Employ the services of other public, nonprofit, or private entities.

(8) Employ its own legal staff or contract with other state or federal agencies for legal services, or both. The authority may employ special legal counsel with the approval of the Attorney General.

(9) Adopt regulations as needed for the implementation of this division. A federal representative may decline to participate in actions described in this subdivision if he or she identifies a constitutional or statutory limitation on that participation. The authority granted by this subdivision does not extend to the adoption of regulations to implement the program elements described in subdivisions (a) to (f), inclusive, and subdivision (h) of Section 79441.

(10) Obtain and hold regulatory permits and prepare environmental documents.

(11) Pursuant to Section 78684.8, the authority is hereby designated the successor to the Secretary of the Resources Agency for the purpose of carrying out the balancing and related procedures established pursuant to Section 78684.12.

(b) This section shall become operative only if this bill and Senate Bill 1653 of the 2001–02 Regular Session are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last, in which case this section shall prevail over Section 79420, as added by Senate Bill 1653.

SEC. 2. Section 79423 is added to the Water Code, to read:

79423. (a) The implementing agencies shall annually submit to the director their annual program plan and proposed budget for the following budget year describing how each implementing agency proposes to implement their respective program elements during the following budget year. The director shall then submit a comprehensive budget proposal to the Secretary of the Resources Agency for consideration consistent with the existing budget development process. Individual departmental budget requests are exempt from the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). These programs shall also address environmental justice concerns and assess the impacts of projects and activities on tribal trust resources and tribal governmental concerns.

(b) Each annual program plan and proposed budget shall include programs that are designated as Category A programs in Attachment 3, entitled ''Implementation Memorandum of Understanding'' of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(c) Annually, the authority shall consult with the agencies identified in subdivision (f) of Section 79401 and the Bay-Delta Public Advisory Committee, and shall determine, with the concurrence of the

implementing agencies, those changes that shall be made to the list of Category A programs.

(d) Each annual program plan and proposed budget shall include program priorities, work plans, proposed budgets, and significant program products, including, but not limited to, regulations, grant or loan solicitations, schedules for production of environmental documents, and project selection processes.

(e) Annual program plans and proposed budgets also shall include a strategy and proposed budget for addressing program-specific, critical scientific uncertainties, developing and implementing performance measures, evaluating program actions, developing strategies for incorporating tribal and environmental justice interests, and conducting scientific review of program implementation and proposed projects. The implementing agency and the director shall consult with the lead scientist, as appropriate, to determine an appropriate science strategy and proposed budget.

(f) The implementing agencies shall develop comprehensive tribal and environmental justice work plans, including specific goals and objectives and projected expenditures that address all program areas.

(g) The implementing agencies shall coordinate the preparation of annual program plans and proposed budgets with agencies participating in the California Bay-Delta Program, federally recognized Indian tribes, and other appropriate agencies.

(h) The implementing agencies and the director shall seek to integrate the annual plans and proposed budgets for the program elements into a comprehensive and balanced annual implementation plan.

(i) Annually, the authority shall review and approve, and, as appropriate, may recommend that implementing agencies modify, multiyear program plans and long-term expenditure plans on behalf of Category A programs, based on the following criteria:

(1) Consistency with the program.

(2) The balanced achievement of the program's goals and objectives.

(j) If the authority does not approve an implementing agency's multiyear program plan and long-term expenditure plan, the authority shall prepare and submit written findings to the appropriate policy and fiscal committees of the Legislature and the implementing agencies, describing how the multiyear program plan and long-term expenditure plan do not meet the criteria adopted by the authority pursuant to subdivision (o) of Section 79421.

(k) If the authority recommends modification to implementation of the Budget Act for the current fiscal year or the multiyear program plan and long-term expenditure plan, the implementing agency shall resubmit the Budget Act implementation plan, the multiyear plan, or the long-term expenditure plan, as appropriate, to the authority for approval.

If an implementing agency makes any of the modifications recommended by the authority, the authority shall submit these modifications to the Legislature.

(*l*) Nothing in this division limits or interferes with the final decisionmaking authority of the implementing agencies.

(m) This section shall become operative only if this bill and Senate Bill 1653 of the 2001–02 Regular Session are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last, in which case this section shall prevail over Section 79423, as added by Senate Bill 1653.

SEC. 3. Section 79453 is added to the Water Code, to read:

79453. (a) The director may appoint and hire staff as necessary to administer the affairs of the authority.

(b) This section shall become operative only if this bill and Senate Bill 1653 of the 2001–02 Regular Session are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last, in which case this section shall prevail over Section 79453, as added by Senate Bill 1653.

SEC. 4. Section 79455 is added to the Water Code, to read:

79455. (a) Notwithstanding any other provision of law, and only for the purposes of this division, the authority may hire members of federally recognized Indian tribes and nonprofit organizations in accordance with the inter-jurisdictional employee exchange program described in Section 427 of Title 2 of the California Code of Regulations.

(b) This section shall become operative only if this bill and Senate Bill 1653 of the 2001–02 Regular Session are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last, in which case this section shall prevail over Section 79455, as added by Senate Bill 1653.

CHAPTER 956

An act to amend Section 7048 of the Water Code, relating to water.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 7048 of the Water Code is amended to read:

7048. (a) The Legislature hereby finds and declares that the protection, restoration, and enhancement of urban creek channels provide potential benefits to the state by combining an effective and

efficient means of flood damage reduction with the preservation and enhancement of natural environmental values. The Legislature further finds that urban creek protection, restoration, and enhancement are best undertaken by local agencies and organizations with assistance from the state. It is the intent of the Legislature, in enacting this section, to restore the ecological viability of creek environments located in predominantly urban areas, thereby enhancing aesthetic, recreational, and fish and wildlife values.

(b) (1) The director may establish a program of flood damage reduction and urban creek restoration known as the Urban Streams Restoration Program. The program shall consist of both of the following components:

(A) The development of the capability by the department to respond to requests from local agencies and organizations for planning and design assistance for efficient and effective urban creek protection, restoration, and enhancement.

(B) To the extent that funds are provided, a process for awarding competitive grants.

(2) For purposes of this section, urban creek protection, restoration, and enhancement include, but are not limited to, the maintenance of channel capacity, channel stabilization, vegetation management, and adaptive management to meet program objectives. Where appropriate, the protection, restoration, and enhancement shall utilize efficient, nonstructural low-maintenance flood protection techniques. The department shall utilize in this program its expertise in a variety of disciplines, including, but not limited to, soil bioengineering, hydrology, and plant ecology.

(3) (A) The department shall maintain a balance in allocating the money annually available for grants to small urban creek restoration projects and large urban stream restoration projects, allocating not less than 35 percent to both small and large projects. For purposes of this section, ''small urban creek restoration projects'' are projects for which total costs, including acquisition and restoration costs, are below one million dollars ($1,000,000) and ''large urban stream restoration projects'' are projects for which total costs, including acquisition and restoration costs are one million dollars ($1,000,000) or more.

(B) Notwithstanding subparagraph (A), if an insufficient number of qualified projects are available to fully meet the allocation requirement, the department may grant funds to any project that is otherwise qualified, in order to ensure that all available funds are used efficiently.

(c) In responding to requests for assistance, the department shall give priority to those projects that are being planned in conjunction with, or in lieu of, local flood control projects. The department may award grants and contracts to local agencies and organizations as provided for in the

budget of the department. Participating local agencies and organizations shall follow procedures, plans, and practices that are acceptable to the department, and shall conform to guidelines established by the department that define the level of contribution and participation required by local agencies and organizations.

The department shall coordinate the program with the Department of Fish and Game during the formulation of guidelines and project planning for urban creek protection, restoration, and enhancement. The department shall also consult with the Department of Fish and Game on project criteria which may include economic, environmental, and social benefits to be achieved.

(d) It is the intent of the Legislature that the duties and responsibilities of the department be identified as the Urban Streams Restoration Program and be carried out by an office or staff designated for this purpose. Information on how to obtain planning, design, and financial assistance should be readily accessible to the public.

(e) As used in this section, ''urban creek'' means a creek stream, or river that crosses built-up residential, commercial, or industrial property, or that crosses land where, in the near future, the land use will be residential, commercial, or industrial.

(f) For the purposes of this section, eligible activities include, but are not limited to, the maintenance of channel capacity and stabilization of the morphological equilibrium of a natural channel for purposes of flood damage reduction, erosion control, and bank stabilization which may include nonstructural as well as structural projects.

(g) The department may adopt regulations that define adaptive management for the purposes of the Urban Streams Restoration Program and establish criteria to fund projects that include adaptive management activities.

(h) The department may amend or utilize existing regulations for approving competitive grants. The regulations may include, but are not limited to, an application process, grant approval criteria, and grantee's reporting requirements. The department shall annually make available to the public, in a form that is readily accessible, information regarding the status of funds appropriated for these purposes and projects that received grants.

CHAPTER 957

An act to add Section 12949.6 to the Water Code, relating to water, and making an appropriation therefor.

[Approved by Governor September 26, 2002. Filed with
Secretary of State September 27, 2002.]

I am signing Assembly Bill 2717, however, I am reducing the appropriation from the Renewable Resources Investment Fund to $100,000.

This bill would require the Department of Water Resources to convene a Water Desalination task force to make recommendations related to potential opportunities for the use of seawater and brackish water desalination.

The revenues from the Renewable Resources Investment Fund are below projections and the fund is expected to have a significant shortfall this year. At a time when the state is dealing with a $24 billion shortfall, any available funds should be used for on-going environmental activities and programs now supported by the General Fund that would otherwise be reduced or eliminated.

Studying the potential opportunities and impediments for the use of water desalination is an important step toward helping the state meet its water needs. Therefore, I am directing the Department of Water Resources to explore funding partnerships with interested local and private entities to accomplish this goal.

GRAY DAVIS, Governor

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

SECTION 1. The Legislature finds and declares as follows:

(a) There is a clear public interest in ensuring that land and facilities are available for cost-effective seawater desalination.

(b) Recent advances in technology could make seawater desalination a more attractive option for increasing available water supplies.

(c) Additional information is necessary to assess the potential opportunities for seawater desalination in California.

(d) The activities of a water desalination task force are consistent with those activities for which the moneys in the Bosco-Keene Renewable Resources Investment Fund may be used pursuant to Section 34000 of the Public Resources Code.

SEC. 2. Section 12949.6 is added to the Water Code, to read:

12949.6. (a) Not later that July 1, 2004, the Department of Water Resources shall report to the Legislature on potential opportunities for the use of seawater and brackish water desalination in California. The report shall evaluate impediments to the use of desalination technology and shall examine what role, if any, the state should play in furthering the use of desalination in California.

(b) The department shall convene a task force, to be known as the Water Desalination Task Force, to advise the department in implementation of subdivision (a), including making recommendations to the Legislature regarding the following:

(1) The need for research, development and demonstration projects for more cost effective and technologically efficient desalination processes.

(2) The environmental impacts of brine disposal, energy use related to desalination, and large-scale ocean water desalination.

(3) An evaluation of the current regulatory framework of state and local rules, regulations, ordinances, and permits to identify the obstacles and methods to creating an efficient siting and permitting system.

(4) Determining a relationship between existing electricity generation facilities and potential desalination facilities, including an examination of issues related to the amounts of electricity required to maintain a desalination facility.

(5) Ensuring desalinated water meets state water quality standards.

(6) Impediments or constraints, other than water rights, to increasing the use of desalinated water both in coastal and inland regions.

(7) The economic impact and potential impacts of the desalination industry on state revenues.

(8) The role that the state should play in furthering the use of desalination technology in California.

(9) An evaluation of a potential relationship between desalination technology and alternative energy sources, including photovoltaic energy and desalination.

(c) (1) The task force shall be convened by the department and be comprised of one representative from each of the following agencies:

(A) The department.

(B) The California Coastal Commission.

(C) The State Energy Resources Conservation and Development Commission.

(D) The California Environmental Protection Agency.

(E) The State Department of Health Services.

(F) The Resources Agency.

(G) The State Water Resources Control Board.

(H) The CALFED Bay-Delta Program.

(I) The Department of Food and Agriculture.

(J) The University of California.

(K) The United States Department of Interior, if that agency wishes to participate.

(2) The task force shall also include, as determined by the department, one representative from a recognized environmental advocacy group, one representative from a consumer advocacy group, one representative of local agency health officers, one representative of a municipal water supply agency, one representative of urban water wholesalers, one representative from a regional water control board, one representative from a groundwater management entity, one representative of water districts, one representative from a nonprofit association of public and private members created to further the use of desalinated water, one

representative of land development, and one representative of industrial interests.

(d) The sum of $600,000 is hereby appropriated from the Bosco-Keene Renewable Resources Investment Fund to the department for the purpose of establishing the task force and preparing the report required in subdivision (a).

CHAPTER 958

An act to amend Sections 31007, 31008, 31010, 31150.1, 31156, 31200, 31206, 31207, 31207.1, 31251, 31255.1, 31257, 31260, 31303, 31307, 31310, 31350, 31351, 31352, 31352.5, 31353, 31354, and 31355 of, and to add Sections 31017, 31111, 31112, 31120, and 31406 to, the Public Resources Code, relating to conservation.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 31007 of the Public Resources Code is amended to read:

31007. ''Coastal restoration project'' means an action taken by a public agency, including the conservancy, or a nonprofit organization, to correct undesirable development patterns in the coastal zone.

SEC. 2. Section 31008 of the Public Resources Code is amended to read:

31008. ''Coastal resource enhancement project'' means an action taken by a public agency, including the conservancy, or a nonprofit organization, to restore, as nearly as possible, degraded natural areas to their original condition or to enhance the resource values of a coastal zone.

SEC. 3. Section 31010 of the Public Resources Code is amended to read:

31010. ''Local public agency'' includes, but is not limited to, a city, county, city and county, district, association of governments, or joint powers agency.

SEC. 4. Section 31017 is added to the Public Resources Code, to read:

31017. ''Public agency'' includes, but is not limited to, local public agencies, state agencies, federal agencies, colleges and universities, intergovernmental bodies, and federally recognized Indian tribes.

SEC. 5. Section 31111 is added to the Public Resources Code, to read:

31111. In implementing this division, the conservancy may fund and undertake plans and feasibility studies, and may award grants to public agencies and nonprofit organizations for these purposes.

SEC. 6. Section 31112 is added to the Public Resources Code, to read:

31112. With respect to its publications, the conservancy may accept subscriptions and nonpolitical advertising, and proceeds from them. All proceeds shall be deposited into the State Coastal Conservancy Fund and be available for expenditure upon appropriation by the Legislature.

SEC. 7. Section 31120 is added to the Public Resources Code, to read:

31120. In awarding grants to, or entering into agreements with, a federally recognized Indian tribe, the conservancy shall recognize and respect the limited sovereignty of the tribe.

SEC. 8. Section 31150.1 of the Public Resources Code is amended to read:

31150.1. Notwithstanding any other provision of law, the conservancy may enter into an option to acquire an interest in real property for an agricultural preservation project, when the Legislature appropriates funds for purposes of carrying out the objectives of this division. The total cost of the option may not exceed six hundred thousand dollars ($600,000).

SEC. 9. Section 31156 of the Public Resources Code is amended to read:

31156. The conservancy may award grants to public agencies and nonprofit organizations for the purpose of acquiring fee title, development rights, easements, or other interests in land located in the coastal zone in order to prevent loss of agricultural land to other uses and to assemble agricultural lands into parcels of adequate size permitting continued agricultural production. The conservancy may also award grants to public agencies and nonprofit organizations for the purpose of undertaking improvements to and development of these lands where that action is required to meet the purposes of this section. The expenditure of any of these funds shall be consistent with the provisions of this chapter.

SEC. 10. Section 31200 of the Public Resources Code is amended to read:

31200. The conservancy may award grants to public agencies and nonprofit organizations for the purpose of restoration of areas of the coastal zone that, because of scattered ownerships, poor lot layout, inadequate park and open space, incompatible land uses, or other conditions, are adversely affecting the coastal environment or are

impeding orderly development. Grants under this section shall be utilized for the assembly of parcels of land within designated coastal restoration areas, for the redesign of those areas, and the installation of public improvements required to serve those areas. As provided in this chapter, the cost of acquisition of certain coastal access and open-space lands, other than those acquired through dedication, within restoration areas may be funded through the conservancy. Grants under this section may not be utilized as a method of acquisition of public park, recreation, or wildlife areas, except as those uses may be incidental to a coastal restoration project. After redesign and installation of public improvements, if any, lands containing coastal restoration projects, with the exception of lands acquired for public purposes as provided in this chapter, shall be conveyed to any person for the purpose of development in accordance with a restoration plan approved under Section 31208.

SEC. 11. Section 31206 of the Public Resources Code is amended to read:

31206. In accordance with procedures adopted by the conservancy, public agencies and nonprofit organizations may submit proposed coastal restoration projects for consideration by the conservancy.

SEC. 12. Section 31207 of the Public Resources Code is amended to read:

31207. In connection with proposed coastal restoration projects, the conservancy may fund up to three hundred thousand dollars ($300,000) of the cost of preparing coastal restoration plans.

SEC. 13. Section 31207.1 of the Public Resources Code is amended to read:

31207.1. Notwithstanding any other provision of law, the conservancy may enter into an option to acquire an interest in real property in connection with a restoration project, when the Legislature appropriates funds for purposes of carrying out the objectives of this division. The cost of the option may not exceed six hundred thousand dollars ($600,000).

SEC. 14. Section 31251 of the Public Resources Code is amended to read:

31251. The conservancy may award grants to public agencies and nonprofit organizations for the purpose of enhancement of coastal resources that, because of indiscriminate dredging or filling, improper location of improvements, natural or human-induced events, or incompatible land uses, have suffered loss of natural and scenic values. Grants under this chapter shall be utilized for the assembly of parcels of land within coastal resource enhancement areas to improve resource management, for relocation of improperly located or designed improvements, and for other corrective measures that will enhance the natural and scenic character of the areas. As provided in this chapter, the

cost of acquisition of certain lands within coastal resource enhancement areas may be funded through the conservancy. Grants under this section may not be utilized as a method of acquisition of public park, wildlife, or natural areas, except as those uses may be incidental to a coastal resource enhancement project.

SEC. 15. Section 31255.1 of the Public Resources Code is amended to read:

31255.1. Notwithstanding any other provision of law, the conservancy may enter into an option to acquire an interest in real property in connection with an enhancement project, when the Legislature appropriates funds for purposes of carrying out the objectives of this division. The cost of the option may not exceed six hundred thousand dollars ($600,000).

SEC. 16. Section 31257 of the Public Resources Code is amended to read:

31257. In connection with proposed coastal resource enhancement projects, the conservancy may fund up to three hundred thousand dollars ($300,000) of the cost of preparing coastal resource enhancement plans.

SEC. 17. Section 31260 of the Public Resources Code is amended to read:

31260. As part of an approved coastal resource enhancement project, the conservancy may fund the costs of land acquisition.

SEC. 18. Section 31303 of the Public Resources Code is amended to read:

31303. The conservancy shall request the commission, public agencies, nonprofit organizations, and other public and private groups to assist in the development of criteria and guidelines for the submission, evaluation, and determination of priority of projects. After considering comments received from those sources and ensuring that adequate opportunity for public review and comment has been provided, the conservancy shall adopt guidelines and criteria for the administration of the urban waterfront restoration program authorized under this chapter.

In accordance with procedures adopted by the conservancy, public agencies and nonprofit organizations may submit proposed urban waterfront projects for consideration by the conservancy for state or federal funding.

SEC. 19. Section 31307 of the Public Resources Code is amended to read:

31307. The conservancy may award grants to public agencies and nonprofit organizations for the restoration of urban coastal waterfront areas.

SEC. 20. Section 31310 of the Public Resources Code is amended to read:

31310. Notwithstanding any other provision of law, the conservancy may enter into an option to acquire an interest in real property in connection with an urban waterfront project, when the Legislature appropriates funds for purposes of carrying out the objectives of this division. The cost of the option may not exceed six hundred thousand dollars ($600,000).

SEC. 21. Section 31350 of the Public Resources Code is amended to read:

31350. It is the policy of the Legislature to assure that significant coastal resource sites shall be reserved for public use and enjoyment. To achieve this objective, it is the intent of the Legislature to vest in the conservancy authority to acquire, hold, protect, and use interests in key coastal resource lands, as indicated in the chapters of this division, that otherwise would be lost to public use.

SEC. 22. Section 31351 of the Public Resources Code is amended to read:

31351. (a) The conservancy shall cooperate with the commission, bay commission, and other public agencies and with nonprofit organizations in ensuring the reservation of interests in real property for purposes of this division, as well as for park, recreation, fish and wildlife habitat, historical preservation, or scientific study required to meet the policies and objectives of the California Coastal Act of 1976 (commencing with Section 30000), or a certified local coastal plan or program; or, in the case of San Francisco Bay, the sites identified in the bay plan, the Suisun Marsh Protection Plan, or in any other local plan that the bay commission determines to be consistent with those plans; or, in coastal areas not within the coastal zone or the San Francisco Bay, any other local plans.

(b) The provisions of this division shall not diminish or otherwise affect the authority of the bay commission to approve, deny, or modify permits as provided in Section 66632 of the Government Code.

SEC. 23. Section 31352 of the Public Resources Code is amended to read:

31352. (a) If a public agency or nonprofit organization is unable, due to limited financial resources or other circumstances, to acquire, hold, protect, or use an interest in real property for a purpose provided in Section 31351, the conservancy may do either of the following:

(1) Award a grant to the public agency or nonprofit organization for a purpose provided in Section 31351.

(2) Acquire and hold the interest for subsequent conveyance to an appropriate public agency or nonprofit organization.

(b) The conservancy may provide the technical assistance required to aid a public agency or nonprofit organization in completing the acquisition or related functions described in subdivision (a).

SEC. 24. Section 31352.5 of the Public Resources Code is amended to read:

31352.5. Where a nonprofit organization is better situated than the conservancy to acquire temporarily an interest in real property for later acquisition by a public agency or nonprofit organization, the conservancy may loan the nonprofit organization the necessary funds to accomplish the acquisition. As a condition of that loan, the nonprofit organization shall adhere to the procedures and restrictions of this chapter in accomplishing the acquisition.

SEC. 25. Section 31353 of the Public Resources Code is amended to read:

31353. Notwithstanding any other provision of law, the conservancy may enter into an option to acquire an interest in real property in connection with a site-reservation project, when the Legislature appropriates funds for purposes of carrying out the objectives of this division. The cost of the option may not exceed six hundred thousand dollars ($600,000).

SEC. 26. Section 31354 of the Public Resources Code is amended to read:

31354. The conservancy may not hold fee interests acquired in accordance with this chapter for more than 10 years from the time of acquisition. A public agency shall have the right to acquire the fee interest at any time during this period for the public purposes indicated in this chapter. At any time during this period, a nonprofit organization may acquire the fee interest if the city or county where the lands are located approves the acquisition. The acquisition shall be deemed approved thirty days after the conservancy has mailed written notice, unless the city or county objects in writing within that time. When deemed appropriate by the conservancy, the instrument conveying an interest in real property to a nonprofit organization may include a restriction permanently limiting the use of those lands to the acquisition purposes. The price to public agencies or to nonprofit organizations that acquire interests in real property from the conservancy may include the cost of acquisition or the conservancy's administrative and management costs in reserving and managing the land, or both. The payment of this acquisition price shall be either monetary or conservancy approved property of an equivalent value, or a combination thereof. The lands acquired under this section shall not be disposed of under Section 11011.1 of the Government Code. If, at the expiration of this 10-year period, no public agency or nonprofit organization is willing or able to acquire the lands, the conservancy shall request the Department of General Services to dispose of those lands at fair market value without restriction on subsequent land use under this division.

Any funds received by the state upon disposition of lands acquired in accordance with Section 31352 shall be deposited with the conservancy and shall be available for expenditure when appropriated by the Legislature for the purposes of funding the programs specified in this division.

SEC. 27. Section 31355 of the Public Resources Code is amended to read:

31355. The conservancy is authorized to lease interest in real property acquired in accordance with this chapter. When the leases are made to private individuals or groups, the conservancy shall annually, upon appropriation of the amounts by the Legislature, transfer 24 percent of the gross income of the leases to the county where the interests in real property are situated.

The county shall distribute any payment received by it pursuant to this section to itself, to each revenue district for which the county assesses and collects real property taxes or assessments, and to every other taxing agency within the county where the property is situated. The amount distributable to the county and each revenue district or other taxing agency shall be proportionate to the ratio that the amount of the taxes and assessments of each on similar real property similarly situated within that part of the county embracing the smallest in area of the revenue districts or other taxing agencies other than the county, levied for the fiscal year next preceding, bears to the combined amount of the taxes and assessments of all those districts and agencies, including the county, on the property levied for that year. The county auditor shall determine and certify the amounts distributable to the board of supervisors, that shall thereupon order the making of the distribution.

Any money distributed pursuant to this section to any county, revenue district, or other taxing agency shall be deposited to the credit of the same fund as any taxes or assessments on any taxable similar real property similarly situated.

Where a county receives a payment pursuant to this section in an amount of twenty-five dollars ($25) or less in respect to any parcel of leased property, all of that payment shall be distributed to the county for deposit in the county general fund.

SEC. 28. Section 31406 is added to the Public Resources Code, to read:

31406. Notwithstanding any other provision of law, the conservancy may enter into an option to acquire an interest in real property in connection with a public access project, when the Legislature appropriates funds for purposes of carrying out the objectives of this

division. The cost of the option may not exceed six hundred thousand dollars ($600,000).

CHAPTER 959

An act to amend, repeal, and add Section 2157 of, and to add and repeal Sections 101.5, 2162.5, 2195, 2196, 9607, 9608, 9609, and 9610 of, the Elections Code, relating to voter information.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. The Legislature finds and declares that:

(a) In the Internet age, an individual's voter registration information is in danger of being shared, sold, or borrowed for purposes outside of the strict limits of the law.

(b) There exists a need to provide greater security for information contained in voter files which generally may be accessed from the offices of county elections officials, the office of the Secretary of State, commercial vendors, and campaign consultants.

SEC. 2. Section 101.5 is added to the Elections Code, to read:

101.5. (a) Immediately following the statement required by Section 101, the following statement shall be printed in 12-point type:

''THE USE OF YOUR SIGNATURE FOR ANY PURPOSE OTHER THAN QUALIFICATION OF THIS MEASURE FOR THE BALLOT IS A MISDEMEANOR. COMPLAINTS ABOUT THE MISUSE OF YOUR SIGNATURE MAY BE MADE TO THE SECRETARY OF STATE'S OFFICE.''

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 3. Section 2157 of the Elections Code is amended to read:

2157. (a) Subject to this chapter, the affidavit of registration shall be in a form prescribed by regulations adopted by the Secretary of State. The affidavit shall:

(1) Contain the information prescribed in Section 2150.

(2) Be sufficiently uniform among the separate counties to allow for the processing and use by one county of an affidavit completed in another county.

