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2003

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Statewide Special Election, October 7, 2003

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

2003–04 Regular Session
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CHAPTER 171

An act to amend Section 31470.10 of the Government Code, relating to county employees' retirement.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 31470.10 of the Government Code is amended to read:

31470.10. Notwithstanding Section 31470.2, all welfare fraud investigators and administrators budgeted within Orange County shall be eligible, regardless of which county department actually supervises or funds them, and shall receive those benefits upon a majority vote of the board of supervisors.

CHAPTER 172

An act to amend Section 116786 of the Health and Safety Code, relating to water.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 116786 of the Health and Safety Code is amended to read:

116786. (a) Notwithstanding subdivision (b) of Section 116785, a local agency may, by ordinance, limit the availability, or prohibit the installation, of residential water softening or conditioning appliances that discharge to the community sewer system if the local agency makes all of the following findings and includes them in the ordinance:

(1) Limiting the availability, or prohibiting the installation, of the appliances is a necessary means of achieving compliance with waste discharge requirements issued by a California regional water quality control board. In determining a necessary means of achieving compliance, the local agency shall assess both of the following:

(A) The technological and economic feasibility of alternatives to the ordinance.

(B) The potential saline discharge reduction of the ordinance.

(2) The local agency has adopted and is enforcing regulatory requirements that limit the volumes and concentrations of saline discharges from nonresidential sources in the community waste disposal system to the extent technologically and economically feasible.

(b) Notwithstanding subdivision (b) of Section 116785, a local agency may, by ordinance, limit the availability, or prohibit the installation, of residential water softening or conditioning appliances that discharge to the community sewer system if the local agency makes all of the following findings and includes them in the ordinance:

(1) Limiting the availability, or prohibiting the installation, of the appliances is a necessary means of achieving compliance with the water reclamation requirements or the master reclamation permit issued by a California regional water quality control board. In determining a necessary means of achieving compliance, the local agency shall assess both of the following:

(A) The technological and economic feasibility of alternatives to the ordinance.

(B) The potential saline discharge reduction of the ordinance.

(2) The local agency has adopted, and is enforcing, regulatory requirements that limit the volumes and concentrations of saline discharges from nonresidential sources to the community waste disposal system to the extent technologically and economically feasible.

(c) Local agency findings shall be substantiated by an independent study of discharges from all sources of salinity, including, but not limited to, residential water softening or conditioning appliances, residential consumptive use, industrial and commercial discharges, and seawater or brackish water infiltration and inflow into the sewer collection system. The study shall quantify, to the greatest extent feasible, the total discharge from each source of salinity and identify remedial actions taken to reduce the discharge of salinity into the community sewer system from each source, to the extent technologically and economically feasible, to bring the local agency into compliance with waste discharge requirements, water reclamation requirements, or a master reclamation permit, prior to limiting or prohibiting the use of residential water softening or conditioning appliances.

(d) Any ordinance adopted pursuant to this section shall be prospective in nature and may not require the removal of residential water softening or conditioning appliances that are installed before the effective date of the ordinance.

(e) To comply with this section, any local agency described in subdivision (f) of Section 116780 is authorized to adopt an ordinance.

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

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CHAPTER 173

An act to amend Sections 16100 and 16101 of, and to add Sections 16204 and 16402.5 to, the Elections Code, relating to elections.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 16100 of the Elections Code is amended to read:

16100. Any elector of a county, city, or of any political subdivision of either may contest any election held therein, for any of the following causes:

(a) That the precinct board or any member thereof was guilty of malconduct.

(b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office.

(c) That the defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined in Division 18 (commencing with Section 18000).

(d) That illegal votes were cast.

(e) That eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote.

(f) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been declared elected.

(g) That there was an error in the vote-counting programs or summation of ballot counts.

SEC. 2. Section 16101 of the Elections Code is amended to read:

16101. Any candidate at a primary election may contest the right of another candidate to nomination to the same office by filing an affidavit alleging any of the following grounds, that:

(a) The defendant is not eligible to the office in dispute.

(b) The defendant has committed any offense against the elective franchise defined in Division 18 (commencing with Section 18000).