(3) Allow for the inclusion of informational language to meet the specific needs of that county, including, but not limited to, the return

address of the elections official in that county, and a telephone number at which a voter can obtain elections information in that county.

(4) Be included on one portion of a multipart card, to be known as a voter registration card, the other portions of which shall include information sufficient to facilitate completion and mailing of the affidavit. The affidavit portion of the multipart card shall be numbered according to regulations adopted by the Secretary of State. For purposes of facilitating the distribution of voter registration cards as provided in Section 2158, there shall be attached to the affidavit portion a receipt. The receipt shall be separated from the body of the affidavit by a perforated line.

(5) Contain, at the top of the card, in a type size and color of ink that is clearly distinguishable from surrounding text, a statement that the use of voter registration information for commercial purposes is a misdemeanor, and any suspected misuse should be reported to the office of the Secretary of State.

(6) Contain a fraud hotline telephone number maintained by the Secretary of State at which the public may report suspected fraudulent activity concerning misuse of voter registration information.

(7) Be returnable to the county elections official as a self-enclosed mailer with postage prepaid by the Secretary of State.

(b) Nothing contained in this division shall prevent the use of voter registration cards and affidavits of registration in existence on the effective date of this section and produced pursuant to regulations of the Secretary of State, and all references to voter registration cards and affidavits in this division shall be applied to the existing voter registration cards and affidavits of registration.

(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. 4. Section 2157 is added to the Elections Code, to read:

2157. (a) Subject to this chapter, the affidavit of registration shall be in a form prescribed by regulations adopted by the Secretary of State. The affidavit shall:

(1) Contain the information prescribed in Section 2150.

(2) Be sufficiently uniform among the separate counties to allow for the processing and use by one county of an affidavit completed in another county.

(3) Allow for the inclusion of informational language to meet the specific needs of that county, including, but not limited to, the return address of the elections official in that county, and a telephone number at which a voter can obtain elections information in that county.

(4) Be included on one portion of a multipart card, to be known as a voter registration card, the other portions of which shall include

information sufficient to facilitate completion and mailing of the affidavit. The affidavit portion of the multipart card shall be numbered according to regulations adopted by the Secretary of State. For purposes of facilitating the distribution of voter registration cards as provided in Section 2158, there shall be attached to the affidavit portion a receipt. The receipt shall be separated from the body of the affidavit by a perforated line.

(5) Be returnable to the county elections official as a self-enclosed mailer with postage prepaid by the Secretary of State.

(b) Nothing contained in this division shall prevent the use of voter registration cards and affidavits of registration in existence on the effective date of this section and produced pursuant to regulations of the Secretary of State, and all references to voter registration cards and affidavits in this division shall be applied to the existing voter registration cards and affidavits of registration.

(c) This section shall become operative on January 1, 2005.

SEC. 5. Section 2162.5 is added to the Elections Code, to read:

2162.5. (a) Any online or downloadable voter registration form maintained on the Web site of the Secretary of State's office shall include at the top of the form, in a font size and color that is clearly distinguishable from surrounding text, a statement that the use of voter registration information for commercial purposes is a misdemeanor, and any suspected misuse should be reported to the office of the Secretary of State.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 6. Section 2195 is added to the Elections Code, to read:

2195. (a) The Secretary of State shall appoint a task force of seven members who have experience in campaigns, administration of elections, public interest organizations, law enforcement, and other relevant backgrounds to study and recommend to the Secretary of State appropriate standards applicable for safeguarding voter file information in view of the different database formats and security procedures used by the various counties. The task force shall file its report with the Secretary of State and the Legislature no later than January 1, 2004.

(b) The Secretary of State shall adopt uniform guidelines based upon the recommendations in the report filed by the task force pursuant to subdivision (a) not later than 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. 7. Section 2196 is added to the Elections Code, to read:

2196. (a) Any person or committee who purchases data from a voter file and who uses any or all of that data to provide services to a candidate or another committee shall include at the appropriate location in a contract for services a notice in bold type that states as follows: ''State law prohibits the use of voter registration information for commercial purposes.''

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 8. Section 9607 is added to the Elections Code, to read:

9607. (a) The proponents of an initiative measure shall ensure that any person, company, or other organization that is paid, or who volunteers, to solicit signatures to qualify the proposed measure for the ballot shall receive instruction on the requirements and prohibitions imposed by state law with respect to circulation of the petition and signature gathering thereon, with an emphasis on the prohibition on the use of signatures on an initiative petition for a purpose other than qualification of the proposed measure for the ballot.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 9. Section 9608 is added to the Elections Code, to read:

9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

> I, _____, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.
>
> _____
> (Signature of Proponent)
> Dated this ____ day of _____, 20___

(b) The certification required by subdivision (a) shall be kept on file by the agency authorized to prepare the title and summary for the proposed initiative measure for not less than eight months after the certification of the results of the election for which the petition qualified for, or if the measure, for any reason, is not submitted to the voters, eight

months after the deadline for submission of the petition to the elections official.

(c) Failure to comply with this section shall not invalidate any signatures on a state or local initiative petition.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 10. Section 9609 is added to the Elections Code, to read:

9609. (a) Prior to allowing a person to circulate an initiative petition for signatures, the person, company official, or other organizational officer who is in charge of signature gathering shall execute and submit to the proponents, a signed statement that reads as follows:

> I, _____, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.
>
> _____
> (Signature of Official)
> Dated this ____ day of _____, 20___

(b) The certification required by subdivision (a) shall be kept on file by the proponents of the proposed initiative measure for not less than eight months after the certification of the results of the election for which the petition qualified for, or if the measure, for any reason, is not submitted to the voters, eight months after the deadline for submission of the petition to the elections official.

(c) Failure to comply with this section shall not invalidate any signatures on a state or local initiative petition.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 11. Section 9610 is added to the Elections Code, to read:

9610. (a) Prior to soliciting signatures on an initiative petition, a circulator shall execute and submit to the person, company official, or other organizational officer who is in charge of signature gathering a signed statement that reads as follows:

I, _____, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

_____

(Signature of Circulator)

Dated this ____ day of _____, 20___

(b) The certification required by subdivision (a) shall be kept on file by the person, company official, or other organizational officer who is in charge of signature gathering for the proposed initiative measure for not less than eight months after the certification of the results of the election for which the petition qualified for, or if the measure, for any reason, is not submitted to the voters, eight months after the deadline for submission of the petition to the elections official.

(c) This section shall not apply to unpaid circulators of state or local initiative petitions.

(d) Failure to comply with this section shall not invalidate any signatures on a state or local initiative petition.

(e) 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. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 960

An act to add Sections 53343.1 and 53344.4 to the Government Code, relating to community facilities districts.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 53343.1 is added to the Government Code, to read:

53343.1. For any community facilities district formed after January 1, 1992, the community facilities district shall, prepare, if requested by a person who resides in or owns property in the district, within 120 days after the last day of each fiscal year, a separate document titled an ''Annual Report.'' The district may charge a fee for the report not exceeding the actual costs of preparing the report. The report shall include the following information for the fiscal year:

(a) The amount of special taxes collected for the year.

(b) The amount of other moneys collected for the year and their source, including interest earned.

(c) The amount of moneys expended for the year.

(d) A summary of the amount of moneys expended for the following:

(1) Facilities, including property.

(2) Services.

(3) The costs of bonded indebtedness.

(4) The costs of collecting the special tax under Section 53340.

(5) Other administrative and overhead costs.

(e) For moneys expended for facilities, including property, an identification of the categories of each type of facility funded with amounts expended in each category, including the total percentage of the cost of each type of facility that was funded with bond proceeds or special taxes.

(f) For moneys expended for services, an identification of the categories of each type of service funded with amounts expended in each category, including the total percentage of the cost of each type of service that was funded with bond proceeds or special taxes.

(g) For moneys expended for other administrative costs, an identification of each of these costs.

(h) A certification and explanation by the district of how the moneys described in subdivisions (d), (e), (f), and (g) comply with Section 53343.

The Annual Report shall contain references to the relevant sections of the resolution of formation of the district so that interested persons may confirm that bond proceeds and special taxes are being used for authorized purposes. The annual report shall be made available to the public upon request.

SEC. 2. Section 53344.4 is added to the Government Code, to read:

53344.4. Any district preparing a report pursuant to Section 53343.1 shall not be required to comply with Section 50075.3.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 961

An act to add Section 6531 to the Government Code, relating to joint powers authority.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 6531 is added to the Government Code, to read:

6531. (a) The Legislature finds and declares all of the following:

(1) It is in the best interests of communities located within the City of San Diego for the local public agencies that have jurisdiction within the city to form a joint powers agency to provide for the orderly and coordinated acquisition, construction, and development of model school projects. These projects may include the acquisition of land by negotiation or eminent domain, the construction of schools, the construction of recreational facilities or park sites or both, and the construction of replacement and other housing, including market rate, moderate-income, and low-income housing.

(2) The coordinated construction of these projects by redevelopment agencies, school districts, housing authorities, housing commissions, and the city is of great public benefit and will save public money and time in supplying much needed replacement housing lost when schools are constructed within existing communities.

(3) Legislation is needed to allow redevelopment agencies, school districts, housing authorities, housing commissions, and the city to use their powers to the greatest extent possible to expedite, coordinate, and streamline the construction and eventual operation of such projects.

(b) (1) Notwithstanding any other provision of law, the Redevelopment Agency of the City of San Diego, the Housing Authority of the City of San Diego, the San Diego Housing Commission, the San Diego Unified School District, and the City of San Diego may enter into a joint powers agreement to create and operate a joint powers agency for

the development and construction of a model school project located within the City Heights Project Area. The agency created pursuant to this section shall be known as the San Diego Model School Development Agency. The San Diego Model School Development Agency shall have all the powers of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, all of the powers of a housing authority pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, and all of the powers of the San Diego Unified School District, as well as all the powers of a joint powers agency granted pursuant to this chapter, to acquire property and to construct and improve and finance one or more schools, housing projects, parks, recreational facilities, and any other facilities reasonably necessary for their proper operation. Further, the San Diego Model School Development Agency shall have all of the powers of the City of San Diego pursuant to its charter and state law to acquire property and to finance and operate parks and recreational facilities and any other facilities reasonably necessary for their proper operation.

(2) Notwithstanding paragraph (1), neither the San Diego Model School Development Agency nor the Redevelopment Agency of the City of San Diego shall expend any property tax increment revenues to acquire property, and to construct, improve, and finance a school within the City Heights Project Area.

(3) Nothing in this section shall relieve the San Diego Model School Development Agency or the Redevelopment Agency of the City of San Diego from its obligations to increase, improve, and preserve the community's supply of low- and moderate-income housing, including, but not limited to, the obligation to provide relocation assistance, the obligation to provide replacement housing, the obligation to meet housing production quotas, and the obligation to set aside property tax increment funds for those purposes.

(4) The San Diego Model School Development Agency shall perform any construction activities in accordance with the applicable provisions of the Public Contract Code, the Education Code, and the Labor Code that apply, respectively, to the redevelopment agency, housing authority, housing commission, school district, or city creating the San Diego Model School Development Agency. Funding pursuant to Proposition MM, a local San Diego County bond measure enacted by the voters for the purpose of school construction, shall be used only for the design, development, construction, and financing of school-related facilities and improvements, including schools, as authorized and to the extent authorized under Proposition MM.

(c) Any member of the joint powers agency, including the school district, may, to the extent permitted by law, transfer and contribute

funds to the agency, including bond funds, to be deposited into and to be held in a facility fund to be expended for purposes of the acquisition of property for, and the development and construction of, any school, housing project, or other facility described in this section.

(d) Nothing contained in this section shall preclude the joint powers agency from distributing funds, upon completion of construction, the school, housing project, park, recreational facility, or other facility to a member of the agency to operate the school, housing project, park, or other facility that the member is otherwise authorized to operate. These distribution provisions shall be set forth in the joint powers agreement, if applicable.

(e) The San Diego Model School Development Agency may construct a school in the City Heights Project Area pursuant to Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of the Education Code.

(f) The San Diego Model School Development Agency shall establish and enforce, with respect to construction contracts awarded by the joint powers agency, a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing those requirements. This requirement shall not apply to projects that are subject to a collective bargaining agreement that binds all of the contractors and subcontractors performing work on the project, but nothing shall prevent the joint powers agency from operating a labor compliance program with respect to those projects.

(g) Construction workers employed as apprentices by contractors and subcontractors on contracts awarded by the San Diego Model School Development Agency shall be enrolled in a registered apprenticeship program, approved by the California Apprenticeship Council, that has graduated apprentices in the same craft in each of the preceding five years. This graduation requirement shall be applicable for any craft that was first deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft prior to January 1, 1998. A contractor or subcontractor need not submit contract award information to an apprenticeship program that does not meet the graduation requirements of this subdivision. If no apprenticeship program meets the graduation requirements of this subdivision for a particular craft, the graduation requirements shall not apply for that craft.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Redevelopment Agency of the City of San Diego, the Housing Redevelopment Agency of the City of San Diego, the Housing Authority of the City of San Diego, the San

Diego Housing Commission, the San Diego Unified School District, and the City of San Diego. The facts constituting the special circumstances are:

These five public agencies desire to coordinate their powers to build a school and other public facilities in the City Heights neighborhood within the City of San Diego. Because these agencies do not share the same powers, they are not able to enter into a joint powers agreement under the Joint Exercise of Powers Act. Therefore, it is necessary for the Legislature to adopt a special statute authorizing these agencies to form the San Diego Model School Development Agency.

CHAPTER 962

An act to amend Sections 8045, 8047, 8568, and 8569 of, to add Sections 7862.5 and 8568.5 to, and to add Article 1.3 (commencing with Section 7630) to Chapter 1 of Part 3 of Division 6 of, the Fish and Game Code, relating to fishing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Article 1.3 (commencing with Section 7630) is added to Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, to read:

Article 1.3. Commercial Fisheries Capacity Reduction Program

7630. It is the intent of the Legislature to enact legislation establishing a comprehensive program to allow California groundfish fishermen to participate in any federally established buy-back program for the Pacific groundfish fishery.

SEC. 2. Section 7862.5 is added to the Fish and Game Code, to read:

7862.5. (a) The Commercial Salmon Trollers Advisory Committee established under Section 7862 may recommend to the director that a nonprofit organization or the California Salmon Council be authorized to create or contract to create salmon or salmon fishing artwork and other materials based on that artwork, including, but not limited to, a stamp, and offer those items for sale to the public during 2003 and thereafter, for the purpose of augmenting funding for the Commercial Salmon Trollers Enhancement and Restoration Program established under this article.

(b) The committee may not recommend a nonprofit organization or the California Salmon Council as authorized under subdivision (a), unless all of the following conditions are met:

(1) The proposed creation and sale of the artwork is pursuant to a written business plan presented to the committee.

(2) The committee determines that a reasonable share of the sales of any stamp will be remitted to the department for deposit into the Commercial Salmon Stamp Account established in the Fish and Game Preservation Fund under Section 7861.

(3) The committee determines that the creation and sale of the artwork will act to increase public awareness and support for the salmon stamp program and the restoration of salmon and their habitats in the state.

(4) Any other conditions deemed necessary by the committee for determining whether to recommend approval to the director have been met.

(c) The director, upon receiving the recommendation of the committee, and upon finding that there will be no new costs to the department, may authorize the recommended entity to create or contract to create salmon or salmon fishing artwork and other materials based on that artwork, including, but not limited to, a stamp, and offer those items for sale to the public, for the purpose described in subdivision (a).

(d) No person or entity, including, but not limited to, any nonprofit organization, may use the name of the Commercial Salmon Stamp, the Commercial Salmon Trollers Advisory Committee, or the Commercial Salmon Trollers Enhancement and Restoration Program for the sale of artwork and other materials, unless that person or entity has been approved by the director under this section for that purpose. The approval of the director under this section shall be for one year, after which the approval may be renewed for an additional year, upon recommendation of the committee.

(e) No artwork sold in the form of a stamp under this section conveys to the purchaser any entitlement to engage in the commercial salmon fishery.

(f) Proceeds from the sales of artwork and other materials sold under this section, after deduction of all reasonable costs borne by the nonprofit organization or California Salmon Council for creation of the artwork and conducting the sales, shall be deposited in the Commercial Salmon Stamp Account.

SEC. 3. Section 8045 of the Fish and Game Code is amended to read:

8045. The names used in the landing receipt and transportation receipt made under Sections 8043 and 8047 for designating the species

of fish dealt with shall be those in common usage unless otherwise designated by the department.

SEC. 4. Section 8047 of the Fish and Game Code is amended to read:

8047. (a) (1) A person licensed under Article 7 (commencing with Section 8030) who takes his or her own fish shall make a legible record in the form of the landing receipt as required by Sections 8043 and 8043.1 at the time the fish are brought ashore. The original signed copy of the landing receipt shall be delivered by the licensee to the department on or before the 16th day or the last day of the month in which the fish were landed, whichever date occurs first after landing. A copy of the landing receipt shall be retained by the licensee for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

(2) A person licensed under Section 8033.5 who sells his or her fish to a licensed receiver may use a transportation receipt to transport those fish only to that licensed receiver. The receiver shall complete a landing receipt for those fish. A person who sells his or her fish to the ultimate consumer shall complete a landing receipt pursuant to Sections 8043 and 8043.2. Transportation receipts shall be completed at the time the fish are transferred from the fishing vessel.

(b) Every commercial fisherman who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes pursuant to Article 7 (commencing with Section 8030) shall make a legible record in the form of the landing receipt required by Sections 8043 and 8043.1. Persons subject to Section 8043 shall remit the landing tax imposed by Section 8041. The person taking, purchasing, or receiving the fish, whether or not licensed under Article 7 (commencing with Section 8030), shall sign the landing receipt. The original signed copy of the landing receipt shall be delivered by the commercial fisherman to the department on or before the first and 16th day of each month. A copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be retained by the person taking, purchasing, or receiving the fish until they are prepared for consumption or otherwise disposed of. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

(c) (1) Every commercial fisherman or his or her designee, who transports, causes to be transported, or delivers to another person for transportation, any fish, except herring, taken from the waters of this state or brought into this state in fresh condition, shall fill out a transportation receipt according to the instructions and on forms provided by the department at the time the fish are brought ashore.

(2) The original signed copy of the transportation receipt shall be delivered by the commercial fisherman to the department on or before the 16th day or the last day of the month in which the fish were landed, whichever date occurs first after landing. A copy of the transportation receipt shall be retained by the commercial fisherman who filled it out for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the transportation receipt shall be given to and retained by the person transporting the fish until the fish are sold fresh, processed, or otherwise disposed of.

(3) The transportation receipt is required only for transit purposes.

(4) A person transporting fish from the point of first landing under a transportation receipt is not required to be licensed to conduct the activities of a fish receiver as described in Section 8033.

(5) The transportation book receipt shall be issued to an individual fisherman and is not transferable.

(d) The transportation receipt shall contain all of the following information:

(1) The name of each species of fish, pursuant to Section 8045.

(2) The date and time of the receipt.

(3) The accurate weight of the species of fish being transported. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight.

(4) The name and identification number of the fisherman. The signature of the fisherman authorizing transportation.

(5) The name of the person transporting the fish.

(6) The name of the fish business, the fish business identification number, and the corresponding landing receipt number issued by the fish business to the commercial fisherman.

(7) The department registration number of the vessel and the name of the vessel.

(8) The department origin block number where the fish were caught.

(9) The port of first landing.

(10) Any other information the department may prescribe.

(e) The numbered transportation receipt forms in each individual transportation receipt book shall be completed sequentially. A voided fish transportation receipt shall have the word ‘‘VOID’’ plainly and noticeably written on the face of the receipt. A voided fish transportation

receipt shall be submitted to the department in the same manner as a completed fish transportation receipt is submitted to the department. A commercial fisherman who is no longer conducting business as a licensed fisherman shall forward all unused transportation receipts and transportation receipt books to the department immediately upon terminating his or her business activity.

SEC. 5. Section 8568 of the Fish and Game Code is amended to read:

8568. Drift gill net shark and swordfish permits shall be issued to any prior permittee who possesses a valid drift gill net shark and swordfish permit issued pursuant to this section, but only if the permittee meets both of the following requirements:

(a) Possesses a valid permit for the use of gill nets authorized pursuant to Section 8681.

(b) Possessed a valid drift gill net shark and swordfish permit during the preceding season and that permit was not subsequently revoked.

SEC. 6. Section 8568.5 is added to the Fish and Game Code, to read:

8568.5. Any person holding a valid drift gill net shark and swordfish permit on or after January 1, 2000, who did not make, on or after January 1, 2000, the minimum landings required under subdivision (c) of Section 8568, as amended by Section 11 of Chapter 525 of the Statutes of 1998, is eligible for that permit when that person meets all other qualifications for the permit.

SEC. 7. Section 8569 of the Fish and Game Code is amended to read:

8569. The commission may establish conditions for the issuance of a permit if the person's drift gill net shark and swordfish permit was revoked during a preceding season or if the person possessed a valid permit during the preceding season but did not apply for renewal of his or her permit on or before April 30. The applicant for a permit under this section may appeal to the director for the issuance of the permit under those conditions.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the sale of salmon stamps and other material to the public, to permit fisherman's retail licensees to use transportation receipts, to require that names of species used in transportation receipts be those in common usage, to permit the Fish and Game Commission to waive certain landing requirements, and to establish a commercial fisheries capacity reduction program, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 963

An act to amend Section 66014 of the Government Code, relating to land use.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 66014 of the Government Code is amended to read:

66014. (a) Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 or under any other authority; those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) The fees charged pursuant to subdivision (a) may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the

charge of a fee subject to this section shall be brought pursuant to Section 66022.

CHAPTER 964

An act to amend Sections 25118 and 25120 of the Corporations Code, relating to corporations.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 25118 of the Corporations Code is amended to read:

25118. (a) An evidence of indebtedness issued by an entity or guaranteed by an entity that is an affiliate (as defined in Section 150) of the borrower that, on the day the evidence of indebtedness issued or guaranty is first issued or entered into, has total assets of at least two million dollars ($2,000,000) according to its then most recent financial statements, and the purchasers or holders thereof, shall be exempt from the usury provisions of the Constitution. The financial statements referred to in the preceding sentence shall meet both of the following requirements:

(1) Be as of a date not more than 90 days prior to the date the evidence of indebtedness or guaranty is first issued or entered into.

(2) Be prepared in accordance with either of the following:

(A) In accordance with generally accepted accounting principles and, if the entity has consolidated subsidiaries, on a consolidated basis.

(B) In accordance with the rules and requirements of the Securities and Exchange Commission, whether or not required by law to be prepared in accordance with those rules and requirements.

(b) Any one or more evidences of indebtedness, and the purchasers or holders thereof, shall be exempt from the usury provisions of the Constitution if either of the following applies:

(1) The evidences of indebtedness aggregate at the time of issuance at least three hundred thousand dollars ($300,000) in original face amount, or, if the evidences of indebtedness are purchased with original issue discount, they are purchased for an aggregate purchase price at the time of issuance of at least three hundred thousand dollars ($300,000).

(2) The evidences of indebtedness are issued pursuant to a bona fide written commitment for the lending to the issuer of at least three hundred thousand dollars ($300,000), or the provision of a line of credit to the

issuer in a principal amount of at least three hundred thousand dollars ($300,000). The exemption provided by this paragraph shall not be affected by a subsequent event of default or other event not in the lender's control that has relieved or may relieve the lender from its commitment.

(c) Any evidence of indebtedness described in subdivisions (a) or (b), and the purchasers or holders thereof, shall be entitled to the benefits of the usury exemption contained in this section regardless of whether, at any time after the evidence of indebtedness or guaranty upon which the exemption is based is first issued or entered into, the evidence of indebtedness or guaranty is determined by a court of competent jurisdiction not to be a ''security.''

(d) This section creates and authorizes a class of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

(e) This section shall not apply to:

(1) Any evidence of indebtedness issued or guaranteed (if the guaranty is part of the consideration for the indebtedness) by an individual, a revocable trust having one or more individuals as trustors, or a partnership in which, at the time of issuance, one or more individuals are general partners.

(2) Any transaction subject to the limitation on permissible rates of interest set forth in paragraph (1) of the first sentence of Section 1 of Article XV of the California Constitution.

(f) The exemptions created by this section shall only be available in a transaction which meets either of the following criteria:

(1) The lender and either the issuer of the indebtedness or the guarantor, as the case may be, or any of their respective officers, directors, or controlling persons, or, if any party is a limited liability company, the managers as appointed or elected by the members, have a preexisting personal or business relationship.

(2) The lender and the issuer, or the lender and the guarantor, by reason of their own business and financial experience or that of their professional advisers, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(g) For purposes of this section, ''preexisting personal or business relationship'' and ''capacity to protect their own interests in connection with the transaction'' as used in subdivision (f) shall have the same meaning as, and be determined according to the same standards as, specified in paragraph (2) of subdivision (f) of Section 25102 and its implementing regulations provided that, solely with respect to this section, a lender or purchaser who is represented by counsel may designate that person as its professional adviser whether or not that person is compensated by the issuer or guarantor, as long as that person has a bona fide attorney-client relationship with the lender or purchaser.

(h) This section shall not exempt any person from the application of the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code).

SEC. 2. Section 25120 of the Corporations Code is amended to read:

25120. (a) Except as provided in subdivision (b), it is unlawful for any person to offer or sell in this state any security in any of the following manners:

(1) In an issuer transaction in connection with any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(2) In any exchange of securities by the issuer with its existing security holders exclusively.

(3) In any exchange in connection with any merger or consolidation or purchase of assets in consideration wholly or in part of the issuance of securities.

(4) In an entity conversion transaction.

(b) Subdivision (a) shall not apply to a security if the security is qualified for sale under this chapter (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to the qualification) or if the security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part.

CHAPTER 965

An act to amend Section 10264 of the Public Contract Code, and to add Section 284 to the Streets and Highways Code, relating to public works, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. (a) The Department of Transportation shall extend the completion date to June 30, 2007, for the Environmental Enhancement and Mitigation Project for the Ueda Parkway Off-Road Recreation and Environmental Enhancement Project in the City of Sacramento (Project No. EEM-0099-52; Agreement No. 03-99-01).

(b) The Department of Transportation shall extend the completion date to June 30, 2007, for the Eastern Sierra Interagency Visitor Center Environmental Enhancement and Mitigation Project in Lone Pine (Project No. EEM-099 (112)).

(c) The Department of Transportation shall extend the completion date to June 30, 2004, for the Environmental Enhancement and Mitigation (EEM) Project for the Cambria Community Services District (Project No. 96-28).

(d) The Department of Transportation shall extend the completion date to June 30, 2004, for the Dry Creek Parkway Environmental Enhancement and Mitigation (EEM) Project in the County of Sacramento (Project No. EEM 0099-027, Agreement No. 03-99-12).

SEC. 2. Section 10264 of the Public Contract Code is amended to read:

10264. (a) With the exception of projects over water requiring marine access, and which have a contract amount greater than twenty-five million dollars ($25,000,000), in addition to the provisions for partial payment made in Section 10261, the department may make partial payments for the mobilization costs of a contract subject to this chapter, not to exceed the following:

(1) When 5 percent of the original contract amount is earned, 50 percent of the amount bid for mobilization, or 5 percent of the original contract amount, whichever is lesser, may be paid.

(2) When 10 percent of the original contract amount is earned, 75 percent of the amount bid for mobilization or 7.5 percent of the original contract amount, whichever is lesser, may be paid.

(3) When 20 percent of the original contract amount is earned, 95 percent of the amount bid for mobilization, or 9.5 percent of the original contract amount, whichever is lesser, may be paid.

(4) When 50 percent of the original contract amount is earned, 100 percent of the amount bid for mobilization, or 10 percent of the original contract amount, whichever is lesser, may be paid.

(5) Upon completion of all work on the project, payment of any amount bid for mobilization in excess of 10 percent of the original contract amount will be paid.

(b) For projects over water requiring marine access, and with a contract amount greater than twenty-five million dollars ($25,000,000), in addition to the provisions for partial payment made in Section 10261, the department may make partial payments for the mobilization costs of a contract subject to this chapter, not to exceed the following:

(1) When 1 percent of the original contract amount is earned, 50 percent of the amount bid for mobilization, or 1 percent of the original contract amount, whichever is lesser, may be paid.

(2) When 2.5 percent of the original contract amount is earned, 60 percent of the amount bid for mobilization, or 2.5 percent of the original contract amount, whichever is lesser, may be paid.

(3) When 5 percent of the original contract amount is earned, 75 percent of the amount bid for mobilization, or 5 percent of the original contract amount, whichever is lesser, may be paid.

(4) When 15 percent of the original contract amount is earned, 95 percent of the amount bid for mobilization, or 10 percent of the original contract amount, whichever is lesser, may be paid.

(5) When 40 percent of the original contract amount is earned, 100 percent of the amount bid for mobilization, or 15 percent of the original contract amount, whichever is lesser, may be paid.

(6) Upon completion of all work on the project, payment of any amount bid for mobilization in excess of 15 percent of the original contract amount shall be paid.

This subdivision shall apply only to contracts that are advertised subsequent to the date that the act adding this subdivision becomes effective.

SEC. 3. Section 284 is added to the Streets and Highways Code, to read:

284. That part of the California highway system frequently referred to as the Cabrillo Freeway, which is the segment of State Highway Route 163 between postmiles 0.5 and 3.0 through Balboa Park in the City of San Diego, is hereby designated a California Historic Parkway and is named the Cabrillo Parkway.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide an extension at the earliest date possible for the projects described by this act, to revise partial payment amounts and limits with respect to certain public contracts as quickly as possible, and to designate and name a parkway, it is necessary that the act take effect immediately.

CHAPTER 966

An act to amend Section 66907.7 of the Government Code, and to add and repeal Article 1.5 (commencing with Section 5019.10) of Chapter 1 of Division 5 of the Public Resources Code, relating to natural resources, and making an appropriation therefor.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 66907.7 of the Government Code is amended to read:

66907.7. (a) The conservancy may award grants to local public agencies, state agencies, federal agencies, federally recognized Indian tribes, the Tahoe transportation district established under Section 66801, and nonprofit organizations, for the purposes of this title.

(b) Grants to nonprofit organizations for the acquisition of real property or interests therein shall be subject to all of the following conditions:

(1) The purchase price of any interest in land acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the conservancy.

(2) The conservancy approves the terms under which the interest in land is acquired.

(3) The interest in land acquired pursuant to a grant from the conservancy may not be used as security for any debt to be incurred by the nonprofit organization unless the conservancy approves the transaction.

(4) The transfer of land acquired pursuant to a grant shall be subject to the approval of the conservancy and the execution of an agreement between the conservancy and the transferee sufficient to protect the interest of the people of California.

(5) The state shall have a right of entry and power of termination in and over all interests in real property acquired with state funds, which may be exercised if any essential term or condition of the grant is violated.

(6) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state, except that, prior to that termination, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property, by recording its acceptance of title, together with the conservancy's approval, in writing.

(c) Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest or right of entry on the part of the state.

SEC. 2. Article 1.5 (commencing with Section 5019.10) is added to Chapter 1 of Division 5 of the Public Resources Code, to read:

Article 1.5. The Parks Project Revolving Fund

5019.10. (a) The Parks Project Revolving Fund is hereby established in the State Treasury. Except as otherwise specified in this section, upon approval of the Department of Finance there shall be transferred to, or deposited in, the fund all money appropriated, contributed, or made available from any source, including sources other than state appropriations, for expenditure on work within the powers and duties of the department with respect to the construction, alteration, repair, and improvement of state park facilities, including, but not limited to, services, new construction, major construction and equipment, minor construction, maintenance, improvements, and equipment, and other building and improvement projects for which an appropriation is made or, as to funds from sources other than state appropriations, as may be authorized by written agreement between the contributor or contributors of funds and the department and approved by the Department of Finance.

(b) Money from state sources transferred to, or deposited in, the fund for major construction shall be limited to the amount necessary based on receipt of competitive bids. Money transferred for this purpose shall be upon the approval of the Department of Finance. Any amount available, in the state appropriation, which is in excess of the amount necessary based on receipt of competitive bids, shall be immediately transferred to the credit of the fund from which the appropriation was made. Money in the fund also may be expended, upon approval of the Department of Finance, to finance the cost of a construction project within the powers and duties of the department for which the federal government will contribute a partial cost thereof, if written evidence has been received from a federal agency indicating that that money has been appropriated by Congress and the federal government, and that the federal government will pay to the state the amount specified upon the completion of construction of the project. The director may approve plans, specifications and estimates of cost, and advertise for and receive bids on, those projects in anticipation of the receipt of the written evidence. Money transferred or deposited for the purposes of this subdivision is available for expenditure by the department for the purposes for which appropriated, contributed, or made available, without regard to fiscal years and irrespective of the provisions of Section 13340 of the Government Code.

(c) As used in this article, ''fund'' means the Parks Project Revolving Fund.

5019.11. The department shall file against the fund all claims covering expenditures incurred in connection with services, new construction, major construction and equipment, minor construction,

maintenance, improvements, and equipment, and other building and improvement projects, and the Controller shall draw his or her warrant therefor against that fund.

5019.12. The department shall keep a record of all expenditures chargeable against each specific portion of the fund. Any unencumbered balance in any portion of the fund, either within three months after completion of the project for which the portion was transferred or within three years from the time the portion was transferred or deposited therein, whichever is earlier, shall be withdrawn from the revolving fund and transferred to the credit of the fund from which the appropriation was made. As to funds from other than state appropriations, they shall be paid out or refunded as provided in the agreement relating to the contributions. The Department of Finance may approve an extension of the time of withdrawal. For the purpose of this section an estimate, prepared by the department upon receipt of bids, of the amount required for supervision, engineering, and other items, if any, necessary for the completion of a project, on which a construction contract has been awarded, shall be deemed a valid encumbrance and shall be included with any other valid encumbrances in determining the amount of an unencumbered balance.

5019.13. At any time the department, without furnishing a voucher or itemized statement, may withdraw from the Parks Project Revolving Fund a sum not to exceed five hundred thousand dollars ($500,000). Any sum withdrawn pursuant to this section shall be used as a revolving fund where payments of compensation earned or cash advances are necessary with respect to the construction, alteration, repair, or improvement of state buildings.

5019.14. The department shall annually submit to the Department of Finance a report that reconciles, by project, all of the following:

(a) Amounts transferred to the revolving fund.

(b) Amounts expended from the revolving fund.

(c) In cases of project savings or completion, or both, unexpended amounts withdrawn from the fund and transferred to the credit of the fund, paid out, or refunded, as provided in Section 5019.12.

5019.15. This article shall become inoperative on a date that is three years after the date that Section 5018.1 is repealed, and, as of January 1 immediately following that inoperative date, is repealed, unless a later enacted statute that is enacted before that January 1 deletes or extends the dates on which it becomes inoperative and is repealed.

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CHAPTER 967

An act relating to parks.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Notwithstanding any other provision of law, the County of Los Angeles may construct and operate a public library in the Schabarum Regional Park, located in the County of Los Angeles.

CHAPTER 968

An act to amend Section 115825 of, and to add Section 115842 to, the Health and Safety Code, relating to public health.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 115825 of the Health and Safety Code, as amended by Section 1 of Chapter 70 of the Statutes of 1998, is amended to read:

115825. (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.

(b) Except as provided in Sections 115840, 115840.5, 115841, and 115842, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

(c) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 2. Section 115825 of the Health and Safety Code, as amended by Section 2 of Chapter 70 of the Statutes of 1998, is amended to read:

115825. (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.

(b) Except as provided in Sections 115840, 115841, and 115842, recreational uses shall not, with respect to a reservoir in which water is

stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

(c) This section shall become operative on January 1, 2004.

SEC. 3. Section 115842 is added to the Health and Safety Code, to read:

115842. (a) Recreational activity in which there is bodily contact with the water by any participant is allowed in the Sly Park Reservoir provided that all of the following conditions are satisfied:

(1) Commencing on or before June 30, 2005, the water shall receive ongoing complete water treatment, including coagulation, flocculation, sedimentation, filtration, and disinfection, or an alternative filtration system that provides an equivalent degree of pathogen removal in compliance with all applicable department regulations before being used for domestic purposes. The disinfection shall include, but is not limited to, an advanced technology capable of inactivating organisms including virus, cryptosporidium, and giardia, to levels that comply with department regulations.

(2) The El Dorado Irrigation District conducts a monitoring program for e. coli, bacteria and giardia, and cryptosporidium organisms at various reservoir locations and at a frequency determined by the department.

(3) The reservoir is operated in compliance with regulations of the department.

(b) The recreational use of that reservoir shall be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir that are designed to further protect or enhance the public health and safety and do not conflict with regulations of the department.

(c) The El Dorado Irrigation District shall file, on or before January 1, 2005, with the department, a report on the recreational uses at Sly Park Reservoir and the water treatment program for that reservoir. That report shall include, but is not limited to, providing all of the following information:

(1) The estimated levels and types of recreational uses at the reservoir on a monthly basis.

(2) A summary of available monitoring in Sly Park Reservoir watershed for giardia and cryptosporidium.

(3) The sanitary survey of the watershed and water quality monitoring plan.

(4) An evaluation of the impact on source water quality due to recreational activities on Sly Park Reservoir, including any microbiological monitoring.

(5) The reservoir management plan and the operations plan.

(6) The annual water reports submitted to the consumers each year.

SEC. 4. 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 969

An act to amend Section 56831 of the Government Code, and to amend Section 10631 of the Water Code, relating to governance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. This act shall be known and may be cited as The Water Omnibus Act of 2002.

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

(a) Whereas, water is fundamental to the future growth and the quality of life in California.

(b) Whereas, it is critical that a unified program of research, education, and policy be directed at the complex water-related issues facing the state now and into the future.

(c) Whereas, the California Water Institute, located at California State University, Fresno, is positioned to be the lead institution in this effort.

(d) Whereas, the institutions involved is a consortia of California State University campuses working in the areas of water quality, water quantity, and water allocation.

(e) Whereas, the consortium includes the following campuses and their associated water programs:

(1) California State University, Fresno (California Water Institute).

(2) California State University, San Bernardino (Water Resources Institute).

(3) California State University, Monterey Bay (The Watershed Institute).

(4) California State University, Humboldt (Institute for Forestry and Watershed Management).

(f) Whereas, each of these sister campuses has ongoing programs targeting key California water issues.

(g) Whereas, the research activities of these California State University programs are fully consistent with the mission of the California Water Institute, which is to address critical policy and research needs of agriculture, urban, and environmental water use in the State of California.

Therefore, the Legislature recognizes California State University and the California Water Institute consortium for their leadership and contribution in addressing California water and environmental issues.

SEC. 3. Section 56381 of the Government Code is amended to read:

56381. (a) The commission shall adopt annually, following noticed public hearings, a proposed budget by May 1 and final budget by June 15. At a minimum, the proposed and final budget shall be equal to the budget adopted for the previous fiscal year unless the commission finds that reduced staffing or program costs will nevertheless allow the commission to fulfill the purposes and programs of this chapter. The commission shall transmit its proposed and final budgets to the board of supervisors; to each city; to the clerk and chair of the city selection committee, if any, established in each county pursuant to Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1; to each independent special district; and to the clerk and chair of the independent special district selection committee, if any, established pursuant to Section 56332.

(b) After public hearings, consideration of comments, and adoption of a final budget by the commission pursuant to subdivision (a), the auditor shall apportion the net operating expenses of a commission in the following manner:

(1) (A) In counties in which there is city and independent special district representation on the commission, the county, cities, and independent special districts shall each provide a one-third share of the commission's operational costs.

(B) The cities' share shall be apportioned in proportion to each city's total revenues, as reported in the most recent edition of the Cities Annual Report published by the Controller, as a percentage of the combined city revenues within a county, or by an alternative method approved by a majority of cities representing the majority of the combined cities' populations.

(C) The independent special districts' share shall be apportioned in proportion to each district's total revenues as a percentage of the combined total district revenues within a county. Except as provided in subparagraph (D), an independent special district's total revenue shall be calculated for nonenterprise activities as total revenues for general purpose transactions less revenue category aid from other governmental agencies and for enterprise activities as total operating and nonoperating revenues less revenue category other governmental agencies, as reported

in the most recent edition of the ''Special Districts Annual Report'' published by the Controller, or by an alternative method approved by a majority of the agencies, representing a majority of their combined populations. For the purposes of fulfilling the requirement of this section, a multicounty independent special district shall be required to pay its apportionment in its principal county. It is the intent of the Legislature that no single district or class or type of district shall bear a disproportionate amount of the district share of costs.

(D) (i) For purposes of apportioning costs to a health care district formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code that operates a hospital, a health care district's share, except as provided in clauses (ii) and (iii), shall be apportioned in proportion to each district's net revenue from operations as reported in the most recent edition of the hospital financial disclosure report form published by the Office of Statewide Health Planning and Development, as a percentage of the combined independent special districts' net operating revenues within a county.

(ii) A health care district for which net revenue from operations is a negative number may not be apportioned any share of the commission's operational costs until the fiscal year following positive net revenue from operations, as reported in the most recent edition of the hospital financial disclosure report form published by the Office of Statewide Health Planning and Development.

(iii) A health care district that has filed and is operating under public entity bankruptcy pursuant to federal bankruptcy law, shall not be apportioned any share of the commission's operational costs until the fiscal year following its discharge from bankruptcy.

(E) Notwithstanding the requirements of subparagraph (C), the independent special districts' share may be apportioned by an alternative method approved by a majority of the districts, representing a majority of the combined populations. However, in no event shall an individual district's apportionment exceed the amount that would be calculated pursuant to subparagraphs (C) and (D), or in excess of 50 percent of the total independent special districts' share, without the consent of that district.

(F) Notwithstanding the requirements of subparagraph (C), no independent special district shall be apportioned a share of more than 50 percent of the total independent special districts' share of the commission's operational costs, without the consent of the district as otherwise provided in this section. In those counties in which a district's share is limited to 50 percent of the total independent special districts' share of the commission's operational costs, the share of the remaining districts shall be increased on a proportional basis so that the total

amount for all districts equals the share apportioned by the auditor to independent special districts.

(2) In counties in which there is no independent special district representation on the commission, the county and its cities shall each provide a one-half share of the commission's operational costs. The cities' share shall be apportioned in the manner described in paragraph (1).

(3) In counties in which there are no cities, the county and its special districts shall each provide a one-half share of the commission's operational costs. The independent special districts' share shall be apportioned in the manner described for cities' apportionment in paragraph (1). If there is no independent special district representation on the commission, the county shall pay all of the commission's operational costs.

(4) Instead of determining apportionment pursuant to paragraph (1), (2), or (3), any alternative method of apportionment of the net operating expenses of the commission may be used if approved by a majority vote of each of the following: the board of supervisors; a majority of the cities representing a majority of the total population of cities in the county; and the independent special districts representing a majority of the combined total population of independent special districts in the county. However, in no event shall an individual district's apportionment exceed the amount that would be calculated pursuant to subparagraphs (C) and (D) of paragraph (1), or in excess of 50 percent of the total independent special districts' share, without the consent of that district.

(c) After apportioning the costs as required in subdivision (b), the auditor shall request payment from the board of supervisors and from each city and each independent special district no later than July 1 of each year for the amount that entity owes and the actual administrative costs incurred by the auditor in apportioning costs and requesting payment from each entity. If the county, a city, or an independent special district does not remit its required payment within 60 days, the commission may determine an appropriate method of collecting the required payment, including a request to the auditor to collect an equivalent amount from the property tax, or any fee or eligible revenue owed to the county, city, or district. The auditor shall provide written notice to the county, city, or district prior to appropriating a share of the property tax or other revenue to the commission for the payment due the commission pursuant to this section. Any expenses incurred by the commission or the auditor in collecting late payments or successfully challenging nonpayment shall be added to the payment owed to the commission. Between the beginning of the fiscal year and the time the auditor receives payment from each affected city and district, the board of supervisors shall transmit funds to the commission sufficient to cover the first two

months of the commission's operating expenses as specified by the commission. When the city and district payments are received by the commission, the county's portion of the commission's annual operating expenses shall be credited with funds already received from the county. If, at the end of the fiscal year, the commission has funds in excess of what it needs, the commission may retain those funds and calculate them into the following fiscal year's budget. If, during the fiscal year, the commission is without adequate funds to operate, the board of supervisors may loan the commission funds and recover those funds in the commission's budget for the following fiscal year.

SEC. 4. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the

past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(1) An average water year.

(2) A single dry water year.

(3) Multiple dry water years.

For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single-dry, and multiple-dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the ''Memorandum of Understanding Regarding Urban Water Conservation in California,'' dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

(j) Urban water suppliers that rely upon a wholesale agency for a source of water, shall provide the wholesale agency with water use projections from that agency for that source of water in five-year increments to 20 years or as far as data is available. The wholesale agency shall provide information to the urban water supplier for inclusion in the urban water supplier's plan that identifies and quantifies, to the extent practicable, the existing and planned sources of water as required by subdivision (b), available from the wholesale agency to the urban water supplier over the same five-year increments, and during various water-year types in accordance with subdivision (c). An urban water supplier may rely upon water supply information provided by the wholesale agency in fulfilling the plan informational requirements of subdivisions (b) and (c).

SEC. 5. (a) Pursuant to Sections 14011 and 14012 of the Water Code, the Department of Water Resources may make grants from the California Safe Drinking Water Fund in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code) to the following entities in the following accounts for the purpose of financing domestic water system improvement projects to meet state and federal drinking water standards:

(1) The Weaver Union School District in Merced County in the amount of sixty-five thousand dollars ($65,000).

(2) The La Honda Elementary School District in San Mateo County in the amount of three hundred sixty thousand dollars ($360,000).

(3) The Spring Valley School District in Butte County in the amount of four hundred thousand dollars ($400,000).

(4) The Mountain Union School District in Shasta County in the amount of three hundred seventy thousand dollars ($370,000).

(5) The Delta View Joint Union Elementary School District in Kings County in the amount of forty-five thousand dollars ($45,000).

(b) The Department of Water Resources shall determine eligibility for any grant authorized in subdivision (a) in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code), and may make those grants in accordance with that bond law.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical water and special district funding problems, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 970

An act to add and repeal Section 29031.1 of the Public Utilities Code, relating to the San Francisco Bay Area Rapid Transit District.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 29031.1 is added to the Public Utilities Code, to read:

29031.1. (a) If the district conducts three workshops and other outreach efforts to ensure public awareness of the proposed seismic retrofit work prior to commencement of construction, the district's seismic retrofit work on any existing structures or facilities contained in the San Francisco Bay Area Rapid Transit District Seismic Retrofit Program Phase I-Segment I necessary for rapid transit service shall be considered to be an action necessary to prevent or mitigate an emergency, for the purposes of paragraph (4) of subdivision (b) of Section 21080 of the Public Resources Code.

(b) This section shall become inoperative on June 30, 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.

CHAPTER 971

An act to amend Sections 65040.2, 65302, 65302.3, 65560, and 65583 of, and to add Section 65040.9 to, the Government Code, and to amend Section 21675 of the Public Utilities Code, relating to local planning.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

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

(1) California contains an integrated system of military installations and special use airspace, connected by low-level flight corridors, that provides a key foundation for our nation's security. This integrated system provides for the training of military personnel, as well as the research, development, testing, and evaluation of military hardware.

(2) The military is a key component of California's economy comprising direct economic expenditures of over $29,800,000,000 each year, making the military larger than other economic sectors of the state, including agriculture, and the military represented over 263,000 working adults in the 2000–01 fiscal year.

(3) The federal Department of Defense's research, development, test, and evaluation programs, which included $3,900,000,000 in direct 2000–01 fiscal year contracts in California, make an important contribution to maintaining the state's lead in technology development.

(b) The Legislature therefore finds that the protection of this integrated system of military installations and special use airspace is in the public interest.

SEC. 1.5. Section 65040.2 of the Government Code is amended to read:

65040.2. (a) In connection with its responsibilities under subdivision (*l*) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall

be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

(1) Military installations.

(2) Military operating areas.

(3) Military training areas.

(4) Military training routes.

(5) Military airspace.

(6) Other territory adjacent to those installations and areas.

(g) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 1.7. Section 65040.2 of the Government Code is amended to read:

65040.2. (a) In connection with its responsibilities under subdivision (*l*) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six

months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

(1) Military installations.

(2) Military operating areas.

(3) Military training areas.

(4) Military training routes.

(5) Military airspace.

(6) Other territory adjacent to those installations and areas.

(g) The guidelines shall include guidelines for addressing human services matters within the context of a general plan. For the purposes of this section, ''human services matters'' means provisions that assist a community in its efforts to establish goals to address the needs of targeted community members, which may include, but are not limited to, seniors, children, young adults, families, workers, and persons with disabilities, with the objective of improving the overall quality of life of both the targeted community members and the community. In preparing guidelines for addressing human services matters, the office shall consult with interested persons, organizations, and public agencies that have knowledge, training, and experience in the organization and delivery of human services and services for persons with disabilities. The office shall hold at least one public hearing prior to the release of any draft guidelines for addressing human services matters, and at least one public hearing after the release of the draft guidelines. The hearings may be held at regular meetings of the Planning Advisory and Assistance Council.

(h) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 2. Section 65040.9 is added to the Government Code, to read:

65040.9. (a) On or before January 1, 2004, the Office of Planning and Research shall, if sufficient federal funds become available for this purpose, prepare and publish an advisory planning handbook for use by local officials, planners, and builders that explains how to reduce land use conflicts between the effects of civilian development and military readiness activities carried out on military installations, military operating areas, military training areas, military training routes, and military airspace, and other territory adjacent to those installations and areas.

(b) At a minimum, the advisory planning handbook shall include advice regarding all of the following:

(1) The collection and preparation of data and analysis.

(2) The preparation and adoption of goals, policies, and standards.

(3) The adoption and monitoring of feasible implementation measures.

(4) Methods to resolve conflicts between civilian and military land uses and activities.

(5) Recommendations for cities and counties to provide drafts of general plan and zoning changes that may directly impact military facilities, and opportunities to consult with the military base personnel prior to approving development adjacent to military facilities.

(c) In preparing the advisory planning handbook, the office shall collaborate with the Office of Military Base Retention and Reuse within the Trade, Technology, and Commerce Agency. The office shall consult with persons and organizations with knowledge and experience in land use issues affecting military installations and activities.

(d) The office may accept and expend any grants and gifts from any source, public or private, for the purposes of this section.

SEC. 3. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other

territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information that the military provides.

(B) The following definitions govern this paragraph:

(i) ''Military readiness activities'' mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation

element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average

level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the

above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

SEC. 4. Section 65302.3 of the Government Code is amended to read:

65302.3. (a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.

(c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

(d) In each county where an airport land use commission does not exist, but where there is a military airport, the general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.

SEC. 5. Section 65560 of the Government Code is amended to read:

65560. (a) ''Local open-space plan'' is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) ''Open-space land'' is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones

to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

SEC. 5.5. Section 65560 of the Government Code is amended to read:

65560. (a) The ''local agricultural and open-space element'' is the component of a county or city general plan adopted by the board or council, either as the local open-space element or as the interim local open-space element adopted pursuant to Section 65563.

(b) ''Agricultural and open-space land'' is any parcel or area of land or water that is essentially unimproved and devoted to an agricultural or open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Land used for the production of food and fiber, including, but not limited to, rangeland and agricultural lands.

(2) Lands used for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(3) Land used for the managed production of resources, including but not limited to, forest lands ; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(4) Land used for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(5) Land used for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

SEC. 6. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. ''Assisted housing developments,'' for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. ''Assisted housing developments'' shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving

the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase ''use by right'' shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 7. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In

formulating a land use plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission shall include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any military airport for all of the purposes specified in subdivision (a). The plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport. This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the plan and each amendment to the plan.

(e) If a comprehensive land use plan does not include the matters required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

SEC. 8. (a) A city or county shall not be required to comply with the amendments made by this act to Sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations, until both of the following occur:

(1) An agreement is entered into between the United States Department of Defense or other federal agency and the State of California, through the Governor's Office of Planning and Research, for the federal government to fully reimburse all claims approved by the Commission on State Mandates and paid by the Controller that cities and counties would be eligible to file as a result of the enactment of this act.

(2) The city or county undertakes its next general plan revision.

(b) The amendments made by this act to Sections 65302, 65302.2, 65560, and 65583 of the Government Code shall become inoperative on the January 1 following the date that the Director of Planning and Research executes a declaration stating that the agreement described in paragraph (1) of subdivision (a) has been terminated by either party.

SEC. 9. Section 1.7 of this bill incorporates amendments to Section 65040.2 of the Government Code proposed by both this bill and AB 2175. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 65040.2 of the Government Code, and (3) this bill is enacted

after AB 2175, in which case Section 1.5 of this bill shall not become operative.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 65560 of the Government Code proposed by both this bill and AB 3057. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 65560 of the Government Code, and (3) this bill is enacted after AB 3057, in which case Section 5 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 972

An act to amend Sections 5216 and 5354 of, to add Section 5408.3 to, and to repeal and add Section 5485 of, the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 5216 of the Business and Professions Code is amended to read:

5216. (a) ''Landscaped freeway'' means a section or sections of a freeway that is now, or hereafter may be, improved by the planting at least on one side or on the median of the freeway right-of-way of lawns, trees, shrubs, flowers, or other ornamental vegetation requiring reasonable maintenance.

(b) Planting for the purpose of soil erosion control, traffic safety requirements, including light screening, reduction of fire hazards, or traffic noise abatement, shall not change the character of a freeway to a landscaped freeway.

(c) Notwithstanding subdivision (a), if an agreement to relocate advertising displays from within one area of a city or county to an area adjacent to a freeway right-of-way has been entered into between a city

or county and the owner of an advertising display, then a ''landscaped freeway'' shall not include the median of a freeway right-of-way.