(c) A sufficient number of votes were illegal, fraudulent, forged, or otherwise improper, and that had those votes not been counted, the defendant would not have received as many votes as the contestant.

(d) A sufficient number of eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote, and

that had those voters been permitted to vote, the defendant would not have received as many votes as the contestant.

(e) Due to mistake, error, or misconduct the votes in any precinct were so incorrectly counted as to change the result.

SEC. 3. Section 16204 is added to the Elections Code, to read:

16204. An election shall not be set aside on account of eligible voters being denied the right to vote, unless it appears that a sufficient number of voters were denied the right to vote as to change the result.

SEC. 4. Section 16402.5 is added to the Elections Code, to read:

16402.5. An election shall not be set aside on account of eligible voters being denied the right to vote, unless it appears that a sufficient number of voters were denied the right to vote as to change the result.

CHAPTER 174

An act to add Section 19610.8 to the Business and Professions Code, relating to horse racing.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 19610.8 is added to the Business and Professions Code, to read:

19610.8. Notwithstanding any other provision of law, and in lieu of any deduction and distribution provided for in this chapter, upon the joint request of the association or fair accepting the wager, and the organization representing the horsemen participating in the meeting of the association or fair accepting the wager, the board may set the total percentage deducted from the parimutuel pool for any new type of wager introduced after January 1, 2004, in an amount of at least 10 percent and not more than 30 percent of the amount handled in the parimutuel pool for the wager. Three percent of the amount deducted shall be paid to the state as a license fee and, if the wager was placed at a satellite wagering facility or a location other than the host racing association, eight percent shall be paid to the satellite wagering facility or to the entity that processed the wager. In addition, with respect to thoroughbred racing only, three percent of the amount remaining after the payment of the state license fee and payment to a satellite wagering facility or an entity that processed the wager, if any, shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b), (c),

and (d) of Section 19617.2. Thereafter, for all kinds of racing, the remaining amount shall be distributed 50 percent to the association conducting the racing meeting and 50 percent to the horsemen participating in the racing meeting as purses.

CHAPTER 175

An act to add Section 14312 to the Elections Code, relating to elections.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 14312 is added to the Elections Code, to read:

14312. This article shall be liberally construed in favor of the provisional voter.

CHAPTER 176

An act to amend Sections 56132 and 56668 of the Government Code, relating to local agency formation.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 56132 of the Government Code is amended to read:

56132. (a) This section shall only apply to any change of organization or reorganization that includes detachment of territory from the Broadmoor Police Protection District in the County of San Mateo and that includes or accommodates, or is intended to facilitate, an annexation of territory to another local agency that has initiated the change of organization or reorganization. This section does not, however, apply to any territory comprising real property owned by the San Francisco Bay Area Rapid Transit District.

If the commission adopts a resolution approving such a change of organization or reorganization, the board of commissioners of the district may, within 15 days thereafter, adopt a resolution finding either

that the proposed detachment may or will not adversely affect the district's ability to efficiently provide its law enforcement services in the remainder of the district. The district shall, if it adopts a resolution, file a certified copy of its resolution with the local agency to which the affected territory is proposed to be annexed and the commission. If that resolution finds that the proposed detachment may have an adverse financial effect, then the reorganization shall not become effective unless a majority of the voters voting at a special election of the district called for that purpose approve the detachment. The Broadmoor Police Protection District shall pay the costs of the election. For purposes of this section, it shall be conclusively presumed that any affected local agency that adopts a resolution under Section 56654 requesting a detachment of contiguous territory from the Broadmoor Police Protection District and that could have concurrently requested annexation of the affected territory, intends to do so.

(b) The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the following special circumstances:

The Broadmoor Police Protection District consists primarily of suburban residential properties which have long enjoyed an urban level of police services. The threat of continued piecemeal detachments of territory from the district threatens its ability to continue providing that level of service on an economically efficient basis.

(c) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted prior to January 1, 2005, deletes or extends that date.

SEC. 2. Section 56668 of the Government Code is amended to read:

56668. Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

(a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

(b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

''Services,'' as used in this subdivision, refers to governmental services whether or not the services are services which would be

provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

(c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

(d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377.

(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.

(f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.

(g) Consistency with city or county general and specific plans.

(h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.