SEC. 2. Section 5354 of the Business and Professions Code is amended to read:

5354. (a) The applicant for any permit shall offer written evidence that both the owner or other person in control or possession of the property upon which the location is situated and the city or the county with land use jurisdiction over the property upon which the location is situated have consented to the placing of the advertising display.

(b) At the written request of the city or county with land use jurisdiction over the property upon which a location is situated, the department shall reserve the location and shall not issue a permit for that location to any applicant, other than the one specified in the request, in advance of receiving written evidence as provided in subdivision (a) and for a period of time not to exceed 90 days from the date the department received the request.

(c) In addition to the 90-day period set forth in subdivision (b), an additional period of 30 days may be granted at the discretion of the department upon any proof, satisfactory to the department and provided by the city or county making the original request for a 90-day period, of the existence of extenuating circumstances meriting an additional 30 days. There shall be a conclusive presumption in favor of the department that the granting or denial of the request for an additional 30 days was made in compliance with this subdivision.

SEC. 3. Section 5408.3 is added to the Business and Professions Code, to read:

5408.3. Notwithstanding Section 5408, a city or a county with land use jurisdiction over the property may adopt an ordinance that establishes standards for the spacing and sizes of advertising displays that are more restrictive than those imposed by the state.

SEC. 4. Section 5485 of the Business and Professions Code is repealed.

SEC. 5. Section 5485 is added to the Business and Professions Code, to read:

5485. (a) (1) The annual permit fee for each advertising display shall be set by the director.

(2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars ($100). This maximum fee shall be increased in the 2007–08 fiscal year and in the 2012–13 fiscal year by an amount equal to the increase in the California Consumer Price Index.

(3) The fee may reflect the department's average cost, including the indirect costs, of providing the service or enforcing the regulations.

(b) If a display is placed or maintained without a valid, unrevoked, and unexpired permit, the following penalties shall be assessed:

(1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars ($100) shall be assessed.

(2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars ($10,000) plus one hundred dollars ($100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed.

(c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged.

(d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section.

(e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys' fees for pursuing the action.

(f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

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 973

An act to amend Section 1069 of the Fish and Game Code, and to add Chapter 25 (commencing with Section 79000) to Part 2 of Division 22 of the Food and Agricultural Code, relating to sea urchins.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 1069 of the Fish and Game Code is amended to read:

1069. The director may enter into an agreement with the Secretary of Food and Agriculture for the collection of an assessment on behalf of any marketing council or commission for fish or seafood organized under the Food and Agricultural Code. The agreement may authorize the department to collect the assessment in conjunction with the collection of landing taxes on those species for which the marketing council or commission is organized. The department shall remit the amount of the assessment collected to the Secretary of Food and Agriculture according to the agreement after making the collection. Prior to remitting the assessments, the department may deduct an administrative fee in an amount agreed to with the Secretary of Food and Agriculture to pay the costs of collection and remission of the assessments. The administrative fees shall be deposited in the Fish and Game Preservation Fund.

SEC. 2. Chapter 25 (commencing with Section 79000) is added to Part 2 of Division 22 of the Food and Agricultural Code, to read:

CHAPTER 25. SEA URCHINS

Article 1. Declarations and General Provisions

79000. The sea urchin fishery includes both divers and processors working together to provide a sustainable sea urchin resource and to ensure a reliable supply of quality seafood product for domestic consumption and export, thereby maintaining strong local coastal economies, fair levels of income to the thousands of persons engaged directly and indirectly in commercial fishing enterprises, and historically significant cultural and community resources of California's coast.

79001. The production and marketing of seafood, including sea urchin, constitute an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens.

79002. The production of sea urchin for domestic consumption and export is one of the leading segments of the state's commercial fishing industry. To maintain this significant contribution to the state's economy and public well-being, there is a need to make regulators aware of unique economic factors affecting the sea urchin fishery and how these factors can be integrated with appropriate management measures to protect a

sustainable sea urchin resource. In addition, there is a need to make consumers and the general public aware of the nutritional value of seafood, the high quality of sea urchin produced by the industry, and the opportunities available to balance sea urchin production and protection of the natural marine resources of California. The activities made possible by the establishment of a commission will meet this need and further the interests of the industry and the state.

79003. The establishment of a commission is necessary for the efficient creation and management of a research program to develop improved harvesting and processing practices, an integrated approach to fishery management, and more efficient resource assessment, monitoring and protection tools.

79004. The successes that the sea urchin fishery in California has enjoyed have come in large part through a commitment by the industry to support appropriate management regulations guiding the harvesting of sea urchin and to fund research into resource assessment and enhancement methodology that has led to significant improvements in understanding the biology of the sea urchin resource. The establishment of a commission will continue and enhance this research effort and the ability of the industry to promote responsible fishery management regulations, all of which will move the industry toward a sustainable position, resulting in increased consumer value and enhanced economic returns.

79005. The harvesting, processing, and marketing of sea urchin in this state is hereby declared to be affected with a public interest. The provisions of this chapter are enacted in the exercise of the police power of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state.

79006. No action taken by the commission, or by any individual in accordance with this chapter or with the regulations adopted under this chapter, is a violation of the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code, the Unfair Practices Act, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, or any statutory or common law against monopolies or combinations in restraint of trade.

79007. This chapter shall be liberally construed. 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 applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

79008. Opportunity exists for increasing the stability and reliability of the sea urchin fishery. The success of those efforts is uniquely

dependent upon effective fishery and resource management, fishery biological research, industry engagement in management decisions, and fishery promotion. A stable and reliable sea urchin fishery provides an important source of jobs for many people in this state, economic activity in many small coastal communities, and serves to ensure the preservation of historically and culturally significant coastal dependent industry.

79009. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the sea urchin fishery the opportunity to avail themselves of the benefits of collective action within the broad fields of fishery management, resource protection and enhancement, harvesting and processing practices, and market development, expansion, and research necessary to achieve the purposes of this act.

Article 2. Definitions

79020. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

79021. ''Commission'' means the California Sea Urchin Commission.

79022. ''Fiscal year'' means from April 1 of a year to March 31 of the next succeeding year.

79023. ''Diver'' means an individual licensed to commercially harvest fish pursuant to Section 7850 of the Fish and Game Code, and who in addition holds a valid sea urchin diving permit.

79024. ''Handler'' means any individual or person working for any individual or business entity licensed as one of the following who can document that they are substantially engaged in the California commercial sea urchin fishery:

(a) A receiver licensed pursuant to Section 8033 of the Fish and Game Code.

(b) A processor licensed pursuant to Section 8034 of the Fish and Game Code.

(c) A wholesaler licensed pursuant to Section 8035 of the Fish and Game Code.

(d) A business entity or organization licensed pursuant to subdivision (a) of Section 8032 of the Fish and Game Code.

79025. ''Sea urchin'' means the following species of fish:

(a) Red sea urchin (Strongylocentrotus franciscanus).

(b) Purple sea urchin (Strongylocentrotus purpuratus).

(c) Any other species of sea urchin authorized for commercial landing in the state.

79026. ''Sea urchin fishery'' means any activity, including economic activity, involved in the harvesting, receiving, processing, manufacturing, or distributing of sea urchin, parts of sea urchin, or products therefrom, for commercial purposes.

Article 3. The California Sea Urchin Commission

79040. There is in the state government the California Sea Urchin Commission. The commission shall be composed of 11 voting members, including five sea urchin handlers, five sea urchin divers, and one public member, and may include any number of nonvoting members, at the discretion of the commission.

(a) Handlers shall elect five commission members from among those persons qualified pursuant to this act and licensed pursuant to the Fish and Game Code to engage in the sea urchin fishery or a person specifically representing one or more handlers.

(b) (1) Divers statewide shall elect five persons from among those persons qualified pursuant to this act and licensed pursuant to the Fish and Game Code to engage in the sea urchin fishery.

(2) One diver member shall be elected from each of the following areas:

(A) San Diego, Orange, or Los Angeles County.

(B) Ventura County.

(C) Santa Barbara County.

(D) Sonoma County.

(E) Mendocino County.

(3) Persons nominated for election to the commission as a diver member shall be nominated by a petition signed by not less than 10 divers eligible to vote pursuant to this chapter.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) The secretary and other appropriate individuals, as determined by the commission, shall be nonvoting members of the commission.

(e) If the secretary finds, pursuant to Section 79103, that either the divers or handlers, but not both, have voted in favor of the referendum, the number of commission voting members shall be six, composed of either five divers or five handlers, depending on which portion of the industry voted in favor of the referendum, elected pursuant to this section and one public member.

(f) If the composition of the commission is determined by subdivision (e) it shall also include at least one nonvoting member appointed by the commission representing either divers or handlers, whichever did not vote in favor of the referendum.

79041. (a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that is in violation of this chapter.

(b) If the commission refuses or fails to cease those activities or functions or to make the corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of activities or functions as required by the secretary has been accomplished by the commission.

(c) Actions of the commission in violation of the written notice are without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions that are the subject of the written notice.

(d) Upon service of the written notice, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, his or her reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and recommendations that will make the activities or functions acceptable.

79042. The commission or the secretary may bring an action for judicial relief from the secretary's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

79043. When the secretary is required to concur in a decision of the commission, the secretary shall give his or her response to the commission within 15 working days from notification of the decision. The secretary's response may be a requirement that additional information be provided.

79044. The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the secretary's legal costs with regard to that action.

79045. Except for nonvoting members, alternates for regular members may be elected in the same manner as members. An alternate shall, in the absence of the member for whom he or she is substituting, serve in place of a member and shall have and be able to exercise all the rights, privileges, and powers of a member when serving on the commission. In the event of a change in status making a member ineligible to serve, or due to death, removal, resignation, or

disqualification of a member, an alternate shall act as a member of the commission until a qualified successor is elected or appointed.

79046. Any vacancy on the commission occurring by the failure of any person elected to the commission as a member or alternate to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal or resignation, shall be filled by another eligible person for the unexpired portion of the term by a majority vote of the remaining members of the commission. The person shall fulfill all the qualifications set forth in this article as required for the person whose office he or she is to occupy.

79047. Any vacancy on the commission occurring by the failure of the public member to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled by another eligible person for the unexpired portion of the term by the secretary from nominees recommended by the commission. The person shall fulfill all the qualifications set forth in this article as required for the member whose office he or she is to occupy.

79048. (a) (1) Any handler member and his or her alternate on the commission shall be an individual handler or an employee or representative of one or more handlers who have an ownership interest in a handling facility or who can document a substantial financial interest in processing or causing to be processed sea urchin for market.

(2) Qualifications of handler members and their alternates shall be maintained during their entire term of office.

(b) Any handler member or his or her alternate shall not have been convicted within the two years prior to election to the commission of a violation of any law related to the business of commercially handling any fish or seafood products, not including any technical reporting or paperwork violation.

79049. (a) Any diver member and his or her alternate on the commission shall be an individual diver who has documented landings of sea urchin in the previous commercial fishing license year. Qualifications of diver members and their alternates shall be maintained during their entire term of office.

(b) Any diver member or his or her alternate shall not have been convicted within the two years prior to election to the commission of a violation of any law related to commercial fishing, not including any technical reporting or paperwork violation.

79050. The public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member or alternate, respectively, on the commission. The public member and his or her alternate member shall not have any financial interest in the sea urchin fishery.

79051. (a) The term of office of all members and alternates on the commission, except nonvoting members, shall be two years from the beginning of the fishery season in the year of their election and may serve not more than two consecutive terms. Following the final term, a member may serve up to 12 months or until a qualified successor is elected, whichever occurs first.

(b) A member or alternate who has served the maximum number of sequential years authorized by this section shall be again eligible for election to the commission following a period of not less than 12 months during which he or she has not served as either a member or an alternate.

79052. The commission shall be, and is hereby declared and created, a corporate body. It shall have the power to sue and be sued, to contract and be contracted with, and to have and possess all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

79053. A quorum of the commission shall be six voting members, including at least two handlers and two divers. Except as provided in Section 79143, the vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

79054. The secretary or his or her representative shall be notified and may attend each meeting of the commission and any committee meetings of the commission. However, the secretary or his or her representative is not entitled to attend an executive session of the commission or a committee of the commission called for the purpose of discussing potential or actual litigation against the department.

79055. No member or alternate of the commission or member of a committee established by the commission who is a nonmember of the commission shall receive a salary. Each member of the commission and each alternate serving in place of a member, except nonvoting members who are officers or employees of a public agency, and each member of a committee established by the commission who is a nonmember of the commission, may receive reasonable and necessary traveling expenses and meal allowances as approved by the commission for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission.

79056. (a) All funds received by the commission or an agent of the commission from the assessments levied under this chapter or otherwise received by the commission shall be deposited in accounts that the commission may designate and the secretary shall approve. Commission funds shall by expended for the purposes of this chapter only and shall be disbursed by order of the commission through an agent or agents as it may designate for that purpose. The agent or agents shall be bonded

by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars ($25,000).

(b) Funds that exceed the amount of funds necessary for the annual operations of the commission and a prudent reserve may be invested by the commission in any of the securities authorized in Section 16430 of the Government Code.

79057. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member or alternate of the commission, or any employee or agent thereof, is personally liable for the contracts of the commission. No member or alternate of the commission, or any employee or agent thereof, is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate of the commission, or any employee or agent thereof, is responsible individually for any act or omission of any other member or alternate of the commission, or any employee or agent thereof. Liability is several and not joint, and no member or alternate of the commission, or any employee or agent thereof, is liable for the default of any other member or alternate of the commission, or any employee or agent thereof.

Article 4. Powers and Duties of the Commission

79061. The commission may adopt and from time to time alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders in accordance with commission procedures for purposes of carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, operating procedure, or order of the commission.

79062. The commission may administer and enforce this chapter and do and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary, to promote and maintain the sea urchin commercial fishing industry.

79063. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and such other officers as it deems necessary. The officers shall have the powers and duties delegated to them by the commission.

79064. The commission may employ a person or firm to serve at the pleasure of the commission as executive officer of the commission, and other personnel, including legal counsel of its choice, necessary to carry

out this chapter. If any person employed by the commission engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action, be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person.

79065. The commission may fix the compensation for all employees of the commission.

79066. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

79067. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, and borrow funds in advance of receipt of assessments as may be necessary in the opinion of the commission for the proper administration and enforcement of this chapter and the performance of its duties.

79068. The commission shall keep accurate books, records, and accounts of all of its dealings, which shall be subject to an annual audit by an auditing entity or firm selected by the commission with the concurrence of the secretary. A summary of the audit shall be reported to all persons subject to this chapter, a copy of which shall also be submitted to the department. In addition, the secretary may, as appropriate, conduct or cause to be conducted a fiscal and compliance audit of the commission.

79069. The commission may present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the sea urchin commercial fishing industry.

79070. (a) The commission may carry out industry educational programs with respect to proper methods of handling and preserving the quality of sea urchin to protect the public health, the economic viability of the fishery, and employee and diver safety and may conduct market surveys and analyses.

(b) The commission may carry out public information programs regarding, but not limited to, the condition of the sea urchin resource, efforts to ensure a sustainable sea urchin resource, sea urchin quality standards the commission may adopt, and other programs to promote the sea urchin fishery. No commission funds shall be expended to advertise brand name sea urchin products.

(c) The commission may adopt quality standards, a sea urchin fishery logo or trademark, or other promotional tools consistent with this chapter and other applicable laws.

79071. The commission may conduct, or contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere, regarding the importance and methods for maintaining a sustainable sea urchin fishery, fishery management, resource management and enhancement, cost-efficient production practices, and marketing and distribution of sea urchin and sea urchin products. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate.

79072. The commission may enter into contracts to acquire and render services in preparing plans and conducting programs and other contracts or agreements that the commission may deem necessary for carrying out this chapter.

79073. The commission may accept contributions of, or match private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies for purposes of promoting and maintaining the sea urchin fishery.

79074. The commission may collect information, including, but not limited to, fishery landing statistics, and publish and distribute without charge, a bulletin, newsletter, or other communication to persons subject to this chapter.

79075. The commission shall establish an assessment rate to defray operating costs of the commission.

79076. (a) The commission shall establish an annual budget and maintain records of expenditures according to generally accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for ongoing disbursements made in relation to employees of the commission.

(b) The secretary shall review the annual budget and expenditures to ensure that only reasonable and necessary administrative costs are paid for the proper operation of the commission's activities.

79077. The commission shall submit to the secretary for his or her concurrence an annual statement of contemplated activities authorized pursuant to this chapter.

79078. The commission and the secretary shall keep confidential and shall not disclose, except when required by court order after a hearing in a judicial proceeding, all lists of persons subject to this chapter in their possession. However, the commission shall establish procedures to provide divers and handlers access to communication with other divers and handlers regarding nonproprietary matters affecting the commission and persons subject to its jurisdiction. The access shall not include the actual release of the names and addresses of divers and handlers in the possession of the commission or the secretary.

79079. The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

79080. The commission may administer any government program engaged in the activities authorized by this chapter and that directly affects the sea urchin fishery, upon the request of an authorized agent of the program.

79081. The commission may approve payment of a stipend to commission members of not more than one hundred twenty-five dollars ($125) for each day a member is on official commission business pursuant to Section 79055, not to exceed five hundred dollars ($500) in any single month.

Article 5. Implementation and Voting Procedures

79100. (a) Within 60 days of the effective date of this chapter, the secretary shall establish a list of divers and handlers eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that divers and handlers submit the names and mailing addresses of all divers and handlers. The secretary also may request assistance of the Director of Fish and Game for the names of all licensed divers and handlers engaged in the sea urchin fishery during the previous season and the volume of landings of each diver. The request for information shall be in writing and the information provided shall be confidential and not made public. Notwithstanding Section 8022 or any other provision of law, the Director of Fish and Game shall comply with the request within 30 days of receipt.

(b) Any diver and handler whose name does not appear on the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement, identifying himself or herself as a diver or handler, and submitting other supporting documentation. Failure to be on the list does not exempt the person from paying assessments, and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of establishing the commission pursuant to this chapter may contact divers and handlers on the lists through the secretary, in a form and manner prescribed by the secretary, if all expenses associated with those contacts are paid in advance.

79101. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds at least one of the following in a referendum vote conducted by the secretary:

(a) At least 40 percent of the total number of divers from the list established by the secretary pursuant to this article participate, and that either of the following occurs:

(1) Sixty-five percent of the divers who voted in the referendum voted in favor of establishing the commission, and the divers so voting landed a majority of the total quantity of sea urchin landed in the preceding fishing season by all of the divers who voted in the referendum.

(2) A majority of the divers who voted in the referendum voted in favor of establishing the commission, and the divers so voting landed 65 percent or more of the total quantity of sea urchin landed in the preceding fishing season by all of the divers who voted in the referendum.

(b) At least 40 percent of the total number of handlers from the list established by the secretary pursuant to this article participate and that either of the following occurs:

(1) Sixty-five percent of the handlers who voted in the referendum voted in favor of establishing the commission, and the handlers so voting handled a majority of the total quantity of sea urchin in the preceding fishing season by all of the handlers who voted in the referendum.

(2) A majority of the handlers who voted in the referendum voted in favor of establishing the commission, and the handlers so voting handled 65 percent or more of the total quantity of sea urchin in the preceding fishing season by all of the handlers who voted in the referendum.

79102. (a) The secretary shall establish a period in which to conduct the referendum, which shall not be less than 10 days or more than 60 days in duration, and may prescribe additional procedures necessary to conduct the referendum, including measures to maximize the likelihood that all eligible persons receive referendum voting materials. If the initial period established is less than 60 days, the secretary may extend the period. However, the total referendum period may not exceed 60 days.

(b) Nonreceipt of a ballot by an eligible person shall not invalidate a referendum.

79103. (a) If the secretary finds that a favorable vote has been given, pursuant to Section 79101, the secretary shall certify and give notice of the favorable vote to all affected divers and handlers whose names and addresses are on file with the secretary.

(b) If the secretary finds that a favorable vote has not been given, pursuant to Section 79101, the secretary shall certify and declare all provisions of this chapter inoperative. The secretary may conduct other implementation referendum votes one year or more following certification of a previous vote.

(c) If the secretary finds that a favorable vote has been given by either the divers or the handlers, but not both, the secretary shall certify and give notice of the favorable vote to all the divers and handlers whose

names and addresses are on file with the secretary and this chapter shall be in effect only with regard to the divers or handlers, but not both, voting in favor of the referendum.

79104. (a) Prior to the referendum vote conducted by the secretary pursuant to this article, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses of preparing the necessary lists and information and conducting the vote.

(b) Any funds not used in carrying out Section 79101 shall be deposited in the funds of the commission.

(c) Upon establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

79120. (a) The commission shall establish an assessment for the season not later than February 1 of each year or continue the previous assessment. The assessment in the first year of the commission's operation shall be one cent ($0.01) for each pound of sea urchin landed or delivered by divers to handlers in the state. The maximum assessment that can be levied by majority vote of the commission shall not exceed three cents ($0.03) for each pound of sea urchin landed.

(b) An assessment greater than the amount provided for in this section may not be levied unless and until a greater fee is approved by a majority of the commission and by eligible divers and handlers pursuant to procedures specified in this act.

(c) The diver and the handler shall each pay one-half of the assessment established pursuant to this section. If the divers do not vote, pursuant to this act, to approve the commission, a diver is not required to pay any portion of the assessment. If handlers do not vote, pursuant to this act, to approve the commission, a handler is not required to pay any portion of the assessment. If either divers or handlers, but not both, vote in favor of the commission, the assessment may not exceed one-half of the amounts authorized by this section.

(d) Any assessment that is levied as provided for in this section is a personal debt of every person assessed.

79121. (a) Every person or entity who handles sea urchin in any quantity shall keep a complete and accurate record of all transactions involving the purchase or sale of sea urchin. The records shall be in a simple form and contain such information as the commission shall prescribe. The records shall be preserved by the handler for a period of three years, and shall be offered and submitted for inspection at any

reasonable time upon written demand of the commission or its duly authorized agent.

(b) The assessment imposed by this article shall be paid consistent with the applicable procedures required for the payment of landing taxes pursuant to Article 7.5 (commencing with Section 8040) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code. The fees imposed shall be paid quarterly pursuant to Section 8053 of the Fish and Game Code. If fees are not paid as required, the commission shall collect amounts owed under the procedures prescribed for sales and use taxes provided in Chapter 5 (commencing with Section 6451) of Part 1 of Division 2 of the Revenue and Taxation Code, insofar as they may be applicable, and for those purposes, ''board'' means the commission and ''the date on which the tax became due and payable'' means 30 days after the close of the quarter for which it is due.

(c) Sections 8058 to 8070, inclusive, of the Fish and Game Code, shall apply to claims for overpayment of assessments to the commission. For the purposes of this subdivision, ''department'' as used in those sections, means the commission, and ''landing tax'' means the assessment imposed under this article.

79122. (a) All proprietary information obtained by the commission or the secretary from any source, including, but not limited to, the names and addresses of divers and the volume and value of landings made or purchased, is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding.

(b) Information on volume and value of landings, and any other related information that is required for reports to governmental agencies, financial reports to the commission, or aggregate sales and inventory information, and any other information that gives only totals, but excludes individual diver or handler information, may be disclosed by the commission.

79123. The first handler of sea urchin being assessed shall deduct the assessment from amounts paid by him or her to the diver, and shall be a trustee of these assessments until they are paid to the commission at the time and in the manner prescribed by the commission. Failure to collect the assessment from any diver shall not exempt the handler from liability. In addition, failure of a handler to remit the collected diver assessments to the commission shall not relieve the diver of this obligation.

79124. When the handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for violating this chapter, including but not limited to, failing to pay assessments or to collect assessments, shall also include identical liability upon each director or officer of the corporation.

79125. Any person who fails to pay any assessment, including submitting any records required by the commission, within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, shall pay 1 $^{1}/_{2}$ percent interest per month on the unpaid balance.

79126. In addition to any other penalty imposed, the commission may require any person who fails to pay an assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the commission as assurance that all payments to the commission will be made when due.

79127. It is a misdemeanor for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission, or in any way to affect the shipment and marketing of sea urchin with the intent to avoid payment of assessments.

(b) Fail to render or furnish a report, statement, or record required by the commission.

(c) When engaged in the fishing of sea urchin or in the wholesale or retail trade of sea urchin, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons to whom sea urchin were sold or from whom sea urchin were received, and the quantity sold or received.

(d) Secrete, destroy, or alter records required to be kept under this chapter.

79128. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission, or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

79129. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and for the obtaining of injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code

of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding sea urchin until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

79130. Any action by the commission for any violation of this chapter shall be commenced within two years from the date of discovery of the alleged violation. Any action against the commission by any person shall be commenced within two years from the date of the act of which the person complains.

79131. The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

79132. The commission may consult and enter into agreements with the Director of Fish and Game, if necessary and appropriate, to assist in the administration and enforcement of this chapter, including, but not limited to, collecting assessments authorized by this chapter and providing routine information regarding the persons that may be subject to this chapter. If an agreement is established, the commission shall reimburse the Department of Fish and Game for reasonable administrative costs associated with the agreement.

Article 7. Continuation or Suspension and Termination

79140. Every five years, commencing with the fifth year following certification of the commission, the secretary shall hold a hearing to determine whether the operation of this chapter should be continued. If the secretary finds after the hearing that a substantial question exists among eligible persons regarding whether the operation of this chapter should be continued, the secretary shall submit the chapter to a reapproval referendum. If a reapproval referendum is required, the operation of this chapter shall be continued in effect if the secretary finds

that a majority of the eligible persons voting in the referendum, voted in favor of continuing this chapter.

79141. If the secretary finds after conducting a hearing that no substantial question exists or that a favorable vote has been given, the secretary shall so certify and this chapter shall remain operative. If the secretary finds that a favorable vote has not been given, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the fishing season of the year in which the certification is made. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 79144. No bond or security shall be required for any such referendum.

79142. The process specified in Section 79140 shall be conducted by the commission every fifth year following the initial certification of the commission, unless a referendum is conducted as the result of a petition pursuant to Section 79143. In that case, the hearing, and the referendum if required, shall be conducted every fifth year following the industry petitioned referendum.

79143. (a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to achieve its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current fishing season.

(b) The secretary shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with him or her requesting a suspension signed by 20 percent of the divers and handlers who landed or handled not less than 20 percent of the total quantity of sea urchin in the immediately preceding fishing season, hold a referendum among the divers and handlers to determine if the operations of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows by the weight of evidence that this chapter has not tended to achieve its declared purposes.

(c) The secretary shall establish a referendum period, which shall not be less than 10 days or more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of divers and handlers from the list established by the secretary participate in the referendum, the secretary shall suspend the operation of this chapter if he or she finds either one of the following has occurred:

(1) Sixty-five percent or more of the divers and handlers who voted in the referendum voted in favor of suspension, and the divers and handlers so voting sold or handled a majority of the total quantity of sea urchin in the preceding fishing season by all of the divers and handlers who voted in the referendum.

(2) A majority of the divers and handlers who voted in the referendum voted in favor of suspension, and the divers and handlers so voting landed or handled 65 percent or more of the total quantity of sea urchin in the preceding fishing season by all of the divers and handlers who voted in the referendum.

79144. After the effective date of suspension of this chapter, the operation of the commission shall be concluded and all moneys held by the commission not required to defray the expenses of concluding and terminating operations of the commission shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding fishing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remitting of the prorated refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program conducted or used to fund activities related to the subject matter of this chapter.

79145. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all eligible persons affected by the suspension whose names and addresses are on file.

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 974

An act to amend Section 11011.21 of, and to repeal and add Section 14672.14 of, the Government Code, to amend Section 3 of Chapter 625 of the Statutes of 1991, to amend Section 1 of Chapter 761 of the Statutes of 1976, and to amend Section 1 of Chapter 770 of the Statutes of 2000,

to amend Section 12 of Chapter 1087 of the Statutes of 1985, relating to state property.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 11011.21 of the Government Code is amended to read:

11011.21. (a) The Legislature finds and declares that the Department of General Services has, pursuant to former Section 11011.21, as added by Section 8 of Chapter 150 of the Statutes of 1994, and amended by Section 15 of Chapter 422 of the Statutes of 1994, developed an inventory, known as the Surplus Property Inventory, of state-owned properties that are either surplus to the needs of the state in their entirety or are being used for a state program and some portions of the property are unused or underutilized.

(b) State agencies, when purchasing real property, shall review the Surplus Property Inventory and purchase, lease, or trade property on that list, if possible, prior to purchasing property not on the Surplus Property Inventory.

(c) The Department of General Services may sell, lease, exchange, or transfer for current market value, or upon terms and conditions as the Director of General Services determines are in the best interest of the state, all or part of properties as follows:

Parcel 1. Approximately 292 acres with improvements thereon, known as the Agnews Developmental Center-West Campus, bounded by Lick Mill Blvd., Montague Expressway, Lafayette Street and Hope Drive, in Santa Clara, Santa Clara County.

Parcel 2. Approximately 56 acres known as a portion of the Agnews Developmental Center-East Campus, located between the Agnews Developmental Center and Coyote Creek, in San Jose, Santa Clara County.

Parcel 3. Approximately 102 acres with improvements thereon, known as the Stockton Developmental Center, located at 510 E. Magnolia Street, in Stockton, San Joaquin County.

Parcel 6. Approximately 33.56 acres with improvements thereon, known as the California Highway Patrol Motor Transport Facility and Shop, located at 2800 Meadowview Road, in Sacramento, Sacramento County.

Parcel 7. Approximately 1.03 acres of land, not including improvements thereon, located at 1614 O Street, in Sacramento, Sacramento County, and leased by the Department of General Services

to the Capital Area Development Authority for development of the 17th Street Commons condominiums.

Parcel 8. Approximately 2 acres of land, not including improvements thereon, located on a portion of block 273 bound by 10th, 11th, P, and Q Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Somerset Parkside condominiums.

Parcel 9. Approximately 1.76 acres of land, not including improvements thereon, located on the south $^1/_2$ of block bound by 15th, 16th, O, and P Streets and the south $^1/_4$ of block bound by 14th, 15th, O, and P Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Stanford Park condominiums.

Parcel 10. Approximately 1.18 acres of land, not including improvements thereon, located on the north $^1/_2$ of block bound by 9th, 10th, Q, and R Streets, in Sacramento, Sacramento County, and leased by the Department of General Services to the Capital Area Development Authority for development of the Saratoga Townhomes.

Parcel 11. Approximately 3.66 acres including improvements thereon, known as the Department of General Services, Junipero Serra State Office Building, located at 107 S. Broadway, in Los Angeles, Los Angeles County.

Parcel 12. Approximately 32 acres including improvements thereon, being a portion of the State Department of Developmental Services Fairview Developmental Center, located at 2501 Harbor Blvd., in Costa Mesa, Orange County.

Parcel 13. Approximately 3.6 acres, with improvements thereon. Entire structure used as the Delano Armory by the Military Department, located at 705 South Lexington Street, in Delano, Kern County.

Parcel 16. Approximately 1,720 acres of agricultural land, being a portion of the Department of Corrections' Imperial South Centinella Prison, located at 2302 Brown Road, in Imperial, Imperial County, which shall only be available for lease.

Parcel 17. Approximately 800 acres of agricultural land, being a portion of the Department of Corrections' Imperial North Calipatria Prison, located at 7018 Blair Road, in Calipatria, Imperial County, which shall only be available for lease.

(d) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(e) Notices of every public auction or bid opening shall be posted on the property to be sold pursuant to this section, and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(f) Any sale, exchange, lease, or transfer of a parcel described in this section is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(g) As to any property sold pursuant to this section consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits possessed by the state, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this section consisting of more than 15 acres, the director shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

(h) The net proceeds of any moneys received from the disposition of any parcels described in this section shall be deposited in the General Fund.

SEC. 2. Section 14672.14 of the Government Code is repealed.

SEC. 3. Section 14672.14 is added to the Government Code, to read:

14672.14. (a) Notwithstanding Sections 11011 and 54222 or any other provision of law, the Director of General Services, with the approval of the State Public Works Board, upon those terms and conditions that the director deems in the best interest of the state, may, upon the conditions specified in subdivision (c), transfer at no cost to the City of Chino up to 140 acres of real property, of which a portion is currently leased to the City of Chino pursuant to Section 14672.15. The transfer of land shall be only for the development and maintenance of a public park, public recreational uses, and open-space uses, including the development of joint use facilities with Chaffey Community College. Upon the transfer authorized by this section, the lease and authority authorized by Section 14672.15 shall terminate.

(b) Notwithstanding Section 11011 or any other provision of law, the Director of General Services, with the approval of the State Public Works Board, upon those terms and conditions that the director deems in the best interests of the state, may, upon the conditions specified in subdivision (c), transfer at no cost to the Chaffey Community College District up to 100 acres of real property for the development of a new community college campus and development of joint use facilities with the City of Chino.

(c) The Department of General Services shall process an application with the City of Chino for the zoning and specific plan approval of approximately 450 acres of property identified as surplus pursuant to

Section 1 of Chapter 770 of the Statutes of 2000 as amended by the act adding this section. The transfers pursuant to subdivisions (a) and (b) shall occur only when the City of Chino has granted, according to terms and conditions deemed acceptable by the director, all approvals necessary to rezone the property, approved a specific plan or plans for the property, and entered into any development agreements needed to sell the approximately 450 acres.

(d) The transfer authorized pursuant to subdivisions (a) and (b) are further conditioned that should the authorized uses ever cease then title shall revert to the State of California. In addition, upon terms and conditions deemed in the best interest of the state by the director, the city and Chaffey College shall be responsible for their share of the costs needed to implement the planned development and accomplish the transfers, including, but not limited to, the costs of infrastructure improvements, roads, utilities, environmental mitigation measures, environmental impact reports, special studies, and facility relocations.

SEC. 4. Section 1 of Chapter 761 of the Statutes of 1976, as amended by Section 8 of Chapter 417 of the Statutes of 1996, is amended to read:

Sec. 1. The Director of General Services, with the approval of the State Public Works Board, is hereby authorized to sell or lease for current market value and upon such terms and conditions and with such reservations and exceptions as in his or her opinion may be for the best interest of the state, all or any part of the following real property:

Parcel 8. Approximately 2.5 acres of land, being land acquired by the state as partial satisfaction of a personal income tax liability, located on Carter Lane, approximately one-half mile west of the Bermuda Dunes Airport in Riverside County.

Parcel 9. Approximately 1.5 acres of land, being a portion of the Dorris Agricultural Quarantine Inspection Station, located about $^1/_4$ mile south of the community of Dorris on State Highway Route 97, in Siskiyou County.

SEC. 5. Section 12 of Chapter 1087 of the Statutes of 1985 is amended to read:

Sec. 12. In carrying out the requirement of subdivision (b) of Section 1 of Chapter 1549 of the Statutes of 1982 to sell excess land at the Northern California Youth Center as surplus property, the land at the center that is excess to correctional needs and is to be sold as surplus property shall consist of approximately 280 acres of the land currently under the jurisdiction of the Department of the Youth Authority and lying south of Arch Road, east of Newcastle Road, and west of Austin Road in the County of San Joaquin. Notwithstanding Section 11011 of the Government Code or any other provision of law, the excess land shall not be sold or otherwise transferred to any state agency.

SEC. 6. Section 3 of Chapter 625 of the Statutes of 1991, as amended by Section 3 of Chapter 870 of the Statutes of 1999, is amended to read:

Sec. 3. The Director of General Services, with the approval of the State Public Works Board, may sell or lease for current market value only, all or any part of the following property:

Parcel 2. Approximately 1.07 acres, with a structure used by the Employment Development Department, located at 1313 Pine Avenue, Long Beach, Los Angeles County.

Parcel 3. Approximately 0.43 acre, with a structure used by the Employment Development Department, located at 660 Tule Street, Mendota, Fresno County.

Parcel 5. Approximately 0.18 acre, with a structure used by the Employment Development Department, located at 500 North Garden, Visalia, Tulare County.

Parcel 6. Approximately 1.46 acres, with a structure used by the Employment Development Department, located at 100 North Imperial Avenue, El Centro, Imperial County.

Parcel 8. Approximately 1.17 acres, with a structure used by the Employment Development Department, located at 346 Front Street, Salinas, Monterey County.

Parcel 9. Approximately 0.85 acre with a structure used by the Employment Development Department, located at 805 R Street, Sacramento, Sacramento County.

SEC. 7. Section 1 of Chapter 770 of the Statutes of 2000 is amended to read:

Sec. 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, lease, or transfer for current market value, or for any lesser consideration authorized by law, and upon terms and conditions and subject to reservations and exceptions that the director determines are in the best interest of the state, all or any part of the following property:

Parcel 1. Approximately a 49.14 acre irregularly shaped property (APN 048-010-210), under the jurisdiction of the State Department of Health Services, located at 6250 Lambie Road, Solano County.

Parcel 2. Approximately 450 acres of real property in San Bernardino County, located south of Edison Avenue, west of Euclid Avenue, and northerly of the proposed southerly boundary identified by the Strategic Master Land Use Plan and Implementation Approach CIM Chino.

SEC. 8. Notwithstanding Section 14670 of the Government Code or any other provision of law, the Director of General Services, with the approval of the Director of Transportation, may lease to the City of Los Angeles for the colocation of the city's transportation division in the

Department of Transportation office building located at 100 South Main Street, Los Angeles, upon terms and conditions deemed to be in the best interest of the state, up to 130,000 gross square feet and for a period not to exceed 25 years.

SEC. 9. (a) The Director of General Services, with the concurrence of the Adjutant General, may exchange with the Cities of Glendale and Burbank and the Burbank Glendale Pasadena Airport Authority interests in certain real property located in the Cities of Burbank and Glendale that contain California National Guard Armory facilities, for certain real property owned by the Burbank Glendale Pasadena Airport Authority and for the improvement thereof with an armory facility for use by the California National Guard.

(b) The exchange shall be based on current market value and subject to federal regulations, and further subject to the terms and conditions, and with the reservations and exceptions, the Director of General Services determines are in the best interest of the state. The exchange shall result in no net cost to the state.

SEC. 10. The Director of General Services, with the concurrence of the Adjutant General, may lease to the Sacramento Archdiocese, a corporation sole, for a period not to exceed seven years, approximately 1.4 acres of real property located at 1013 58th Street in the City of Sacramento, in the County of Sacramento, known as the 58th Street Armory, for purposes of constructing a parking lot, upon terms and conditions deemed to be in the best interest of the state.

SEC. 11. Notwithstanding Section 14670 of the Government Code or any other provision of law, the Director of General Services, with the approval of the Director of Developmental Services, may lease to the County of Sonoma for a period not to exceed 20 years, up to 1.5 acres of real property located within the grounds of the Sonoma Developmental Center for the purpose of providing housing for migrant farmworkers, upon terms and conditions deemed to be in the best interest of the state.

SEC. 12. (a) Notices of every public auction or bid opening shall be posted on the real property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 13. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels described in this act.

(b) The net proceeds from the sale or lease of any armory property described in this act shall be deposited in the Armory Fund pursuant to Section 435 of the Military and Veterans Code, and the net proceeds from the lease entered into by the City of Los Angeles pursuant to Section 8 of this act shall be deposited in the State Highway Account in the State Transportation Fund. The net proceeds of any other moneys received from the disposition of any parcels described in this act shall be deposited in the General Fund and, unless otherwise specified, be available for appropriation in accordance with Section 15863 of the Government Code.

SEC. 14. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

CHAPTER 975

An act to amend Sections 5004.5, 5095.3, 5095.4, and 5095.5 of, and to add Sections 5095.6 and 32556.2 to, the Public Resources Code, relating to public resources.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 5004.5 of the Public Resources Code is amended to read:

5004.5. (a) The California Youth Soccer and Recreation Development Program is hereby created in the department. The department shall administer the program, which is intended to provide assistance to local agencies and community-based organizations with regard to funding, and fostering the development of, new youth soccer, baseball, softball, and basketball recreation opportunities in the state.

(b) After all grants authorized under this program have been awarded, the department shall report to the Budget Committee of the Assembly and the Budget and Fiscal Review Committee of the Senate on the number of grant applications received, the total amount of funds sought by applicants, and the number of eligible applications that were not funded.

(c) The California Youth Soccer and Recreation Development Fund is hereby created in the State Treasury, to be used as a repository of funds derived from federal, state, and private sources to be used for the program.

(d) The department shall award grants, on a competitive basis, to local agencies and community-based organizations for the purposes of the program, subject to an appropriation therefor. The department shall also develop eligibility guidelines for the award of grants that give preference to those communities that provide matching funds for grants, and that are heavily populated, low-income urban areas with a high youth crime and unemployment rate. The guidelines shall also require that preference be given to those inner city properties that may be leased for periods of at least five years or more for recreational purposes. The department shall conduct public hearings throughout the state prior to final adoption of eligibility guidelines.

(e) Any regulation, guideline, or procedural guide adopted or developed pursuant to this section is not subject to the review or approval of the Office of Administrative Law or to any other requirement of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) For purposes of this section, the following terms have the following meanings:

(1) ''Community-based organization'' means an organization that enters into a cooperative agreement with the department pursuant to Section 513, a nonprofit group or organization, or a friends of parks group or organization of a city, county, city and county, and regional park. All community-based organizations shall have a current tax-exempt status as a nonprofit organization under Section 501(c)(3) of the federal Internal Revenue Code.

(2) ''Local agency'' means a city, county, city and county, park and recreation district, open-space district, or school district.

(g) This section shall be implemented only upon appropriation of sufficient funds to the department for that purpose.

(h) All funds received by the department pursuant to this section shall be encumbered within three years of the date of the appropriation and expended within eight years from the date of the appropriation.

(i) Nothing in this section is intended to prohibit community-based organizations from acting in partnership with organizations that do not

have tax-exempt status as a nonprofit organization under Section 501(c)(3) of the federal Internal Revenue Code.

SEC. 2. Section 5095.3 of the Public Resources Code is amended to read:

5095.3. There is hereby created, in the State Treasury, the State Urban Parks and Healthy Communities Fund. The department shall expend moneys from this fund, upon appropriation by the Legislature, to provide grants to state agencies, including state conservancies in existence on January 1, 2002, urbanized or heavily urbanized local agencies, and community-based organizations, in accordance with Sections 5095.4 and 5095.5. Funds necessary to administer this chapter shall be appropriated in the annual Budget Act.

SEC. 3. Section 5095.4 of the Public Resources Code is amended to read:

5095.4. (a) The director, in consultation with the State Department of Education, shall develop a competitive grant program to assist state parks, state conservancies in existence as of January 1, 2003, urbanized and heavily urbanized local agencies, and community-based organizations within those jurisdictions, working in collaboration, to provide outdoor educational opportunities to children.

(1) Applicant entities shall provide a 25-percent matching contribution in community resources. The matching contributions may be in the form of money, including funds from other state or local assistance programs, gifts of real property, equipment, and consumable supplies, volunteer services, free or reduced-cost use of land, facilities, or equipment, and bequests and income from wills, estates, and trusts. The department may establish findings for hardships to waive the matching requirement when an applicant cannot meet the requirement.

(2) The department may give additional consideration to applicant entities collaborating with other entities, including, but not limited to, school districts, faith-based groups and others providing outreach programs to identify and attract urbanized youth most in need of organized, constructive recreational activities.

(b) The department shall make one-third of any funds appropriated for the purposes of this chapter available to give special priority to providing increased access for elementary schoolage children in grades 2 to 8, inclusive, to conservancy or state, community, and regional park properties and, in addition, shall give priority, in awarding a grant pursuant to this section, to all of the following:

(1) Programs that use curriculum tied to the science content standards and science framework adopted by the State Board of Education.

(2) Applicants that serve children with family incomes below the statewide average, based on the most recent figures computed and established by the Department of Finance.

(3) Applicants that provide access to children who are underserved or lack access to parks or other outdoor venues suitable to conduct appropriate environmental education instruction.

(4) Applicants that have developed working collaboratives to develop environmental education partnerships.

(5) Applicants working in collaboration with local educational agencies to identify those children lacking adequate opportunities to access outdoor environmental education curriculum or innovative or alternative recreation programming.

(c) The amount of a grant awarded pursuant to this section may not be less than twenty thousand dollars ($20,000) or more than two hundred thousand dollars ($200,000). A grant may be expended for any of the following purposes:

(1) Staffing that is directly associated with the programming.

(2) Staff training or development directly associated with the programming.

(3) Costs associated with transporting youth between a community or school and the proposed environmental education venue.

(4) Medical insurance for the participants, only if the insurance is a requirement pursuant to the activity.

(5) Operational costs, such as the rental equipment, food, and supplies.

(6) Applicants that can demonstrate that the administrative costs associated with this activity will not exceed more than 7.5 percent of the amount of the grant.

(d) The department may gather information from the applicants as to the effectiveness of these programs in meeting program objectives. The department shall summarize this information and report to the appropriate budget and fiscal committees of both houses of the Legislature as to the number of children served, the educational objectives met, and the level of demand.

(e) Applicant agencies may enter into contracts with other public agencies or entities to provide unique interpretive skills or to present authentic, curriculum-based programs in units of conservancy properties or state, community, or regional park systems for services not otherwise provided. The purpose of this subdivision is to authorize the applicants to provide programming services, equipment, and materials that assist in the curriculum program or provide educational activities that assist in the presentation of cultural traditions.

SEC. 4. Section 5095.5 of the Public Resources Code is amended to read:

5095.5. (a) The department shall allocate two-thirds of any funds appropriated for the purposes of this chapter to provide grants to urbanized or heavily urbanized local agencies or community-based

organizations within these jurisdictions for the acquisition and development of properties for active recreational purposes, as defined. Eligible projects shall meet all of the following criteria:

(1) The amount of the grant applied for, together with any matching contribution, shall meet all of the cost of acquiring and developing the project, and when construction of the project is completed, the new urban park or facility shall have a management plan and demonstrate to the satisfaction of the department that the applicant agencies have sufficient means to ensure that the park or facility shall remain open and accessible to the public.

(2) The application includes a commitment for a matching contribution. The matching contributions may be in the form of money, including funds from other state or local assistance programs, gifts of real property, equipment, and consumable supplies, volunteer services, free or reduced-cost use of land, facilities, or equipment, and bequests and income from wills, estates, and trusts. The department may establish findings for hardships to waive the matching requirement when an applicant cannot meet the requirement.

(3) To the extent practicable, the project is a joint-use project between two or more agencies that share responsibility for ownership, development, or maintenance, or both, of the project.

(b) The department shall adopt guidelines to amplify or clarify the criteria specified in Section 5095.4 or this section, and may adopt additional criteria, to supplement those criteria.

(c) The department may develop a procedural guide for the administration of this chapter and the guidance of applicants.

(d) The department shall solicit written comments and hold public hearings at convenient locations throughout the state on any regulations, guidelines, or the procedural guide proposed to be adopted or developed pursuant to this section.

(e) The department shall adopt guidelines to implement this chapter.

(f) Any regulation, guideline, or procedural guide adopted or developed pursuant to this chapter is not subject to the review or approval of the Office of Administrative Law or to any other requirement of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) A grant received pursuant to this section may be expended to acquire the fee title or other interest in real property. If an application proposes to acquire less than fee title, the applicant shall demonstrate in the application, to the satisfaction of the department, that the proposed project will provide public benefits that are commensurate with the type and duration of the interest in real property to be acquired.

(h) With the consent of an urbanized or heavily urbanized local agency, any eligible nonprofit organization that is tax exempt pursuant

to Section 501(c)(3) of the Internal Revenue Code may apply for a grant on behalf of an entity for the purposes of either Section 5095.4 or this section. The application shall include a copy of any contract between the local agency and the nonprofit organization and the resolution or other authorization of consent. The contract shall specify arrangements for the long-term management and operation of the urban park or recreation area commensurate with the amount of the grant, as determined by the department.

(i) Every applicant for a grant pursuant to this section and the entity that will operate and maintain the property, if that entity is different than the applicant, shall agree to comply with all of the following requirements:

(1) To operate and maintain the property developed pursuant to this chapter so that it is usable by residents of the affected area. With the approval of the department, the grant recipient, or its successor in interest in the property, may transfer its property interest and the responsibility to operate and maintain the property, in accordance with the terms of the grant and any applicable law, to a public agency or nonprofit organization that is able to operate and maintain the property in perpetuity. Any attempt to make a transfer in violation of this subdivision is void.

(2) To use the property only for the purposes for which the grant was made and to make no other use or sale or other disposition of the property, except as authorized by statute. If the use of the property is changed to a use that is not permitted by the terms of the grant, or if the property is sold or otherwise disposed of, the grant recipient shall reimburse the department an amount equal to the amount of the grant, the fair market value of the land and any improvements constructed with the grant, or the proceeds from the sale or other disposition, whichever amount is greater. If the property that is sold or otherwise disposed of is less than the entire interest in the property funded with the grant, the grant recipient shall reimburse the department an amount equal to either the proceeds from the sale or other disposition of the interest or the fair market value of the interest sold or otherwise disposed of, whichever amount is greater.

(3) In lieu of seeking reimbursement pursuant to paragraph (2), the department may impose restrictions on the use of public park property identical to the requirements for the preservation of public parks set forth in the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400)) with respect to any property used, sold, or otherwise disposed of in a manner not permitted by the terms of the grant.

(j) The recipient of a grant pursuant to this chapter may use the grant funds to pay for any portion of the cost of cleaning up, removing, or remediating any toxic materials or hazardous substances, if the amount

used for cleanup, removal, or remediation does not exceed 20 percent of the grant allocated to the project.

(k) The amount allocated pursuant to this chapter shall be roughly divided 60 percent to the southern portion of the state (south of the Tehachapi Mountains) and 40 percent to the northern portion.

(*l*) Recognizing that some rural areas of the state have significant deficiencies of park facilities for active recreational purposes, the department shall consider allocating two hundred fifty thousand dollars ($250,000) pursuant to this section to nonurbanized local agencies. In awarding these grants, the department shall apply the same guidelines as those established for awarding a grant to a nonurbanized area pursuant to subdivision (e) of Section 5621.

(m) After all grants authorized under this chapter have been awarded, the department shall report to the Budget Committee of the Assembly and the Budget and Fiscal Review Committee of the Senate on the number of grant applications received, the total amount of funds sought by applicants, and the number of eligible applications that were not funded.

(n) Nothing in this section is intended to prohibit community-based organizations from acting in partnership with organizations that do not have tax-exempt status as a nonprofit organization under Section 501(c)(3) of the federal Internal Revenue Code.

SEC. 5. Section 5095.6 is added to the Public Resources Code, to read:

5095.6. (a) This chapter shall be implemented only upon appropriation of sufficient funds to the department for that purpose.

(b) Notwithstanding any other provision, all funds that are appropriated to the department pursuant to this chapter shall be encumbered within three years of the date of that appropriation and expended within eight years of the date of that appropriation.

(c) Any grants to state or local agencies or nonprofit organizations or community groups pursuant to this chapter, on or after January 1, 2003, shall be contingent upon a future appropriation in the annual Budget Act.

SEC. 6. Section 32556.2 is added to the Public Resources Code, to read:

32556.2. Notwithstanding paragraph (3) of subdivision (e) of Section 32556, as amended by Section 3 of Chapter 3 of the Statutes of 2002, the report required under that paragraph shall be provided to the Legislature on or before January 1, 2004.

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CHAPTER 976

An act to add and repeal Section 20175.1 of the Public Contract Code, relating to public contracting, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 20175.1 is added to the Public Contract Code, to read:

20175.1. (a) (1) This section provides for an alternative and optional procedure on bidding on building construction projects applicable only to the City of Brentwood, the City of Hesperia, the City of Vacaville, and the City of Woodland, upon approval of the city council of the respective city.

(2) For projects with costs of at least five million dollars ($5,000,000), inclusive, the city may award the project using either the lowest responsible bidder or by best value.

(3) The design-build approach may be used, but is not limited to use when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method.

(4) If the city council elects to proceed under this section, the city council shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the city or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(b) As used in this section:

(1) ''Best value'' means a value determined by objective criteria and may include, but is not limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the city.

(2) ''Design-build'' means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) ''Design-build entity'' means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(c) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The city shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to: the size, type, and desired design character of the buildings and site; performance specifications covering the quality of materials, equipment, and workmanship; preliminary plans or building layouts; or any other information deemed necessary to describe adequately the city's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the city to assist in the development of the project-specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the city shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the city. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the city to inform interested parties of the contracting opportunity, to include the methodology that will be used by the city to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors which the city reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the city chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the city to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The city shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the

Department of Industrial Relations. In preparing the questionnaire, the director shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement that assures the city that the design-build entity has the capacity to complete the project.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project.

(vii) Any instance where an entity, its owner, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(viii) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(ix) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance

Contribution Act (FICA) withholding requirements settled against any member of the design-build entity.

(x) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(xi) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xii) In the case of a partnership or other association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5, Division 7, Title 1 of the Government Code) shall not be open to public inspection.

(4) The city shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A city may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or consideration given to all criterion factors: price, technical design and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, as defined in clause (v), and an acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the city shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision

supporting its contract award and stating the basis of the award. The notice of award shall also include the city's second and third ranked design-build entities.

(v) (I) For the purposes of this paragraph, ''skilled labor force availability'' shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years.

(II) The five-year graduation requirement in subclause (I) shall not apply to any apprenticeship program that, on or after the date this section is enacted, was in operation for less than the minimum number of years required for completion of the curriculum for that program. This exclusion from the five-year graduation requirement in subclause (I) shall not apply to that apprenticeship program once it has been in operation for the minimum number of years required for completion of the curriculum for that program, if either of the following occurs:

(aa) That program fails to graduate an apprentice during the year in which that apprenticeship program has been in operation for the minimum number of years required for the completion of the curriculum for that program.