(i) The comments of any affected local agency.

(j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.

(k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.

(*l*) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

(m) Any information or comments from the landowner or owners.

(n) Any information relating to existing land use designations.

CHAPTER 177

An act to repeal and add Section 319 of the Streets and Highways Code, relating to streets and highways.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 319 of the Streets and Highways Code, as added by Section 21 of Chapter 597 of the Statutes of 2001, is repealed.

SEC. 2. Section 319 of the Streets and Highways Code, as amended by Section 22 of Chapter 597 of the Statutes of 2001, is repealed.

SEC. 3. Section 319 is added to the Streets and Highways Code, to read:

319. (a) Route 19 is from Del Amo Boulevard near Long Beach to Gardendale Street/Foster Road in the Cities of Bellflower and Downey, and then, with an interruption of already relinquished route, from Telegraph Road at the Downey City limit to Route 164 (Galatin Road) at the northerly city limit of Pico Rivera.

(b) If the commission determines it is in the state's best interests to do so, it may do the following, pursuant to a cooperative agreement between the city and the department:

(1) Relinquish to the City of Bellflower the portion of Route 19 between the city's southerly city limit near Rose Avenue and Gardendale Street/Foster Road.

(2) Relinquish to the City of Downey the portion of Route 19 between the city's southerly city limit at Century Boulevard and Gardendale Street.

(3) Relinquish to the City of Pico Rivera the portion of Route 19 between Telegraph Road and Gallatin Road.

(c) A relinquishment under this section shall become effective when the county recorder records the relinquishment resolution containing the commissioner's approval of the relinquishment's terms and conditions.

(d) Any portion of Route 19 relinquished pursuant to this section shall cease to be a state highway on the effective date of the relinquishment.

CHAPTER 178

An act to amend Sections 14010, 14030, 14034, 14036, 14037, 14038, 14039, 14040, 14041, and 14043 of, to amend and renumber Section 14030.2 of, and to repeal Sections 14031 and 14035 of, the Corporations Code, relating to small business financial development corporations.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 14010 of the Corporations Code is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) ''Corporation'' or ''the corporation'' means any nonprofit California small business financial development corporation created pursuant to this part.

(b) ''Financial institution'' means banking organizations including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, and savings and loan associations.

(c) ''Financial company'' means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) ''Expansion Fund'' means the California Small Business Expansion Fund.

(e) Unless otherwise defined by the office by regulation, ''small business loan'' means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan. From time to time, the director shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(f) ''Employment incentive loan'' means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(g) ''Loan committee'' means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to Section 14060.

(h) ''Board of directors'' means the board of directors of the corporation.

(i) ''Office'' means the California Office of Small Business Development.

(j) ''Board'' means the California Small Business Board.

(k) ''Agency'' means the Trade and Commerce Agency.

(*l*) ''Director'' means the Executive Director of the California Office of Small Business.

(m) ''Secretary'' means the Secretary of Trade and Commerce.

(n) ''Trust fund'' means the money from the expansion fund that is held in trust by a financial institution or a financial company. A trust fund is not a deposit of state funds and is not subject to the requirements of Section 16506 of the Government Code.

(o) ''Trust fund account'' means an account within the trust fund that is allocated to a particular small business financial development corporation for the purpose of paying loan defaults and claims on bond guarantees for a specific small business financial development corporation.

(p) ''Trustee'' is the lending institution or financial company selected by the office to hold and invest the trust fund. The agreement between the agency and the trustee shall not be construed to be a deposit of state funds.

SEC. 2. Section 14030 of the Corporations Code is amended to read:

14030. There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund, including each of the trust fund accounts within the trust fund, unless the office has permitted a higher leverage ratio for an individual corporation pursuant to subdivision (c) of Section 14037.

SEC. 3. Section 14030.2 of the Corporations Code is amended and renumbered to read:

14031. (a) The director may establish accounts within the expansion fund or trust fund for loan guarantees and surety bond guarantees, including loan loss reserves. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation. The director shall recommend whether the expansion fund and corporate fund accounts are to be leveraged, and if so, by how much. Upon the request of the corporation, the director's decision may be repealed or modified by a board resolution.