(bb) That program fails to graduate an apprentice any year following the year in which that apprenticeship program has been in operation for the minimum number of years required for the completion of the curriculum for that program.

(vi) For the purposes of this paragraph, a bidder's ''safety record'' shall be deemed ''acceptable'' if his or her experience modification rate for the most recent three-year period is an average of 1.00 or less, and his or her average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(vii) A city that limits the number of responsible bidders participating in a design-build competition shall evaluate the bid proposals in the manner set forth in clause (i).

(viii) For purposes of this section, in evaluating the ''technical design and construction expertise'' of a responsible bidder participating in a design-build competition, the evaluation shall be limited to the bidder's experience and expertise within California. The evaluation of the ''technical design and construction expertise'' of a responsible bidder participating in a design-build competition shall not include an evaluation of the bidder's experience in utilizing a design-build procurement process.

(ix) A responsible bidder awarded a design-build contract that uses a design-build procurement process in selecting subcontractors shall utilize the following criterion factors in the selection of subcontractors in a manner whereby each of those factors represents at least 15 percent of the total weight or consideration given to all criterion factors: price, technical design and construction expertise, skilled labor force availability, as defined in clause (v), and an acceptable safety record.

(d) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the city.

(e) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (c) shall be awarded by the design-build entity in accordance with the design-build process set forth by the city in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the city.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(f) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (c) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the city.

(g) The city may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(h) Contracts awarded pursuant to this section shall be valid until the project is completed.

(i) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(j) (1) If the city elects to award a project pursuant to this section, retention proceeds withheld by the city from the design-build entity shall

not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the city and the design-build entity. If the design-build entity provides written notice to any subcontractor that is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the city and the design-build entity from any payment made by the design-build entity to the subcontractor.

(k) Each city that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's office, the Senate Committee on Local Government, and the Assembly Committee on Local Government before December 1, 2004, a report containing a description of each public works project procured through the design-build process, and completed on or before November 1, 2004. The report shall include, but shall not be limited to, all of the following information:

(1) The type of facility.

(2) The gross square footage of the facility.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) An assessment of the impact of retaining 5 percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of ''skilled labor force availability.''

(12) An assessment of the design-build dollar limits on city projects. This shall include projects where the city wanted to use design-build methods and was precluded by the dollar limitation. It shall also include

projects where the best value method of awarding contracts was not used, due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(*l*) Any city named in this section that elects not to use the authority granted herein may also submit a report to the entities named and in accordance with the schedule in subdivision (k). This report may include an analysis of why the authority granted herein was not used by the city.

(m) On or before January 1, 2005, the Legislative Analyst shall report to the Legislature on the use of the design-build method by cities pursuant to this section, including the information listed in subdivision (k). The report may include recommendations for modifying or extending this section. It is the intent of the Legislature that a moratorium be placed on the enactment of any additional legislation relating to design-build contracting until any reports required by existing law have been received by the Legislature.

(n) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City of Brentwood, the City of Hesperia, the City of Vacaville, and the City of Woodland. The facts constituting the special circumstances are:

This law would enable these specified cities to address severe public infrastructure concerns by utilizing cost-effective options, such as a design-build contract, in building and modernizing essential public facilities.

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

In order to allow the City of Brentwood, the City of Hesperia, the City of Vacaville, and the City of Woodland to take advantage of the design-build process at the earliest time possible, it is necessary for this act to take effect immediately.

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CHAPTER 977

An act to amend Section 66.5 of, and to add Sections 73.8 and 78.5 to, the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 66.5 of the Military and Veterans Code is amended to read:

66.5. (a) One member of the board shall have substantial training or professional expertise in mortgage lending and real estate finance.

(b) One other member of the board shall have substantial training or professional expertise in geriatrics, gerontology, or long-term care.

(c) One member of the board shall have an accounting or auditing background, and preferably shall be a certified public accountant.

(d) Nothing in this section shall be construed to prohibit any member of the board from serving the remainder of his or her term.

(e) The first vacancy in the membership of the board, that occurs after the enactment of the act adding this subdivision and does not require the training or expertise required by subdivision (a) or (b), shall be filled by the appointment of a member who meets the criteria required by subdivision (c).

SEC. 2. Section 73.8 is added to the Military and Veterans Code, to read:

73.8. The board and the inspector general shall have access to all documents and employees of the department.

SEC. 3. Section 78.5 is added to the Military and Veterans Code, to read:

78.5. The secretary shall conduct audits as required by Section 13402 of the Government Code, on internal controls of the department, that shall be provided to the inspector general.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that a member of the California Veterans Board have an accounting or auditing background and that the Inspector General for Veterans Affairs have access to all documents, including any audits, and

employees of the Department of Veterans Affairs as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 978

An act to amend Sections 170004, 170006, 170010, 170012, 170016, 170018, 170024, 170026, 170038, 170042, 170048, 170052, 170056, 170058, 170062, 170064, 170068, 170070, 170072, 170076, 170078, 170082, and 170084 of, to repeal Sections 170058.5, 170059, and 170080 of, and to repeal and add Sections 170028, 170060, and 170066 of, the Public Utilities Code, relating to airports, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 170004 of the Public Utilities Code is amended to read:

170004. The Legislature hereby finds and declares all of the following:

(a) The population in San Diego County is forecasted to grow to 4.1 million persons by 2030, a 45-percent increase over its population in 2000. In light of this growth, it is incumbent upon the region to take actions to provide for an economy that will maximize employment opportunities and help to ensure a higher quality of life for all its residents.

(b) The globally competitive, export-oriented electronics, communications, and biotechnology industries of San Diego County already employ over 300,000 persons, nearly a third of the local labor force, and will continue to drive the region's economy as it competes in the expanding national and international markets.

(c) Air transportation will be an important factor in fostering continued economic growth in San Diego County, as technology workers travel by air 40 percent more frequently than workers in other sectors of the economy.

(d) According to the Joint Aviation Advisory Committee established by the San Diego Association of Governments and the San Diego Unified Port District, San Diego International Airport today contributes about $4.3 billion to the San Diego regional economy, which is about 4 percent of the total output of the region's economy. With the demand for air travel expected to more than double to 35 million passengers in 2030,

an airport capable of supporting that demand would contribute up to $8 billion to the regional economy. Failure to increase San Diego's regional airport capacity would result in 56,000 fewer jobs and up to $2.5 billion less in personal income by 2030. More than 50 percent of the reduction in jobs would occur in the industries related to air exports, including the high-technology industries that manufacture machinery, electronic equipment, and instruments. The balance of the impact would be in the visitor-related industries.

(e) The San Diego Regional Government Efficiency Commission was established under Chapter 764 of the Statutes of 2000 to evaluate regional governance in San Diego County and to submit a report to the Legislature for improving regional governance. To facilitate its purpose, that commission formed a Port Working Group, a Governance Working Group, a Transportation Working Group, and an Environmental and Land Use Working Group to examine regional governance in the region and to propose options for its improvement. The Port Working Group studied the role and function of the San Diego Unified Port District and in collaboration with the Transportation Working Group created a special joint committee to examine airport development issues in the region. After reviewing the options developed by the joint committee, the commission has recommended to the Legislature, by resolution adopted on July 6, 2001, that a new airport authority be created by statute in San Diego County.

(f) Because of the significant regional consequences of airport development and operations, it is important that the future development of major airport facilities in San Diego County be addressed in the context of a regional decisionmaking process that has regional representation.

(g) In an effort to assure the continued military readiness of the United States Department of Defense (DOD), comprehensive airport planning must consider and protect military airspace needs in the San Diego region. The activities of the DOD in the San Diego region require mission-essential airspace for training and operations. In addition, the DOD has direct economic expenditures in San Diego County of nearly $10 billion annually, and represents over 376,000 residents of the region. For these reasons, the DOD is a major stakeholder in the region's comprehensive plans for a viable airport solution.

SEC. 2. Section 170006 of the Public Utilities Code is amended to read:

170006. For the purposes of this division, the following terms have the following meanings, unless the context requires otherwise.

(a) The ''authority'' means the San Diego County Regional Airport Authority established under this division.

(b) The ''board'' means the governing board of the authority established as specified in Section 170016.

(c) The ''interim board'' means the limited term board established as specified in Section 170012.

(d) The ''port'' means the San Diego Unified Port District established under the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session).

(e) The ''San Diego International Airport'' means the airport located at Lindbergh Field in the County of San Diego.

(f) (1) The ''east area cities'' mean the Cities of El Cajon, Lemon Grove, La Mesa, and Santee.

(2) The ''north coastal area cities'' mean the Cities of Carlsbad, Del Mar, Encinitas, Oceanside, San Marcos, and Solana Beach.

(3) The ''north inland area cities'' mean the Cities of Poway, Escondido, Vista, and San Marcos.

(4) The ''south area cities'' mean the Cities of Coronado, Imperial Beach, Chula Vista, and National City.

SEC. 2.5. Section 170010 of the Public Utilities Code is amended to read:

170010. The interim executive director of the authority shall be that person who is the Senior Director of Aviation of the port on September 1, 2001. The interim executive director shall undertake all regular and necessary measures and decisions for the efficient operation of the authority until January 6, 2004, or until the time that a permanent executive director is appointed, whichever occurs first.

SEC. 3. Section 170012 of the Public Utilities Code is amended to read:

170012. (a) There shall be an interim board of the authority to advise the interim executive director, to prepare and adopt the transition plan required under Section 170062, and to oversee the activities required pursuant to subdivisions (c), (d), (e), and (f) of Section 170048.

(b) The interim board shall be chaired by the interim executive director.

(c) The interim executive director shall appoint five members to the interim board. The members shall be geographically representative of San Diego County and shall be serving as elected officials of, appointees to, or representatives of local, state, or federal governmental agencies or bodies, at the time of their respective appointment.

(d) The first meeting of the interim board shall be on January 7, 2002, at a time and location to be determined by the chair. Thereafter, the chair shall hold monthly public meetings of the interim board.

(e) The interim board shall be dissolved on December 2, 2002.

SEC. 4. Section 170016 of the Public Utilities Code is amended to read:

170016. (a) The permanent board shall be established pursuant to this section. The board shall consist of nine members, as follows:

(1) The Mayor of the City of San Diego, or a member of the city council designated by the mayor to be his or her alternate.

(2) A member of the public appointed by the Mayor of the City of San Diego. The initial term for this member shall be two years.

(3) (A) The initial appointment for the north coastal cities shall be the mayor of the most populous city, as of the most recent decennial census, among the north coastal area cities. If that mayor declines to serve, he or she shall appoint a member of the public who is a resident of one of north coastal area cities. The initial term for this member shall be four years.

(B) For subsequent appointments, the mayors of the north coastal cities shall select the member. The appointment shall alternate between a mayor and a member of the public from these cities to follow the initial appointment made under this paragraph.

(4) (A) If the member serving under paragraph (3) is a mayor, the initial appointment from the north inland cities shall be a member of the public selected by the mayors of the north inland area cities from one of those cities.

(B) If the person serving under paragraph (3) is not a mayor, then the mayors of the north inland area cities shall select a mayor of a north inland area city. The initial term of this member is two years.

(C) For subsequent appointments, the mayors of the north inland area cities shall select the member. The appointment shall alternate between a mayor and a member of the public from these cities to follow the initial appointment made under this paragraph.

(5) (A) The mayor of the most populous city, as of the most recent decennial census, among the south area cities. If that mayor declines to serve, he or she shall appoint a member of the public who is a resident of one of south area cities. The initial term for this member shall be six years.

(B) For subsequent appointments, the mayors of the south area cities shall select the member. The appointment shall alternate between a mayor and a member of the public from these cities to follow the initial appointment made under this paragraph. The initial term of this member is four years.

(6) (A) If the member serving under paragraph (5) is a mayor, then a member of the public shall be selected by the mayors of the the east area cities from one of those cities.

(B) If the person serving under paragraph (5) is not a mayor, then the mayors of the east area cities shall select a mayor of an east area city. The initial term of this member is two years.

(C) For subsequent appointments, the mayors of the east area cities shall select the member. The appointment shall alternate between a mayor and a member of the public from these cities to follow the initial appointment made under this paragraph.

(7) The three remaining positions shall be the members of the executive committee appointed pursuant to Section 170026.

(b) The board shall appoint the chair, who shall serve as chair for a two-year portion of his or her term as a board member. A member may be appointed to consecutive terms as chair.

(c) (1) Members of the first board appointed pursuant to subdivision (a), other than members identified in paragraph (7) of subdivision (a), shall be appointed on or before October 31, 2002, and shall be seated as the board on December 2, 2002.

(2) Any appointment not filled by the respective appointing authority on or before December 1, 2002, shall be appointed by the Governor, consistent with the eligibility requirements of this section for that membership position.

(d) (1) After the initial term, all terms shall be four years, except as otherwise required under subdivision (b) of Section 170018.

(2) The expiration date of the term of office shall be the first Monday in December in the year in which the term is to expire.

SEC. 5. Section 170018 of the Public Utilities Code is amended to read:

170018. (a) The appointing authority for a member whose term has expired shall appoint that member's successor for a full term of four years.

(b) The membership of any member serving on the board as a result of holding another public office shall terminate when the member ceases holding the other public office.

(c) Any vacancy in the membership of the board shall be filled for the expired term by a person selected by the respective appointing authority for that position.

SEC. 6. Section 170024 of the Public Utilities Code is amended to read:

170024. (a) (1) Members shall be paid one hundred dollars ($100) per regular, special, or committee meetings, for not more than four meetings per month.

(2) Any member may waive the payment or payments described in paragraph (1).

(b) Members of the board may be paid for direct out-of-pocket expenses.

(c) The board shall adopt a compensation, benefits, and reimbursement policy within three months of being constituted.

(d) Employees of the authority are eligible for retirement benefits under the California Public Employees' Retirement System (CalPERS), and where permitted by the law governing that system, shall receive full reciprocity with public employees' retirement systems in which they previously participated.

SEC. 6.2. Section 170026 of the Public Utilities Code is amended to read:

170026. (a) The board shall appoint the following officers of the authority:

(1) Executive Director.

(2) General Counsel.

(3) Auditor.

(b) The executive director shall appoint all other officers and employees, including, but not limited to, the deputy executive director.

SEC. 6.8. Section 170028 is added to the Public Utilities Code, to read:

170028. (a) The executive committee of the authority is responsible for overseeing the implementation of the administrative policy of the authority. The executive committee members may not be included in the direct operation of the airports, nor may they be included in the chain of command for purposes of emergency procedures. The executive committee shall conduct monthly meetings with the executive director and executive staff to review the operations of the authority. Any policy recommendations from the executive committee shall be forwarded to the board for consideration at a public meeting of the board.

(b) Three members of the public shall be appointed to the executive committee as follows:

(1) A member of the public, who shall be appointed by the Governor, and confirmed by the Senate, who resides in the County of San Diego, but not within the City of San Diego. The initial term of this member is four years.

(2) A member of the public who shall be appointed by the Sheriff of the County of San Diego, and confirmed by the San Diego County Board of Supervisors, who is a resident of an unincorporated area of the county. The initial term of this member is four years.

(3) A member of the public who shall be appointed by the Mayor of the City of San Diego, and confirmed by a majority vote of the San Diego City Council, who shall be a resident of that city. The initial term of this member is four years.

(c) The appointment of the initial members of the executive committee shall occur on or before December 5, 2002, and those members shall be seated on December 16, 2002.

(d) Except as to the term of the initial appointments, the term of office of an executive committee member is four years.

(e) Members of the executive committee shall receive a base salary commensurate to that of superior court judges in the County of San Diego.

SEC. 7. Section 170038 of the Public Utilities Code is amended to read:

170038. The authority may take by grant, purchase, devise, or lease or otherwise acquire, hold, enjoy, lease, and dispose of, real and personal property within or outside its area of jurisdiction in order to further its purposes.

SEC. 8. Section 170042 of the Public Utilities Code is amended to read:

170042. The board may act only by ordinance or resolution for the regulation of the authority and undertaking all acts necessary and convenient for the exercise of the authority's powers. A majority of the membership of the board shall constitute a quorum for the transaction of business.

SEC. 8.5. Section 170048 of the Public Utilities Code is amended to read:

170048. (a) The authority shall have the exclusive responsibility within its area of its jurisdiction to study, plan, and implement any improvements, expansion, or enhancements at existing or future airports within its control.

(b) The authority may commission planning, engineering, economic, and other studies to provide information to the board for making decisions about the location, design, management, and other features of future airports.

(c) The San Diego Association of Governments, or its successor, shall cooperate with the authority to include all airport system plans and facilities selected by the authority in the regional transportation plan consistent with state and federal law.

(d) (1) Not later than March 1, 2002, the San Diego Association of Governments and the port shall transfer and assign to the authority all contracts in force for studying possible sites for an airport, the economic viability and impact of an airport, the environmental consequences of an airport, public opinion or attitudes regarding an airport's location, and any other contracts related to the location and development of an airport in the County of San Diego.

(2) The contracts described in paragraph (1) shall include, but need not be limited to, the contracts associated with the Joint Aviation Advisory Committee.

(3) The transfer of contracts required under this subdivision shall include the contemporaneous transfer of revenue from state or federal grants, local funds, and other sources of revenue committed to funding

the contracts until their completion. The authority shall accept all obligations, as well as all rights, included in the transferred contracts.

(e) The policy direction for the study described in subdivision (d) shall become the responsibility of the authority. The authority shall consider the concepts and ideas of the San Diego Association of Governments, the port, and other entities, both public and private.

(f) The authority may continue the Joint Aviation Advisory Committee to assist in conducting the analyses for determining a site for a new airport.

(g) The authority, the San Diego Association of Governments, local agencies, and the Department of Transportation shall cooperate to develop effective surface transportation access to new and existing airports.

(h) The authority shall adopt a comprehensive plan on the future development of San Diego's regional international airport. In developing its plan, the authority shall review all options of alternative sites, including, but not limited to, expansion of the existing airport site, use of current military installations that may become available for civilian or mix-use, and other development options available to address future airport needs. The authority shall submit the particular site recommendation in the form of a local ballot proposition to the San Diego County Registrar of Voters for placement on either the November 2, 2004, or the November 7, 2006, countywide election ballot.

SEC. 9. Section 170052 of the Public Utilities Code is amended to read:

170052. The authority shall be responsible for developing all aspects of airport facilities that it operates, including, but not limited to, all of the following:

(a) The location of terminals, hangars, aids to air navigation, Runway Protection Zones (RPZ), Airport Influence Areas (AIA), parking lots and structures, and all other facilities and services necessary to serve passengers and other customers of the airport.

(b) Street and highway access and egress with the objective of minimizing, to the extent practicable, traffic congestion on access routes in the vicinity of the airport.

(c) Providing for public mass transportation access in cooperation and coordination with the responsible public transportation agency in whose jurisdiction the airport is located.

(d) Analyzing and developing intercity bus and passenger rail access to terminals in cooperation with an established agency or organization experienced in developing and operating that service, if the service or the technology proposed for implementation is demonstrated to be in regular, scheduled revenue service and is demonstrated to be a cost-effective investment when considering both direct and indirect

benefits. If that service is proven feasible, the authority shall endeavor to maximize the convenience of its patrons by incorporating the service into the design of its terminals.

SEC. 10. Section 170056 of the Public Utilities Code is amended to read:

170056. The port shall transfer all title and ownership of the San Diego International Airport to the authority consistent with the terms of the transfer under Section 170060 and the transition plan required under Section 170062 and shall include, but need not be limited to, all of the following:

(a) All interest in real property and improvements, including, but not limited to, all terminals, runways, taxiways, aprons, hangars, Runway Protection Zones (RPZ), Airport Influence Areas (AIA), emergency vehicles or facilities, parking facilities for passengers and employees, above and below ground utility lines and connections, easements, rights-of-way, other rights for the use of property necessary or convenient to the use of airport properties, and buildings and facilities used to operate, maintain, and manage the airport which is consistent with the Airport Layout Plan (ALP) dated September 13, 2000, and identified as Drawing No. 724 on file with the clerk of the port, subject to paragraphs (1), (2), and (3).

(1) The following real properties shall not be transferred and shall remain under the ownership and control of the port:

(A) All property originally leased to General Dynamics Corporation and identified in Document No. 12301 on file with the clerk of the port.

(B) Property subleased by the port from TDY Industries, Inc., c/o Allegheny Teledyne (formerly Teledyne Ryan Aeronautical) and identified as Document No. 17600 on file with the clerk of the port.

(C) Property leased to Solar Turbines, Incorporated for parking along Pacific Highway and identified as Document No. 39904 on file with the clerk of the port (Parcel No. 016-026).

(D) Property leased to Solar Turbines, Incorporated, for parking along Laurel Street and identified as Document No. 29239 on file with the clerk of the port (Parcel No. 016-016 - Parcel 2).

(E) Property leased to Sky Chefs, Incorporated, located at 2450 Winship Lane and identified as Document No. 37740 on file with the clerk of the port (Parcel No. 012-025).

(F) (i) Property located at Parcel No. 034-002 and identified as Pond 20. The port shall retain ownership of Pond 20 and shall reimburse the airport fund for the fair market value of that property. The fair market value shall be determined by appraisal and negotiation. If there is no agreement following that negotiation, then the amount of payment shall be determined by arbitration.

(ii) On January 1, 2003, the port shall commence repayment to the airport of the negotiated or arbitrated fair market value for the property. The repayment schedule shall be a 10-year amortized payment plan with interest based upon the rate of 1 percent above the prevailing prime rate.

(2) The following additional real properties shall be transferred from the port to the authority.

(A) Property adjacent to Pond 20 located at Parcel Nos. 042-002 and 042-003 (this parcel encompasses approximately two or three acres).

(B) Property acquired as Parcel No. 034-001 from Western Salt Processing Plant and identified as Document No. 39222 from GGTW, LLC.

(3) The following nonairport, real properties that presently provide airport-related services shall also be excluded from any land transfer to the authority:

(A) Airport employee parking lot located at Harbor Island Drive and Harbor Island Drive East identified as District Parcel No. 007-020.

(B) Airport taxi and shuttle overflow lot located at the southeast corner of North Harbor Drive and Harbor Island Drive identified as District Parcel No. 007-025.

(C) Property leased to National Car Rental System, Incorporated, located east of the southeast corner of North Harbor Drive and Harbor Island Drive identified at District Parcel No. 007-034.

(D) Property leased to The Hertz Corporation located east of the southeast corner of North Harbor Drive and Harbor Island Drive identified as District Parcel No. 007-035.

(E) Property leased to Avis Rent-A-Car Corporation located at the southwest corner of North Harbor Drive and Rental Car Roadway identified as District Parcel No. 007-036.

(F) Property leased to National Car Rental System, Incorporated, located at the southeast corner of North Harbor Drive and Rental Car Roadway identified as District Parcel No. 007-038.

(G) Property leased in common to National Car Rental System, Incorporated; The Hertz Corporation; and Avis Rent-A-Car Corporation, known as Joint-Use Roadway identified as District Parcel No. 007-037.

(H) Property leased to Jimsair, Incorporated, located on the property previously known as the General Dynamics Parcel, south of Sassafras Street and west of Pacific Highway adjacent to the Airport Operation Area identified as District Parcel No. 016-042.

(I) Property leased to Budget Rent A Car of San Diego located at both the northeast and southwest corners of Palm Street and Pacific Highway identified as District Parcel No. 016-001 (Parcel 1 and 2).

(J) Property leased to Budget Rent A Car of San Diego located east of the northeast corner of Palm Street and Pacific Highway identified as District Parcel No. 016-001 (Parcel 3).

(K) Property leased to Lichtenberger Equipment Incorporated, located north of the northeast corner of Palm Street and Pacific Highway identified as District Parcel No. 016-034.

(L) Property leased to Park and Ride, Incorporated, located at the northeast corner of Sassafras and Pacific Highway identified as District Parcel No. 016-038.

(M) Property leased to Ace Parking Management, Incorporated, located north of the intersection of Sassafras Street and Pacific Highway identified as District Parcel No. 016-040.

(N) Property leased to Federal Express Corporation located at the west end of the extension of Washington Street identified as District Parcel No. 015-008.

(b) All contracts with airport tenants, concessionaires, leaseholders, and others, including, but not limited to, fees from vehicle rental companies.

(c) All airport-related financial obligations secured by revenues and fees generated from the operations of the airport, including, but not limited to, bonded indebtedness associated with the airport. The authority shall assume obligations issued or incurred by the port for San Diego International Airport, including, but not limited to, any long-term debt, grants, and grant assurances.

(d) All airport-related financial reserves, including, but not limited to, sinking funds and other credits.

(e) All personal property, including, but not limited to, emergency vehicles, office equipment, computers, records and files, software required for financial management, personnel management, and accounting and inventory systems, and any other personal property owned by the port used to operate or maintain the airport.

(f) Notwithstanding any provision of this section, the port shall agree to lease for a period of 66 years, commencing on January 1, 2003, to the authority parcels 1, 2, and 3 of the property originally leased to General Dynamics (identified in Document No. 12301 on file with the clerk of the port) consisting of approximately 89.75 acres west of the Pacific Highway and including property leased to JimsAir (identified as Parcel #016-042), property leased to Federal Express Corporation (identified as Parcel #015-008) and the Park, Shuttle and Fly lot operated by Five Star Parking under a management agreement with the port (identified as Clerk Document No. 38334, dated March 29, 1999), subject to the following terms:

(1) The rent shall be paid monthly in arrears at the rate of four million seven hundred thousand dollars ($4,700,000) for calendar year 2003, six

million seven hundred thousand dollars ($6,700,000) for calendar year 2004, and eight million seven hundred thousand dollars ($8,700,000) for calendar year 2005. Thereafter, the annual rent shall be level, for the balance of the term, based on the fair market value of the property as of January 1, 2006, and a market rate of return on that date.

(2) The authority shall lease to the port at the same fair market value per square foot a total of not to exceed 250 parking spaces in reasonable proximity to the port's administrative building located at 3165 Pacific Highway with the authority having a right to relocate or substitute substantially equivalent or better parking from time to time. The parties shall first meet and confer to determine by appraisal and negotiation, the fair market value rent. If the authority and port do not reach agreement within 60 days after commencement of meetings for that purpose, either party may submit the matter to binding arbitration in San Diego in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In the event airport operations cease to exist on the property leased to the authority pursuant to this section, control of the property will revert to the port as provided in Section 170060.

(3) All other terms of the ground lease shall be in accordance with reasonable commercial practice in the San Diego area for long-term real property ground leases.

SEC. 11. Section 170058 of the Public Utilities Code is amended to read:

170058. Property adjacent to the San Diego International Airport, owned by the port, and commonly referred to as the ''General Dynamics Property'' shall continue to be operated by the port.

SEC. 12. Section 170058.5 of the Public Utilities Code is repealed.

SEC. 13. Section 170059 of the Public Utilities Code is repealed.

SEC. 14. Section 170060 of the Public Utilities Code is repealed.