(b) Annually, not later than January 1 of each year commencing January 1, 1996, the director shall prepare a report regarding the loss experience for the expansion fund and the trust fund for loan guarantees and surety bond guarantees for the preceding fiscal year. At a minimum, the report shall also include data regarding numbers of surety bond and

loan guarantees awarded through the expansion fund, including ethnicity and gender data of participating contractors and other entities, and experience of surety insurer participants in the bond guarantee program. The director shall submit that report to the Secretary of Technology, Trade, and Commerce for transmission to the Governor and the Legislature.

SEC. 4. Section 14031 of the Corporations Code is repealed.

SEC. 5. Section 14034 of the Corporations Code is amended to read:

14034. The director at his or her discretion, with the approval of the Director of Finance, may request the trustee to invest those funds in the trust fund in securities issued by the Treasury of the United States government. Returns from these investments shall be deposited in the expansion fund and shall be used to support the programs of this part.

SEC. 6. Section 14035 of the Corporations Code is repealed.

SEC. 7. Section 14036 of the Corporations Code is amended to read:

14036. The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government money, and other public or private money to make loans, guarantees, and restricted investments pursuant to this article. Funds in the expansion fund may be allocated by the office, with the approval of the Department of Finance, to the trust fund accounts.

SEC. 8. Section 14037 of the Corporations Code is amended to read:

14037. (a) The state shall not be liable or obligated in any way beyond the state money that is allocated and deposited in the trust fund account from state money and that is appropriated for these purposes.

(b) The office may reallocate funds held within a corporation's trust fund account.

(1) The office shall reallocate funds based on which corporation is most effectively using its guarantee funds. If funds are withdrawn from a less effective corporation as part of a reallocation, the office shall make that withdrawal only after giving consideration to that corporation's fiscal solvency, its ability to honor loan guarantee defaults, and its ability to maintain a viable presence within the region it serves. Reallocation of funds shall occur no more frequently than once per fiscal year. Any decision made by the office pursuant to this subdivision may be appealed to the board. The board has authority to repeal or modify any decision to reallocate funds.

(2) The office may authorize a corporation to exceed the leverage ratio specified in Section 14030, subdivision (b) of Section 14070, and subdivision (a) of Section 14076 pending the annual reallocation of funds pursuant to this section. However, no corporation shall be permitted to exceed an outstanding guarantee liability of more than five times its portion of funds on deposit in the expansion fund.

SEC. 9. Section 14038 of the Corporations Code is amended to read:

14038. (a) The funds in the expansion fund shall be paid out to trust fund accounts by the Treasurer on warrants drawn by the Controller and requisitioned by the office, pursuant to the purposes of this chapter. The office may transfer funds allocated from the expansion fund to accounts, established solely to receive the funds, in lending institutions designated by the office to act as trustee. The lending institutions so designated shall be approved by the state for the receipt of state deposits. Interest earned on the trust fund accounts in lending institutions may be utilized by the corporations pursuant to the purposes of this chapter.

(b) Except as specified in subdivision (c), the office shall allocate and transfer money to trust fund accounts based on performance-based criteria. The criteria shall include, but not be limited to, the following:

(1) The default record of the corporation.

(2) The number and amount of loans guaranteed by a corporation.

(3) The number and amount of loans made by a corporation if state funds were used to make those loans.

(4) The number and amount of surety bonds guaranteed by a corporation.

Any decision made by the office pursuant to this subdivision may be appealed to the board within 15 days of notice of the proposed action. The board may repeal or modify any reallocation and transfer decisions made by the office.

(c) The criteria specified in subdivision (b) shall not apply to a corporation that has been in existence for five years or less. The office shall develop regulations specifying the basis for transferring account funds to those corporations that have been in existence for five years or less.

SEC. 10. Section 14039 of the Corporations Code is amended to read:

14039. Pursuant to this section and the regulations, the state has residual interest in the funds deposited by the state to a trust fund account and to the return on these funds from investments. On dissolution or suspension of the corporation, these funds shall be withdrawn by the director from the trust fund account and returned to the expansion fund or temporarily transferred to another trust fund account. This provision shall be contained in the trust instructions to the trustee.

SEC. 11. Section 14040 of the Corporations Code is amended to read:

14040. Each trust fund account shall consist of a loan guarantee account, and, upon recommendation by the director, a bond guarantee account, each of which is a legally separate account, and the assets of one account shall not be used to satisfy loan guarantees or other obligations of another corporation. Not more than one-third of a trust fund account shall be allocated to a bond guarantee account. No corporation shall use

trust fund accounts to secure a corporate indebtedness. State funds deposited in the trust fund accounts, with the exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

SEC. 12. Section 14041 of the Corporations Code is amended to read:

14041. (a) Except as provided in subdivisions (c) and (d) of Section 14070, the trust fund account, shall be used solely to make loans, guarantee bonds, and guarantee loans, approved by the corporation, that meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a trust fund account beyond the state money that is allocated and deposited in the fund pursuant to this chapter, and that is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans and bonds to which a state guarantee is attached shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

(c) A summary of all loans made by a corporation shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

SEC. 13. Section 14043 of the Corporations Code is amended to read:

14043. The financial institution that is to act as trustee of the trust fund shall be designated after review by the director. The corporation shall not receive money on deposit to support guarantees issued under the provisions of this chapter without the approval of the director.

CHAPTER 179

An act to amend Section 74785 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 74785 of the Food and Agricultural Code is amended to read:

74785. (a) The commission shall establish the assessment for the following marketing year not later than April 1 of each year, or as soon thereafter as is possible.

(b) The assessment shall not exceed fifty dollars ($50) per bearing acreage of grape rootstock and two cents ($0.02) per invoicable unit of grape rootstock and grafted grape rootstock used or distributed for commercial purposes. The commission may establish different invoicable unit assessment rates for rootstock cuttings, rooted rootstock cuttings, and grafted grape rootstocks, provided that the rates do not exceed the maximum assessment authorized by this subdivision.

(c) A fee greater than the amount specified in subdivision (b) may not be charged unless approved pursuant to procedures specified in Section 74771.

CHAPTER 180

An act to amend Section 4107 of the Public Contract Code, relating to public contracts.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 4107 of the Public Contract Code is amended to read:

4107. A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes bankrupt or insolvent.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of ''change orders'' causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

CHAPTER 181

An act to amend Sections 45285 and 88104 of the Education Code, relating to classified school employees.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 45285 of the Education Code is amended to read:

45285. (a) When all of the positions in a class are reclassified to a higher class, the incumbents of the positions who have been in the class for two or more years may be reclassified with their positions by the personnel commission. When a portion of the positions within a class are reclassified to a higher class, an incumbent who has a continuous employment record of two or more years in one or more of the positions being reclassified may be reclassified with his or her position as provided by personnel commission rule.

(b) The basis for reclassification of the position shall be a gradual accretion of duties and not a sudden change occasioned by a reorganization or the assignment of completely new duties and responsibilities. Determinations as to gradual accretion shall be on the basis of guidelines provided by personnel commission rules.

(c) An employee who has been reclassified with his or her position is ineligible for subsequent reclassification with his or her position for a period of at least two years from the initial action.

SEC. 2. Section 88104 of the Education Code is amended to read:

88104. (a) When all of the positions in a class are reclassified to a higher class, the incumbents of the positions who have been in the class for two or more years may be reclassified with their positions by the personnel commission. When a portion of the positions within a class are reclassified to a higher class, an incumbent who has a continuous employment record of two or more years in one or more of the positions being reclassified may be reclassified with his or her position as provided by personnel commission rule.

(b) The basis for reclassification of the position shall be a gradual accretion of duties and not a sudden change occasioned by a reorganization or the assignment of completely new duties and responsibilities. Determinations as to gradual accretion shall be on the basis of guidelines provided by personnel commission rules.

(c) An employee who has been reclassified with his or her position is ineligible for subsequent reclassification with his or her position for a period of at least two years from the initial action.

CHAPTER 182

An act to amend Sections 722, 723, 727, 1483, 1484, 1485, 1487, and 1488 of, and to add Section 1488.5 to, the Streets and Highways Code, relating to highways.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 722 of the Streets and Highways Code is amended to read:

722. The department may remove an encroachment on the failure of the owner to comply with a notice or demand of the department under the provisions of Section 673, Section 680, or Section 720, and shall have an action to recover the expense of the removal, costs, and expenses of suit and, in addition thereto, the sum of three hundred fifty dollars ($350) for each day the encroachment remains after the expiration of five days from the service of the notice or the demand.