SEC. 15. Section 170060 is added to the Public Utilities Code, to read:

170060. (a) The port shall retain trusteeship of lands underlying the airport consistent with the State Lands Commission's requirement and shall execute a 66-year lease with the authority for control of the airport property. The authority shall pay one dollar ($1) per year during the term of the lease, or until that time as airport operations controlled by the authority cease to exist on the property. At that time, the lease shall terminate and control of the property shall revert to the port.

(b) (1) The port may continue or enter into contracts, memorandums of understanding, or other agreements necessary to fulfill its responsibilities as trustee of the lands underlying the airport or adjacent lands under its control, or acquire additional lands within its jurisdiction consistent with its duties and pursuant to Division 6 (commencing with Section 6001) of the Public Resources Code.

(2) (A) The port shall act as lead agency to certify any studies, reports, or other documents necessary to fulfill its obligations as trustee of the lands described in paragraph (1).

(B) Notwithstanding subparagraph (A) or any other provision of law, until the date that the port transfers the airport to the authority, the port and the authority, without the necessity of the giving of any notice, filing of any documents, or the taking of any other action, shall serve jointly as the lead agencies for the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and regulations adopted thereto, including, but not limited to, the filing of notices of exemption, initial studies, negative declarations, and environmental impact reports. On and after the transfer date, the authority, without the necessity of the giving of any notice, filing of any documents, or the taking of any other action, is the sole lead agency for any documents for which an initial study has been commenced pursuant to Section 15063 of Title 14 of the California Code of Regulations or for which a notice of preparation has been issued pursuant to Section 15082 of Title 14 of the California Code of Regulations, regardless of whether or not a notice of determination has been issued or a notice of completion has been issued.

(C) The lead agency status described in this paragraph is declaratory of existing law, and shall not in any respect be grounds for any claim or finding of noncompliance by the port or the authority, or both, with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or regulations adopted under that act.

(3) Lands acquired by or added to lands under its trusteeship by the port adjacent to the existing airport property and necessary to operate the airport, including, but not limited to, lands from the United States Marine Corp Recruit Depot for additional taxiways and other airport related facilities, shall be included in the lease to the authority as it is acquired by the port.

(c) The authority shall be responsible for making any necessary application to the California Coastal Commission pursuant to the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) and to other agencies in accordance with other applicable laws in effect on the effective date of the act that added this section for improvements upon coastal lands under the control of the authority through a lease. The port shall assist in the application for those projects as the trustee of the lands and shall not impede any improvements sought in the fulfillment of the authority's duties. The authority shall be responsible for all applications, requests, or submittals to other governmental agencies for approvals, permits, authorizations or agreements of any kind affecting or relating to the

property governed by the lease, and the port shall cooperate in completion of all documents in the form submitted or approved by the authority without modification, providing the documents are requested by the authority, or required by any other governmental agencies, or both.

(d) Notwithstanding any other provision of law, immediately upon the transfer of the San Diego International Airport to the authority, the variance from Section 5012 of Title 21 of the California Code of Regulations (noise standards) issued to the port effective August 27, 2001, by the Department of Transportation shall be transferred to the authority. That variance shall be transferred on the same terms and conditions as granted to the port. The authority shall comply with the terms and conditions of the transferred variance.

SEC. 16. Section 170062 of the Public Utilities Code is amended to read:

170062. (a) The authority shall develop a transition plan to facilitate the transfer of the San Diego International Airport to the authority pursuant to this section. To facilitate the preparation of a transition plan, the authority and the port shall jointly commission a certified audit to determine the financial condition of the San Diego International Airport, including, but not limited to, the obligations of the airport and the reasonableness of the overhead charges being paid by the airport to the port. Upon completion of the audit, the port and the authority shall balance all accounts, including, but not limit to, loans and other obligations between the two agencies.

(b) The port shall cooperate in every way to facilitate the transfer of the San Diego International Airport to the authority.

(c) In the preparation of the transition plan, priority shall be given to ensuring continuity in the programs, services, and activities of the San Diego International Airport.

(d) (1) The transfer of the San Diego International Airport to the authority shall be completed on or after December 16, 2002.

(2) The terms of the transfer of San Diego International Airport to the authority shall include, but are not limited to, the following:

(A) The authority shall request and receive a finding by the Federal Aviation Administration that it is an eligible airport sponsor.

(B) The authority shall comply with federal regulations, including, but not limited to, Part 139 of Title 14 of the Code of Federal Regulations (certification and operation) and Part 107 of Title 14 of the Code of Federal Regulations (security).

(C) Consistent with the obligations set forth in this section, the authority may, it is sole discretion, from time to time, enter into agreements with the port for services including, but not limited to, operations, maintenance, and purchasing, as the authority may find

necessary or beneficial to facilitate the orderly transfer and continued operation of San Diego International Airport. During a transition period from January 1, 2003, to June 30, 2005, inclusive, the authority shall purchase from the port, pursuant to a written agreement approved by the authority and the port, substantially all of the services specified in subparagraphs (D), (E), and (F) during the periods stated in subparagraphs (D), (E), and (F), subject to subdivisions (h) to (j), inclusive, and other requirements imposed by law or regulation.

(D) For the period from January 1, 2003, to June 30, 2003, inclusive, the authority shall acquire substantially all of its requirements for the following services from the port:

(i) General services and maintenance.

(ii) Training and organizational development.

(iii) Public art.

(iv) Environmental services.

(v) Human resources.

(vi) Audit and risk management.

(vii) Marketing.

(viii) Financial services.

(ix) Information technology.

(x) Purchasing.

(xi) Treasury.

(xii) Equal Opportunity Management.

(E) For the period from July 1, 2003, to June 30, 2004, inclusive, the authority shall acquire substantially all of its requirements for the following services from the port:

(i) General services and maintenance.

(ii) Training and organization development.

(iii) Public art.

(iv) Environmental services.

(v) Human resources.

(vi) Audit and risk management.

(vii) Marketing.

(F) For the period from July 1, 2004, to June 30, 2005, inclusive, under the authority shall acquire substantially all of its requirements for the following services from the port:

(i) General services and maintenance.

(ii) Training and organizational development.

(iii) Public art.

(G) Except as expressly stated in subparagraphs (D), (E), and (F), the authority shall have no obligation to purchase or procure any services, facilities, or equipment from or through the port. At no time shall the authority be obligated to purchase auditing, public affairs, and governmental relations, strategic planning, legal, or board support

services from the port. However, the authority may elect to obtain these services and support in agreement with the port.

(H) Performance of all these services shall be subject to the direction and control of the authority, and shall be provided in accordance with specifications, policies, and procedures as communicated by the authority to the port from time to time. In all cases, the port shall provide services of sufficient quality, quantity, reliability, and timeliness to ensure that the authority can continue the operation, maintenance, planning and improvement of and for San Diego International Airport consistent with the standards and practices under which the airport is operated on the effective date of the act that added this subparagraph or higher standards as the authority may adopt, or as may be required in the authority's judgment to meet the requirements of federal or state law, or the needs of the users of the airport for the safe, secure, and efficient operation of the airport. The authority also, from time to time, may establish performance standards for and may conduct financial or performance audits, or both, of all services provided by the port and all charges or claims for payment for the services provided.

(I) Services provided by the Harbor Police shall in no event be of less quality than the standard established for airport police services by the three other largest airports, based on annual passengers, in this state. The port shall cooperate fully, at its own cost, in any financial or performance audit, or both, conducted by, or on behalf of, the authority or by any government agency having jurisdiction.

(J) For those services that the authority is required, under subparagraphs (D), (E), and (F) to purchase from the port, the port shall submit to the authority a proposed budget for those services for the approval of the authority not less than 120 days preceding the commencement of the applicable six-month or one-year period for the provision of those services. For all other services that the authority in its discretion may request, and the port agrees to provide services, the port shall submit to the authority a proposed budget for those optional services within 30 days of the authority's request for the services.

(K) The authority shall reimburse the port for the actual and reasonable direct costs, including, but not limited to, an appropriate allocation of general and administrative expenses associated with the provision of that service, incurred by the port to deliver services actually provided to the authority in accordance with the standards and requirements described in this section. The port shall request payment for services on a monthly basis. Those requests shall provide details regarding each service or element thereof for which payment is requested as the authority reasonably may request. The authority shall have the right to review and approve any request for payment for those services. Payment shall be due and payable 30 days after the request

provided all necessary supporting documentation is received by the authority.

(L) Performance of all services shall be subject to the direction and control of the authority, and shall be provided in accordance with specifications, policies, and procedures as communicated by the authority to the port from time to time. In all cases, the port shall provide services of sufficient quality, quantity, reliability, and timeliness to ensure that the authority can continue the operation, maintenance, planning and improvement of and for San Diego International Airport, consistent with the standards and practices under which the airport is operated on the effective date of the act that added this subparagraph, or higher standards as the authority may adopt, or as may be required in the authority's judgment to meet the requirements of federal or state law, or the needs of the users of the airport for the safe, secure, and efficient operation of the airport. The authority also, from time to time, may establish performance standards for, and may conduct financial performance audits, or both, of, all services provided by the port and all charges or claims for payment for the services.

(M) Upon the completion of the transfer, the authority shall hire existing port staff assigned to the aviation division of the port as employees of the authority. The authority may hire additional staff, as needed, to fulfill its responsibilities. The authority shall make every responsible effort to fill necessary positions from port staff which may be affected by the transfer of the airport.

(e) The transfer may not in any way impair any contracts with vendors, tenants, employees, or other parties.

(f) The San Diego Harbor Police Department shall remain under the jurisdiction of the San Diego Unified Port District, and employees shall incur no loss of employment or reduction in wages, health and welfare benefits, seniority, retirement benefits or contributions made to retirement plans, or other terms and conditions of employment as a result of enactment of this division. The San Diego Harbor Police Department shall have the exclusive contract for law enforcement services at San Diego International Airport during that time as the airport continues to operate at the Lindbergh Field, and peace officer of the Harbor Police shall remain employees of the port.

SEC. 17. Section 170064 of the Public Utilities Code is amended to read:

170064. (a) From revenues in accounts attributable to airport operations, the port shall fund the authority for not less than one million dollars ($1,000,000) each year until that time as the transfer of the airport and all associated revenue sources have been completed between the port and the authority. The authority's board may submit a budget request for more than this amount if necessary to carry out its duties. The port shall

approve those budget requests in a timely manner without modification or reduction. The authority shall report its total budget expenditure amount to the port on an annual basis and balance or carryover reserves from previous budgets. The funding provided by this subdivision replaces any loans made to the authority by the port under the former provisions set forth in this subdivision requiring the port to loan the authority the sum of one million dollars ($1,000,000).

(b) Upon the completion of the transfer pursuant to Section 170062, the authority shall assume all revenue stream revenues to fund its activities, operations, and investments consistent with its purposes. The sources of revenue available to the authority may include, but are not limited to, imposing fees, rents, or other charges for facilities, services, the repayment of bonded indebtedness, and other expenditures consistent with the purposes of the authority.

(c) To the extent practicable, the authority shall endeavor to maximize the revenues generated from enterprises located on the property of the authority.

(d) The authority may receive state and federal grants for purposes of planning, constructing, and operating an airport and for providing ground access to airports under its control.

SEC. 18. Section 170066 of the Public Utilities Code is repealed.

SEC. 19. Section 170066 is added to the Public Utilities Code, to read:

170066. (a) No other agency in the County of San Diego may apply for grants for funding significant expansion activities, including, but not limited to, specific efforts to increase air capacity, unless the application is first approved by the authority as being consistent with the regional air transportation plan adopted by the authority.

(b) Unless action is taken pursuant to Section 170068, publicly owned airports in the County of San Diego, other than the San Diego International Airport, shall not be considered to be under the control of the authority for purposes of application for, or receipt of grants for, regular operational maintenance and upgrade projects adopted pursuant to Section 21670.3.

SEC. 20. Section 170068 of the Public Utilities Code is amended to read:

170068. The authority may only accept the transfer of ownership of other publicly owned airports in the County of San Diego upon initiation by the respective airport operator. Any transfer shall include the preparation of a transition plan to ensure the orderly transfer of assets and obligations. In accepting a transfer, the authority may assume no financial obligations other than those associated with the operation of the airport being transferred.

SEC. 21. Section 170070 of the Public Utilities Code is amended to read:

170070. (a) The authority may issue bonds, from time to time, payable from revenue of any facility or enterprise operated, acquired, or constructed by the authority, for any of the purposes authorized by this division in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), excluding Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code and the limitations set forth in subdivision (b) of Section 54402 of the Government Code which shall not apply to the issuance and sale of bonds pursuant to this section.

(b) The authority is a local agency within the meaning of Section 54307 of the Government Code. The airport system or any or all facilities and all additions and improvements that the authority's governing board authorizes to be acquired or constructed and any purpose, operation, facility, system, improvement, or undertaking of the authority from which revenues are derived or otherwise allocable, which revenues are, or may by resolution or ordinance be, required to be separately accounted for from other revenues of the authority, shall constitute an enterprise within the meaning of Section 54309 of the Government Code.

(c) The authority's governing board shall authorize the issuance of bonds pursuant to this section by resolution, which resolution shall be adopted by a majority vote and shall specify all of the following:

(1) The purposes for which the bonds are to be issued, which may include any one or more purposes permitted by this division.

(2) The maximum principal amount of bonds.

(3) The maximum term of bonds.

(4) The maximum rate of interest, fixed or variable, to be payable upon the bonds.

(5) The maximum discount or premium payable on sale of the bonds.

(d) For purposes of the issuance and sale of bonds pursuant to this section, the following definitions shall be applicable to the Revenue Bond Law of 1941:

(1) ''Fiscal agent'' means any fiscal agent, trustee, paying agent, depository or other fiduciary provided for in the resolution providing the terms and conditions for the issuance of the bonds, which fiscal agent may be located within or without the state.

(2) ''Resolution'' means, unless the context otherwise requires, the instrument providing the terms and conditions for the issuance of bonds, which instrument may be an indenture, trust agreement, installment sale agreement, lease, ordinance, or other instrument in writing.

(e) Each resolution shall provide for the issuance of bonds in the amounts as may be necessary, until the full amount of bonds authorized has been issued. The full amount of bonds may be divided into two or more series with different dates of payment fixed for bonds of each series. A bond need not mature on its anniversary date.

(f) The authority may issue refunding bonds to redeem or retire any bonds issued by the authority upon the terms, at the times, and in the manner which the authority's governing body determines by resolution. Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premium, if any due upon call redemption thereof prior to maturity, all expenses of redemption and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(g) The authority may enter into any liquidity or credit agreement it may deem necessary in connection with the issuance of bonds authorized by this section.

(h) This section provides a complete, additional, and alternative method of performing the acts authorized by this section, and the issuance of bonds, including refunding bonds, need not comply with any other law applicable to borrowing or the issuance of bonds. Any provision of the Revenue Bond Law of 1941 which is inconsistent with this section or this division shall not be applicable.

(i) Nothing in this section prohibits the authority from availing itself of any procedure provided in this chapter for the issuance of bonds of any type or character for any of the authorized airport facilities. All bond proceedings may be carried on simultaneously or, in the alternative, as the authority may determine.

SEC. 22. Section 170072 of the Public Utilities Code is amended to read:

170072. The authority may levy special benefit assessments consistent with the requirements of Article XIII D of the California Constitution to finance capital improvements, including, but not limited to, special benefit assessments levied pursuant to any of the following:

(a) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(b) The Improvement Bond Act of 1915 (Division 15 (commencing with Section 8500) of the Streets and Highways Code).

(c) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(d) The Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

SEC. 23. Section 170076 of the Public Utilities Code is amended to read:

170076. (a) The authority may borrow money in anticipation of the sale of any bonds that have been authorized to be issued, but have not been sold and delivered, and may issue negotiable bond anticipation notes therefor, and may renew the bond anticipation notes from time to time, but the maximum maturity of any bond anticipation notes, including the renewals thereof, may not exceed five years from the date of delivery of the original bond anticipation notes. The bond anticipation notes may be paid from any money of the authority available therefor and not otherwise pledged.

(b) If not previously otherwise paid, the bond anticipation notes shall be paid from the proceeds of the next sale of the bonds of the authority in anticipation of which they were issued. The bond anticipation notes may not be issued in any amount in excess of the aggregate amount of bonds that the authority has been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefore issued and then outstanding. The bond anticipation notes shall be issued and sold in the same manner as the bonds. The bond anticipation notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations that a resolution of the authority authorizing the issuance of bonds may contain.

(c) Exclusively for the purpose of securing financing or refinancing for any of the purposes permitted by this division through the issuance of bonds, notes, or other obligations, including certificates of participation, by a joint powers authority, and, notwithstanding any other provision contained in this division or any other law, the authority may borrow money or purchase or lease property from a joint powers authority and, in connection therewith, may sell or lease property to the joint powers authority, in each case at the interest rate or rates, maturity date or dates, installment payment or rental provisions, security, pledge of revenues and other assets, covenants to increase rates and charges, default, remedy and other terms or provisions as may be specified in the installment sale, lease, loan, loan purchase, or other agreement or agreements between the authority and the joint powers authority. The authority may enter into any liquidity or credit agreement it may deem necessary or appropriate in connection with any financing or refinancing authorized by this section. This section provides a complete, additional and alternative method of performing the acts authorized by this section,

and the borrowing of money, incurring indebtedness, sale, purchase or lease of property from or to a joint powers authority, and any agreement for liquidity or credit enhancement entered into in connection therewith, pursuant to this section need not comply with the requirements of any other law applicable to borrowing, incurring indebtedness, sale, purchase, lease or credit except for compliance with this section.

SEC. 24. Section 170078 of the Public Utilities Code is amended to read:

170078. The authority may bring an action to determine the validity of any of its bonds, equipment trust certificates, warrants, notes, or other evidences of indebtedness or any of its revenues, rates, or charges pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 25. Section 170080 of the Public Utilities Code is repealed.

SEC. 26. Section 170082 of the Public Utilities Code is amended to read:

170082. (a) Notwithstanding any other provisions of this division or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the authority of any bonds, bonds with a pledge of revenues, bonds for improvement districts, revenue bonds, equipment trust certificates, notes, or any and all evidences of indebtedness or liability constitute a contract between the authority and the holders of the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability, and the provisions thereof are enforceable against the authority or any or all of its successors or assigns, by mandamus or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction.

(b) Nothing in this division or in any other law shall be held to relieve the authority or the territory included within it from any bonded or other debt or liability contracted by the authority.

(c) Upon dissolution of the authority or upon withdrawal of territory therefrom, that territory formerly included within the authority, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal as if the authority had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of the bonded and other indebtedness and liabilities.

(d) To the extent provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the authority may be pledged, charged,

assigned, and have a lien thereon for the payment of the bonds as long as the same are outstanding, regardless of any change in ownership, operation, or control of the revenue-producing improvements, works, facilities, or property and it shall, in any later event or events, be the duty of the successors or assigns to continue to maintain and operate the revenue-producing improvements, works, facilities, or property as long as bonds are outstanding.

SEC. 27. Section 170084 of the Public Utilities Code is amended to read:

170084. The authority shall assume and be bound by the terms and conditions of employment set forth in any collective bargaining agreement or employment contract between the port and any labor organization or employee affected by the creation of the authority, as well as the duties, obligations, and liabilities arising from, or relating to, labor obligations imposed by state or federal law upon the port. Aviation division employees of the port affected by this division shall become employees of the authority and shall suffer no loss of employment or reduction in wages, health and welfare benefits, seniority, retirement benefits or contributions made to retirement plans, or any other term of condition of employment as a result of the enactment of this division. No employee of the port shall suffer loss of employment or reduction in wages or benefits as a result of the enactment of this division.

SEC. 28. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for, in part, the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

SEC. 30. 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 these provisions may apply at the earliest possible time to facilitate the orderly transfer of the San Diego International Airport to the San Diego County Regional Airport Authority, it is essential that this act take effect immediately.

CHAPTER 979

An act to amend, repeal, and add Sections 407.5 and 467 of, to add and repeal Section 313 of, and to add and repeal Article 6 (commencing with Section 21280) of Chapter 1 of Division 11 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 313 is added to the Vehicle Code, to read:

313. (a) The term ''electric personal assistive mobility device'' or ''EPAMD'' means a self-balancing, nontandem two-wheeled device, that can turn in place, designed to transport only one person, with an electric propulsion system averaging less than 750 watts (1 horsepower), the maximum speed of which, when powered solely by a propulsion system on a paved level surface, is less than 12.5 miles per hour.

(b) This section shall become operative on March 1, 2003, and 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 407.5 of the Vehicle Code is amended to read:

407.5. (a) A ''motorized scooter'' is any two-wheeled device that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an electric motor that is capable of propelling the device with or without human propulsion. For purposes of this section, an electric personal assistive mobility device, as defined in Section 313, a motorcycle, as defined in Section 400, a motor-driven cycle, as defined in Section 405, a motorized bicycle or moped, as defined in Section 406, or a toy, as defined in Section 108550 of the Health and Safety Code, is not a motorized scooter.

(b) A device meeting the definition in subdivision (a) that is powered by a source other than electrical power is also a motorized scooter.

(c) (1) Every manufacturer of motorized scooters shall provide a disclosure to buyers that advises buyers that their existing insurance policies may not provide coverage for these scooters and that they should contact their insurance company or insurance agent to determine if coverage is provided.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

''YOUR INSURANCE POLICIES MAY NOT PROVIDE COVERAGE FOR ACCIDENTS INVOLVING THE USE OF THIS SCOOTER. TO DETERMINE IF COVERAGE IS PROVIDED, YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT.''

(d) The amendments made by this section shall become operative on March 1, 2003, and this section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. Section 407.5 is added to the Vehicle Code, to read:

407.5. (a) A ''motorized scooter'' is any two-wheeled device that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an electric motor that is capable of propelling the device with or without human propulsion. For purposes of this section, a motorcycle, as defined in Section 400, a motor-driven cycle, as defined in Section 405, a motorized bicycle or moped, as defined in Section 406, or a toy, as defined in Section 108550 of the Health and Safety Code, is not a motorized scooter.

(b) A device meeting the definition in subdivision (a) that is powered by a source other than electrical power is also a motorized scooter.

(c) (1) Every manufacturer of motorized scooters shall provide a disclosure to buyers that advises buyers that their existing insurance policies may not provide coverage for these scooters and that they should contact their insurance company or insurance agent to determine if coverage is provided.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

"YOUR INSURANCE POLICIES MAY NOT PROVIDE COVERAGE FOR ACCIDENTS INVOLVING THE USE OF THIS SCOOTER. TO DETERMINE IF COVERAGE IS PROVIDED, YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT."

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

SEC. 4. Section 467 of the Vehicle Code is amended to read:

467. (a) A "pedestrian" is any person who is afoot or who is using any of the following:

(1) A means of conveyance propelled by human power other than a bicycle.

(2) An electric personnel assistive mobility device as defined in Section 313.

(b) "Pedestrian" includes any person who is operating a self-propelled wheelchair, invalid tricycle, or motorized quadricycle and, by reason of physical disability, is otherwise unable to move about as a pedestrian, as specified in subdivision (a).

(c) The amendments made by this section shall become operative on March 1, 2003, and this section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 5. Section 467 is added to the Vehicle Code, to read:

467. (a) A "pedestrian" is any person who is afoot or who is using a means of conveyance propelled by human power other than a bicycle.

(b) "Pedestrian" includes any person who is operating a self-propelled wheelchair, invalid tricycle, or motorized quadricycle and, by reason of physical disability, is otherwise unable to move about as a pedestrian, as specified in subdivision (a).

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

SEC. 6. Article 6 (commencing with Section 21280) is added to Chapter 1 of Division 11 of the Vehicle Code, to read:

Article 6. Electric Personal Assistive Mobility Devices

21280. (a) The Legislature finds and declares the following:

(1) This state has severe traffic congestion and air pollution problems, particularly in its cities, and finding ways to reduce these problems is of paramount importance.

(2) Electric personal assistive mobility devices that meet the definition contained in Section 313 operate solely on electricity and

employ advances in technology to safely integrate the user in pedestrian transportation.

(3) Electric personal assistive mobility devices would enable California businesses, public officials, and individuals to travel farther and carry more without the use of traditional vehicles, thereby promoting gains in productivity, minimizing environmental impacts, and facilitating better use of public ways.

(b) The Legislature is adding this article as part of its program to promote the use of no-emission transportation.

21280.5. For purposes of this article, an electric personal assistive mobility device is defined in Section 313.

21281. Every electric personal assistive mobility device, or EPAMD, shall be equipped with the following safety mechanisms:

(a) Front, rear, and side reflectors.

(b) A system that enables the operator to bring the device to a controlled stop.

(c) If the EPAMD is operated between one-half hour after sunset and one-half hour before sunrise, a lamp emitting a white light that, while the EPAMD is in motion, illuminates the area in front of the operator and is visible from a distance of 300 feet in front of the EPAMD.

(d) A sound emitting device that can be activated from time to time by the operator, as appropriate, to alert nearby persons.

21282. Notwithstanding Section 21966, for the purpose of assuring the safety of pedestrians, including seniors, persons with disabilities, and others using sidewalks, bike paths, pathways, trails, bike lanes, streets, roads, and highways, a city, county, or city and county may, by ordinance, regulate the time, place, and manner of the operation of electric personal assistive mobility devices as defined in Section 313, and their use as a pedestrian pursuant to paragraph (2) of subdivision (a) of Section 467, including limiting, prohibiting entirely in the local jurisdiction, or prohibiting use in specified areas as determined to be appropriate by local entities. State agencies may limit or prohibit the time, place, and manner of use on state property.

21283. This article shall become operative on March 1, 2003, and 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. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 980

An act to add and repeal Chapter 9.6 (commencing with Section 8770) of Division 1 of Title 2 of the Government Code, relating to the arts, and making an appropriation therefor.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

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

(a) There is a need to provide innovative and career quality digital arts training and tools, and their dissemination, to secondary school youth and educators. Reinforcing basic and advanced skills in, and knowledge of, digital media arts and aesthetics applications will serve as a means of improving the quality of education, digital access, and workforce and community development offered in California.

(b) Educating and training our youth in digital media arts technology will lead to careers in that field, thus contributing to a stronger state economy through meeting vital employer sector needs.

(c) Currently, the training and educating of our youth in the digital media arts is often fragmented, isolated, and underdeveloped among schools, industry, and the community.

(d) The establishment of a coordinated and networked regional training and service model will enable our youth to obtain competencies and skills and to pursue career paths in digital arts technology.

(e) Therefore, it is the intent of the Legislature in enacting this act to develop comprehensive, community-based, regional partnerships that are the result of a systematic planning process that includes strategies aimed at linking existing programs providing technology training or services, or both, to youth, promoting instructor professional development and networking, and establishing active involvement and support of private industry. It is the further intent of the Legislature in enacting this act to ensure inclusion of underequipped and underserved communities and schools in the partnerships.

SEC. 2. Chapter 9.6 (commencing with Section 8770) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 9.6. DIGITAL ARTS STUDIO PARTNERSHIP DEMONSTRATION PROGRAM ACT

8770. This chapter shall be known and may be cited as the Digital Arts Studio Partnership Demonstration Program Act.

8771. For purposes of this chapter, the following definitions shall apply:

(a) ''Council'' means the Arts Council.