SEC. 2. Section 723 of the Streets and Highways Code is amended to read:

723. If the owner, occupant, or person in possession of the encroachment, or person causing or suffering the encroachment to exist, or the agent of any of them, disputes or denies the existence of the encroachment, or refuses to remove or permit the removal of the encroachment, the department, in the name of the people of the State of California, may commence, in a court of competent jurisdiction, an action to abate the encroachment as a public nuisance. If judgment is recovered by the department, it may, in addition to having the encroachment adjudged a nuisance and abated, recover three hundred fifty dollars ($350) for each day the encroachment remains after the service of the notice in the manner provided in Section 720, and may also recover its costs and expenses incurred in the action.

SEC. 3. Section 727 of the Streets and Highways Code is amended to read:

727. If a person is thus notified, and fails, neglects, or refuses to cease and discontinue the diversion, to discontinue and prevent the drainage, seepage, or overflow of the waters, or to make the repairs

required by Section 726, the department may make the repairs and may also perform work as is necessary to prevent the further drainage, diversion, overflow, or seepage of the waters.

The department, in the name of the people of the State of California, may recover in an action at law, in a court of competent jurisdiction, the amount expended for the repairs and work and, in addition thereto, the sum of three hundred fifty dollars ($350) for each day the drainage, diversion, overflow or seepage of waters is permitted to continue after the service of the notice in the manner required by Section 726, together with the costs and expenses incurred in the action.

SEC. 4. Section 1483 of the Streets and Highways Code is amended to read:

1483. If the encroachment is not removed, or its removal not commenced and diligently prosecuted, prior to the expiration of 10 days from and after the service or posting of the notice, the person causing, owning, or controlling the encroachment forfeits three hundred fifty dollars ($350) for each day the encroachment continues unremoved. The road commissioner shall immediately remove an encroachment that effectually obstructs and prevents the use of the highway by vehicles.

SEC. 5. Section 1484 of the Streets and Highways Code is amended to read:

1484. If the encroachment is denied, and the owner or occupant of the land, or the person causing, owning or controlling the alleged encroachment refuses either to remove it or permit its removal, the road commissioner shall commence, in a court of competent jurisdiction, an action in the name of the county to abate the encroachment as a nuisance. If the commissioner recovers judgment he or she may, in addition to having the nuisance abated, recover a penalty of three hundred fifty dollars ($350) for each day the nuisance remains after service or posting of notice, and also the costs in the action, as provided in Section 1496.

SEC. 6. Section 1485 of the Streets and Highways Code is amended to read:

1485. If the encroachment is not denied, but is not removed within five days from and after service or posting of the notice, the road commissioner may remove the encroachment at the expense of the owner or occupant of the land, or the person causing, owning or controlling the encroachment. The commissioner may recover from the owner, occupant, or person, in an action brought in the name of the county for that purpose, the commissioner's court costs and the expense of removal and also a penalty of three hundred fifty dollars ($350) for each day the encroachment remained after service or posting of the notice, as provided in Section 1496.

SEC. 7. Section 1487 of the Streets and Highways Code is amended to read:

1487. A person who, by means of ditches or dams, obstructs or injures any county highway, diverts any watercourse into any county highway, or drains water from his or her land upon any county highway, to the injury of the highway, shall, upon notice by the road commissioner, immediately cease and discontinue the obstruction and injury, and shall repair the highway at his or her own expense. He or she is liable to a penalty of three hundred fifty dollars ($350) for each day the obstruction or injury remains, recoverable as provided in Section 1496, and is also guilty of a misdemeanor.

SEC. 8. Section 1488 of the Streets and Highways Code is amended to read:

1488. (a) A person who, in storing or distributing water for any purpose, permits water to overflow or by seepage to saturate a county highway, to the injury of the highway, shall, upon notice by the road commissioner, immediately cease the overflow or seepage and repair the injury caused by the overflow or seepage.