(b) ''Program'' means the Digital Arts Studio Partnership Demonstration Program established pursuant to this chapter.

(c) ''Youth'' means individuals aged 13 to 18 years, inclusive.

8772. (a) The Digital Arts Studio Partnership Demonstration Program is hereby established.

(b) The purpose of the program is to create voluntary pilot regional public and private partnerships in digital media arts technology that will train youths in after school regional, community-based digital technology programs, with the goal of providing a qualified, domestic workforce in technology and the arts.

8773. The Arts Council shall administer the Digital Arts Studio Partnership Demonstration Program. In administering the program, the council shall do all of the following:

(a) Develop a strategic plan for the purpose of implementing three voluntary pilot digital arts studio partnerships. The strategic plan shall include, at a minimum, the following components:

(1) An assessment of existing public and private organizations and public schools providing youth with training in digital media arts.

(2) An assessment and description of funding of digital media arts education and training for youth.

(3) Identification of available federal, local, and private funds for digital media arts technology training for youth.

(4) Identification of resources and structures required for the implementation of voluntary pilot digital arts studio partnerships.

(5) Identification of gaps in current curricula serving as barriers to the development and implementation of a model digital media arts curriculum and state standards.

(6) An assessment of effectiveness and quality of collaboration between relevant digital arts industry, education, and training institutions related to provision of resources, transfer of knowledge, job and career opportunities, and other roles industry plays in promoting workforce development.

(b) Convene a voluntary planning and development Advisory Group in Digital Media Arts Technology that is representative of youth, educators, artists, parents, and the high technology industry in the regions served by the voluntary pilot digital arts studio partnerships,

with membership to be appointed by the council. The advisory group shall assist the council in implementing the strategic plan developed pursuant to subdivision (a) and developing the criteria for designation of voluntary pilot digital arts studio partnerships pursuant to subdivision (c).

(c) Designate, fund, and develop three voluntary pilot digital arts studio partnerships in the state, one each in the northern, southern, and central regions of the state, subject to Section 8777.

The council and the advisory group shall consider the following characteristics in establishing criteria for designating the voluntary pilot digital arts studio partnerships:

(1) The capacity to either reach a population of at least one million people or collaborate in a regional, multicounty, community-based, coordinated program, or the capacity to broadcast student-produced media.

(2) The capacity and ability to train 500 youths and 100 instructors annually. Youths trained shall include youth from low-income families and communities of color and youth with disabilities.

(3) Where feasible, the ability to provide access for youth, beyond the established school day, to state-of-the-art facilities, equipment, and personnel.

(4) The ability to provide expert staff who shall serve as trainers and mentors.

(5) The ability to identify underequipped and underserved communities and schools in the targeted region, for purposes of inclusion in the partnership.

(6) The ability to integrate all of the following components:

(A) A nonprofit organization with public access and community cablecast and Internet broadcast capacity, with services in the audio, video, film, and other digital production fields to serve as the central and administrative entity.

(B) Satellite studio training sites with a capacity to establish and support five or more youth groups.

(C) Youth media clubs or ateliers.

(D) Regional youth media arts organizations.

(E) Local support networks of media artists, parents, and community volunteers.

(F) Inclusion and support of underequipped and underserved communities and schools in the satellite studio training sites or the youth media clubs, or both of these. If no such site exists, the application plan shall include a timeline and strategy, and funding for building a satellite or club site in the underserved community within two years.

(7) Demonstrated partnerships with high technology industry, local public high schools, local nonprofit youth groups, local parent groups,

local media artists, and local government, including, but not limited to, local workforce investment boards.

(8) Ability to collaborate, where feasible, with existing state programs and entities, such as the California Workforce Development Programs, the 21st Century Technology Commission, and afterschool mentoring, technology center programs.

(9) An established voluntary regional educator, postsecondary education institution or institutions, and multimedia industry-based consortium associated with the designated voluntary pilot digital arts studio partnership. The consortium should be willing to make recommendations on a comprehensive and articulated model curriculum for digital media arts in public high schools and two-year and four-year college and university systems, based on the ongoing progress and results of the voluntary pilot digital arts studio partnership, consistent with, and complementary to, the California High School Visual and Performance Arts standards.

(d) Establish application content and procedures for the purpose of planning and operating a voluntary pilot digital arts studio partnership.

(e) Provide information and technical assistance to voluntary pilot digital arts studio partnerships to implement this chapter.

(f) Monitor voluntary pilot digital arts studio partnerships and document their progress in meeting performance criteria established by the council pursuant to Section 8774.

(g) Convene a meeting of the California Technology Project, the California Arts Project, and selected education departments of the California State University and the University of California at its option, for the purpose of reviewing and recommending to the council a model curriculum and state standards based on recommendations submitted pursuant to paragraph (8) of subdivision (c).

8774. The council shall establish performance criteria for evaluating voluntary pilot digital arts studio partnerships, to be included in the report required pursuant to subdivision (b) of Section 8775. Performance criteria shall include, but not be limited to, all of the following:

(a) Training outcomes.

(b) Youth art products and their exhibition.

(c) Digital media and aesthetics curriculum development and dissemination.

(d) Afterschool instructor training.

(e) Partnerships with industry.

(f) Partnership effectiveness.

(g) Youth leadership development.

(h) Communication arts growth and achievements.

(i) Impact on digital divide challenges.

8775. The council shall submit the following reports to the Joint Committee on the Arts, the Assembly Committee on Arts, Entertainment, Sports, Tourism and Internet Media, and the education committees of the Legislature:

(a) No later than October 30, 2003, findings from the assessment of digital media arts programs in public schools made pursuant to paragraph (1) of subdivision (a) of Section 8773.

(b) Periodic progress reports, including, but not limited to, evaluations based on criteria established pursuant to Section 8774, recommendations as to revisions to the program, and recommendations regarding levels of funding for the voluntary pilot digital arts studio partnerships.

8776. (a) The Digital Arts Studio Partnership Demonstration Program Fund is hereby established in the State Treasury.

(b) (1) The fund may receive federal, local, or private moneys, which shall be administered by the council for the purposes of this chapter.

(2) Notwithstanding Section 13340, private moneys received pursuant to paragraph (1) are hereby continuously appropriated without regard to fiscal years to the council for the purposes of this chapter.

8777. This chapter shall only be implemented to the extent that private, federal, or local funds are available for that purpose.

8778. This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

CHAPTER 981

An act to add Section 53752 to the Government Code, relating to state property.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. It is the intent of the Legislature that the Franchise Tax Board continue to implement Section 19551.1 of the Revenue and Taxation Code, provided that the requirements of subdivision (c) of that section have been met.

SEC. 2. Section 53752 is added to the Government Code, to read:

53752. The Department of General Services shall develop compliance standards in the State Administrative Manual (SAM) to inform owners of state property of their duties and responsibilities

pursuant to this article and Articles XIII C and XIII D of the California Constitution.

CHAPTER 982

An act to add Sections 485, 951.5, and 58553.5 to, and to repeal Section 58579 of, the Food and Agricultural Code, relating to agricultural agreements, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 485 is added to the Food and Agricultural Code, to read:

485. (a) The secretary may enter into cooperative agreements with private entities, and with boards, bureaus, commissions, or departments of this state or of the United States, for the purpose of administering compensation, conservation, disaster assistance, economic assistance, education, environmental enhancement, indemnification, market promotion, research, and similar programs that promote and enhance agriculture.

(b) Upon appropriation by the Legislature, the secretary may receive and expend federal funds and any nonstate matching funds made available to the department for the purposes specified above via grant, interagency agreement, or otherwise, and these funds shall be administered in accordance with Section 221.

(c) (1) Grant awards shall be made by the department on a competitive basis established by the department wherever possible.

(2) Any grant awarded on an alternative basis that is not competitive shall comply with all applicable state requirements, orders, and guidelines.

(3) Decisions of the secretary relating to the award of grants shall be final.

(d) Procedures, forms, and guidelines established for these grant programs, including the application process, are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 951.5 is added to the Food and Agricultural Code, to read:

951.5. The board shall make recommendations to the secretary regarding the project agreements to be funded pursuant to Chapter 6 (commencing with Section 58551) of Part 1 of Division 21.

SEC. 3. Section 58553.5 is added to the Food and Agricultural Code, to read:

58553.5. ''Advisory committee'' means the State Board of Food and Agriculture.

SEC. 4. Section 58579 of the Food and Agricultural Code is repealed.

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

In order to make federal grants available for economic development in agricultural areas of the state at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 983

An act to amend Section 10335.5 of, to add Division 10.3 (commencing with Section 10280) and Division 10.4 (commencing with Section 10285) to, and to add and repeal Division 10.25 (commencing with Section 10278) of, the Public Resources Code, relating to agricultural lands, and making an appropriation therefor.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

I am signing Assembly Bill 52, however, I am vetoing the $2.4 million appropriation for the California Environmental Quality Improvement Loan Program and the $2.4 million appropriation for the Coastal Farmland Preservation program.

Proposition 40 requires funds to be used for grants for the preservation of agricultural and grazing lands, including oak woodlands and grasslands. The California Environmental Quality Improvement Loan Program is not a grant program and is therefore ineligible.

Additionally, this bill creates the Coastal Farmland Preservation program at the Department of Conservation. This program is duplicative of the existing California Farmland Conservancy Program and other efforts by the State Coastal Conservancy to protect coastal agricultural and rangeland currently funded through Propositions 12 and 40.

GRAY DAVIS, Governor

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

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

(a) It is in the interest of the State of California to ensure the existence of a viable agricultural economy. In doing so, promotion of agricultural production and environmental quality can occur as compatible goals in the state.

(b) It is the intent of the Legislature in enacting Division 10.3 (commencing with Section 10280) of the Public Resources Code to encourage the use of the federal Environmental Quality Incentive Program (16 U.S.C. Sec. 3839aa, and following) in order to promote and improve farm conservation practices in the state.

SEC. 2. Division 10.25 (commencing with Section 10278) is added to the Public Resources Code, to read:

DIVISION 10.25. CALIFORNIA ENVIRONMENTAL QUALITY IMPROVEMENT REVOLVING LOAN PROGRAM

10278. (a) (1) The California Environmental Quality Improvement Revolving Loan Program is established within the Department of Conservation. The loan program shall provide loans for eligible cropland to farmers to carry out practices approved for cost-share payments through the federal Environmental Quality Incentive Program (16 U.S.C. Sec. 3839aa, and following).

(2) The California Environmental Quality Improvement Program Revolving Loan Account is hereby established in the State Treasury for the purposes of the program, including any program delivery costs.

(b) The following terms have the following meanings as used in this division, unless the context clearly requires otherwise:

(1) ''Account'' means the California Environmental Quality Improvement Program Revolving Loan Account established pursuant to subdivision (a) of Section 10278.

(2) ''Department'' means the Department of Conservation.

(3) ''Federal program'' means the federal Environmental Quality Incentive Program (16 U.S.C. Sec. 3839aa, and following).

(4) ''Limited resource and beginning farmer'' means an applicant that meets that definition under an approved contract entered into between the applicant for the loan and the Secretary of the United States Department of Agriculture pursuant to the federal program.

(5) ''Loan program'' means the California Environmental Quality Improvement Revolving Loan Program established pursuant to subdivision (a).

10279. (a) Practices eligible for the loan program shall have evidence of an approved contract entered into between the applicant for the loan and the Secretary of the United States Department of Agriculture indicating that the applicant qualifies for the federal program.

(b) An applicant may apply to the department for the following types of loans under the loan program:

(1) A 10 percent cost-share loan, not to exceed one year, for a qualified limited resource and beginning farmer, or up to a 25 percent cost-share low-interest loan for other farmers. The applicant shall repay the loan to the account.

(2) A low-interest short-term loan, not to exceed one year, for up 90 percent of the total project cost for a limited resource and beginning farmer, or up to 75 percent of the total project cost for other farmers, whichever is less, as determined and approved by the Director of Conservation. The loan shall be repaid to the account once the applicant has received federal reimbursement pursuant to the federal program. As funds are reimbursed to the account, they may be loaned for new qualified projects.

(c) The interest rate for loans granted pursuant to the loan program shall be equal to the average interest paid by the state on bonds sold pursuant to the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Chapter 1.696 (commencing with Section 5096.600) of Division 5), as determined by the Treasurer.

(d) If any of the following occurs, the account shall cease to exist:

(1) No loans are procured from federal sources for the purposes of the loan program on or before June 30, 2004.

(2) No applications for loans are submitted before June 30, 2004.

(3) The federal program ceases to exist.

(e) If the account ceases to exist, two-thirds of the remaining funds in the account shall be available for appropriation by the Legislature for the California Farmland Conservancy Act (Division 10.2 (commencing with Section 10200)) and one-third of the remaining funds in the fund shall be available for appropriation by the Legislature for grazing and grassland protection in accordance with Senate Bill 984 of the 2001–02 Regular Session, if that bill is enacted and becomes effective on or before January 1, 2003.

(f) The department shall adopt guidelines to administer the loan program.

10279.6. This division 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. Division 10.3 (commencing with Section 10280) is added to the Public Resources Code, to read:

DIVISION 10.3. AGRICULTURAL PROTECTION PLANNING GRANT PROGRAM

10280. The Agricultural Protection Planning Grant Program is hereby established within the Department of Conservation, to provide planning grants to improve the protection of agricultural lands and grazing lands, including oak woodlands and grasslands.

10280.5. The following terms have the following meanings as used in this division, unless the context clearly requires otherwise:

(a) ''Authority'' means an entity established by the state that requires its members, including, but not limited to, local government entities, to adopt a resolution stating their intent to participate.

(b) ''Department'' means the Department of Conservation.

(c) ''Grant program'' means the program established pursuant to Section 10280.

(d) ''Joint powers authority'' means a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code that is formed in part to protect agricultural land.

(e) ''Local government entity'' means any city, county, city and county, or district, including, but not limited to, park and open-space districts, resource conservation districts, and other special districts.

(f) ''Nonprofit organization'' means any nonprofit public benefit corporation that has among its purposes the conservation of agricultural lands, and holds a tax exemption, as defined under Section 501(c)(3) of the Internal Revenue Code, and further qualifies as an organization under Section 170(b)(1)(A)(iv) or 170(h)(3) of the Internal Revenue Code.

10281. The purpose of the grant program is to assist any local government entity, nonprofit organization, authority, or joint powers authority to apply for, and cost-effectively use, grant funds available for farmland, grazing lands, and grasslands protection and preservation from funds that are made available pursuant to subdivision (f) of Section 5096.650 and from other funding sources.

10281.5. (a) In addition to the requirements established by the department, the applicant shall demonstrate that the changes to the existing goals, objectives, policies, or programs of the city, county, or city and county that will logically result from the grant will improve protection of agricultural land, grazing land, or grasslands.

(b) The department shall develop and adopt guidelines and criteria for awarding grants that achieve the greatest lasting preservation of agricultural land. The department shall develop these guidelines in consultation with farming and ranching groups, agricultural land

conservation groups, the State Coastal Conservancy, and the Wildlife Conservation Board.

10282. (a) Under the grant program, a local government entity, nonprofit organization, authority, or joint powers authority may apply to the department for a planning grant to be used for the protection of agricultural lands and grazing lands, including oak woodlands and grasslands. In addition to any requirements established by the department, to be eligible for a grant under the grant program, an applicant shall do all of the following:

(1) Identify existing or potential agricultural lands in its jurisdiction.

(2) Specify its existing goals, objectives, policies, or programs that support the long-term protection of agricultural land.

(3) Specify the proposed changes to its existing goals, objectives, policies, or programs that support the long-term protection of agricultural land.

(4) Specify how the planning grant would be used to improve the long-term protection of agricultural land within its jurisdiction.

(b) A grant awarded by the department under the grant program shall not exceed two hundred fifty thousand dollars ($250,000) to any applicant, or five hundred thousand dollars ($500,000) if the department determines that a grant application is for collaborative planning activities proposed to include two or more adjacent counties, cities, or city and county.

(c) In granting funds pursuant to this division, the department shall give priority to proposals that include matching funds from local sources.

(d) A grant proposal by a park or open-space district, resource conservation district, other special district, nonprofit organization, authority, or joint powers authority shall be approved by resolution of the city, county, or city and county, or multiple cities and counties, whose jurisdiction the proposal is intended to benefit. The city, county, or city and county shall provide evidence that it is willing to implement some of the planning process funded by the grant.

(e) The purposes for which a grant made pursuant to this division for agricultural protection may include, but need not be limited to, the following:

(1) To update the general plan of a city, county, or city and county to improve protection of agricultural land, or a zoning ordinance designed to improve protection of agricultural land.

(2) To develop multicounty strategies to protect agricultural land.

(3) To develop city-county agreements to protect agricultural land.

(4) To develop strategies to implement existing general plan provisions, city-county agreements, or multicounty agreements to protect agricultural land, including technical assistance.

(5) To develop public-private partnerships for the long-term protection and stewardship of agricultural lands.

10283. Eligible projects funded under this division with the proceeds from the sale of any bonds shall be consistent with the requirements of Section 16727 of the Government Code.

SEC. 4. Division 10.4 (commencing with Section 10285) is added to the Public Resources Code, to read:

DIVISION 10.4. COASTAL FARMLAND PRESERVATION PROGRAM

10285. The Department of Conservation and the State Coastal Conservancy, with the guidance and concurrence of the Resources Agency, shall enter into a memorandum of understanding to ensure that the program established under this division is a coordinated effort between the two entities and meets the stated goals of coastal farmland preservation and the California Farmland Conservancy Program Act including, but not limited to, the grant process set forth in Section 10286.

10286. The Department of Conservation shall expend the funds appropriated for purposes of this division in accordance with the following requirements:

(a) The Department of Conservation, in cooperation with the State Coastal Conservancy and the Wildlife Conservation Board, shall ensure, to the extent feasible, the funds are used to protect large, contiguous tracts of prime agricultural land.

(b) Acquisition of real property using the funds shall be from willing sellers.

(c) The funds may not be used to acquire easements that would limit farming or farming practices or to improve wildlife habitat on agricultural lands.

(d) Each dollar spent from the funds shall be matched with three dollars ($3) from other sources available to the State Coastal Conservancy. The matching funds may be used during the term of the appropriation for acquisitions of interests in, or for improvements to, real property, if those actions are intended to support agricultural production or prevent conversion to other uses and if acquisition of real property using these funds is from willing sellers. This section does not require the funds appropriated for purposes of this subdivision to be expended on the same land as the matching funds. Matching funds may not be used to improve wildlife habitat on agricultural lands except as incidental to furthering agricultural purposes. Acquisition of nonagricultural conservation easements, retention of agricultural conservation easements after sale of title, habitat conservation efforts, or

any other activities not related to agricultural land preservation, may not be counted as a match under this section.

(e) The Department of Conservation shall use its best efforts to cause title to any lands acquired using matching funds described in subdivision (d) to be conveyed to private parties within five years of the date of acquisition. Following acquisition of title and prior to its sale, the Department of Conservation shall use its best efforts to cause these lands to be leased to, or otherwise used by, private farm operators.

SEC. 5. Section 10335.5 of the Public Resources Code, as added by Senate Bill No. 984 of the 2001–02 Regular Session, is amended to read:

10335.5. Of the total amount of funds derived from the proceeds of bonds and appropriated by Section 2 of Senate Bill No. 984 of the 2001–02 Regular Session, the board may not expend more than 5 percent for associated programmatic costs.

SEC. 6. The State Coastal Conservancy, the Wildlife Conservation Board, and the Department of Conservation shall, at the earliest possible time, jointly prepare a single document describing programs within these entities that protect agricultural lands and grazing lands, including oak woodlands and grasslands. The description shall include the principal differences between the programs, and how the programs can be combined on a single parcel. The description shall be made available to applicants for agricultural conservation programs.

SEC. 7. Of the funds deposited in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund and available for grants pursuant to subdivision (f) of Section 5096.650 of the Public Resources Code for the preservation of agricultural lands and grazing lands, including oak woodlands and grasslands, the sum of nine million six hundred thousand dollars ($9,600,000) is hereby appropriated for allocation in accordance with the following schedule:

(a) The sum of four million eight hundred thousand dollars ($4,800,000) to the Wildlife Conservation Board for the purposes of the Oak Woodlands Conservation Act (Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code) and any associated programmatic costs.

(b) The sum of two million four hundred thousand dollars ($2,400,000) to the Department of Conservation for the Coastal Farmland Preservation Program (Division 10.4 (commencing with Section 10285) of the Public Resources Code) and any associated programmatic costs.

(c) The sum of two million four hundred thousand dollars ($2,400,000) to the Department of Conservation for the California Environmental Quality Improvement Revolving Loan Program (Division 10.25 (commencing with Section 10278) of the Public Resources Code and any associated programmatic costs.

SEC. 8. Notwithstanding any other provision of law, of the funds appropriated in this act from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund, not more than 5 percent of the total amount appropriated for all programs and property acquisitions set forth in this act may be expended for associated programmatic costs.

CHAPTER 984

An act to add Division 10.4 (commencing with Section 10330) to the Public Resources Code, relating to grazing land, and making an appropriation therefor.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Division 10.4 (commencing with Section 10330) is added to the Public Resources Code, to read:

DIVISION 10.4. RANGELAND, GRAZING LAND, AND GRASSLAND PROTECTION ACT

10330. The Wildlife Conservation Board is hereby designated as the lead agency of the state for carrying out the program of rangeland, grazing land, and grassland protection pursuant to this division.

10331. The California Rangeland, Grazing Land, and Grassland Protection Program is hereby established to protect California's rangeland, grazing land, and grasslands through the use of conservation easements, for the following purposes:

(a) To prevent the conversion of rangeland, grazing land, and grassland to nonagricultural uses.

(b) To protect the long-term sustainability of livestock grazing.

(c) To ensure continued wildlife, water quality, watershed, and open-space benefits to the State of California from livestock grazing.

10332. As used in this division, the following terms have the following meanings:

(a) ''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.

(b) ''Conservation easement'' means a conservation easement, as defined by Section 815.1 of the Civil Code, that is perpetual.

(c) ''Local public agency'' means any city, county, city and county, resource conservation district, district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5, authority formed pursuant to Division 26 (commencing with Section 35100), or joint powers authority made up of two or more local public agencies and one or more state agencies.

(d) ''Nonprofit organization'' means any nonprofit public benefit corporation formed pursuant to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code), qualified to do business in California, and qualified under Section 501(c)(3) of Title 26 of the Internal Revenue Code as a tax-exempt corporation that has as a principal purpose the conservation of land and water resources.

(e) ''Property'' means any real property, and any perpetual interest therein, including land, conservation easements, and land containing water rights.

(f) ''Qualified property'' means property that is rangeland, grazing land, or grassland and is used or is suitable for grazing; is zoned for agricultural grazing, or open-space use; and is used or suitable for habitat for aquatic or terrestrial wildlife species or native plants.

(g) ''State agency'' means any public entity created by statute within the Resources Agency.

10334. Funds may be expended by the board for the acquisition of conservation easements over qualified property pursuant to the authority granted to the board under Section 1348 of the Fish and Game Code. The board may also make grants of funds to a state agency, local public agency, or nonprofit organization for the acquisition of conservation easements over qualified property.

10335. Funds expended pursuant to this division may be used only to acquire conservation easements to protect rangeland, grazing lands, and grasslands, consistent with the purposes of Sections 10331 and 10337. If additional property interests, restrictions, enhancements, or access is acquired in addition to a conservation easement, funds for those additional acquisitions shall be provided from other sources.

10335.5. (a) Any eligible projects funded under this division with the proceeds from the sale of any bonds shall be consistent with the requirements of Section 16727 of the Government Code.

(b) Of the total amount of funds derived from the proceeds of bonds and appropriated by Section 2 of the act adding this division, the board may not expend more than 5 percent for associated programmatic costs.

10336. The board may adopt guidelines to implement the program, including the establishment of procedures and a schedule for submittal of applications for grants and a requirement that conservation easements be monitored not less than every two years. 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 adopted pursuant to this section.

10337. A conservation easement may be acquired pursuant to this division only if its acquisition will protect, restore, or enhance rangeland, grazing land, or grassland and sustain the character of the property. In evaluating qualified property, the board and any recipient of a grant may consider all of the following criteria:

(a) The productivity or potential productivity of the land.

(b) The long-term economic viability of the property.

(c) The threat to the property of urban or intensified rural development.

(d) The presence of scenic open-space or viewshed, historic, or archeological values, or unique geologic features.

(e) The presence of water resources, including groundwater recharge.

(f) The presence of vegetation with ecological significance, such as oak woodlands, forests, riparian corridor, or native vegetation.

(g) The quality of the soil.

(h) The location of the property relative to an urban sphere of influence.

(i) The location of the property relative to other properties preserved by conservation easements.

(j) Whether protecting this property will assist in protecting other lands.

(k) The geographic concentration of other rangelands, grazing lands, and grasslands.

10338. At a minimum, each application for a grant shall contain all of the following:

(a) A legal description of the property and a description of the current use of the land and the habitat types of the property, including documentation of how acquisition of a conservation easement will preserve rangeland, grazing land, or grassland.

(b) An independent and impartial appraisal prepared by a real estate appraiser who is licensed pursuant to the Real Estate Appraisers' Licensing and Certification Law (Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code).

(c) Certification by the prospective seller of the conservation easement that the seller was not, and is not, required to satisfy a condition imposed upon the seller 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)).

(d) Disclosure of any known or suspected environmental conditions associated with the property.

10339. The board may require further information as is reasonably necessary to allow the board to evaluate the proposed acquisition.

10340. The board, or the recipient of a grant, may accept contributions of money from a prospective seller to pay or reimburse the costs of appraisal, escrow, and title, and other transaction costs associated with the acquisition, including any environmental assessment.

10341. The board may request staff services from any state agency that submits an application for a grant.

10342. Any conservation easement, money, or other asset acquired pursuant to this division shall not be deemed a transfer pursuant to Article 1 (commencing with Section 2780) of Chapter 9 of Division 3 of the Fish and Game Code.

10343. (a) Nothing in this division authorizes or increases the authority of any public agency to use eminent domain to acquire private property.

(b) Nothing in this division diminishes any existing land or water right held by an existing easement holder in any property for which acquisition of a conservation easement is proposed.

(c) An existing mineral rights holder, as identified in the public records in the county where the property is located, shall be given notice of intent to purchase a conservation easement. The notice may be given by any means authorized by statute.

10344. The board may coordinate this program with the Oak Woodlands Conservation Act established pursuant to Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code, as administered by the board.

SEC. 2. From the funds deposited in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund created pursuant to Section 5096.610 of the Public Resources Code, of the amount made available under subdivision (f) of Section 5096.650 of the Public Resources Code, the sum of nineteen million two hundred thousand dollars ($19,200,000) is hereby appropriated to the Wildlife Conservation Board for the purpose of the Rangeland, Grazing Land, and Grassland Protection Act, as set forth in Division 10.4 (commencing with Section 10330) of the Public Resources Code.