(b) The person permitting the overflow or seepage is liable to a penalty of three hundred fifty dollars ($350) for each day the overflow or seepage continues, recoverable as provided in Section 1496.

(c) If the repair required by subdivision (a) is not made by the person within a reasonable time, as determined by the road commissioner, the road commissioner may make those repairs and recover the expense of the repairs from the person in an action at law brought in the name of the county.

SEC. 9. Section 1488.5 is added to the Streets and Highways Code, to read:

1488.5. The notice referred to in Sections 1487 and 1488 shall be given in the same manner as provided in Section 1482, except that the action it requires shall be taken immediately.

CHAPTER 183

An act to amend Section 634.5 of the Unemployment Insurance Code, relating to unemployment compensation.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 634.5 of the Unemployment Insurance Code is amended to read:

634.5. Notwithstanding any other provision of law, no provision excluding service from ''employment'' shall apply to any entity defined by Section 605 or to any nonprofit organization described by Section 608, except as provided by this section. With respect to any entity defined by Section 605 or any nonprofit organization described by Section 608, ''employment'' does not include service excluded under Sections 629, 631, 635, and 639 to 648, inclusive, or service performed in any of the following:

(a) In the employ of either of the following:

(1) A church or convention or association of churches.

(2) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order.

(c) In the employ of any entity defined by Section 605, if the service is performed by an individual in the exercise of his or her duties as any of the following:

(1) An elected official.

(2) A member of a legislative body or a member of the judiciary of a state or a political subdivision of a state.

(3) A member of the tribal council of an Indian tribe as described by subsection (u) of Section 3306 of Title 26 of the United States Code.

(4) A member of a State National Guard or Air National Guard.

(5) An employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency.

(6) An employee in a position that, under or pursuant to state or tribal law, is designated as either of the following:

(A) A major nontenured policymaking or advisory position.

(B) A policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week.

(7) (A) Except as otherwise provided in subparagraph (B), an election official or election worker if the amount of remuneration reasonably expected to be received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars ($1,000).

(B) This paragraph shall not take effect unless and until the service is excluded from service to which paragraph (1) of subdivision (a) of Section 3309 of Title 26 of the United States Code applies by reason of exemption under subdivision (b) of Section 3309 of that act.

(d) Except as provided by Section 605.5, by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either:

(1) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury.

(2) Providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market.

(e) By an individual receiving work relief or work training as part of an unemployment work relief or work training program assisted or financed in whole or in part by any of the following:

(1) A federal agency.

(2) An agency of a state or a political subdivision thereof.

(3) An Indian tribe, as described by subsection (u) of Section 3306 of Title 26 of the United States Code.

(f) By a ward or an inmate of a custodial or penal institution pursuant to Article 1 (commencing with Section 2700), Article 4 (commencing with Section 2760), and Article 5 (commencing with Section 2780) of Chapter 5 of, and Article 1 (commencing with Section 2800) of Chapter 6 of, Title 1 of Part 3 of the Penal Code, Section 4649 and Chapter 1 (commencing with Section 4951) of Part 4 of Division 4 of the Public Resources Code, and Sections 883, 884, and 1768 of the Welfare and Institutions Code.

(g) By an individual under the age of 18 years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(h) By an individual in the sale of newspapers or magazines to ultimate consumers, under an arrangement that includes the following conditions:

(1) The newspapers or magazines are to be sold by the individual at a fixed price.

(2) The individual's compensation is based on retention of the excess of the price over the amount at which the newspapers or magazines are charged to the individual, whether or not he or she is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines that he or she returns.

(i) (1) Except as otherwise provided in paragraph (2), as a substitute employee whose employment does not increase the size of the employer's normal workforce, whose employment is required by law, and whose employment as a substitute employee does not occur on more than 60 days during the base period.

(2) This subdivision shall not take effect unless and until the United States Secretary of Labor, or his or her designee, finds that this subdivision is in conformity with federal requirements.

(j) As a participant in a national service program carried out using assistance provided under Section 12571 of Title 42 of the United States Code.

CHAPTER 184

An act relating to emergency services.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. (a) The Office of Emergency Services shall conduct a demonstration project on the use of satellite linked devices that utilize geographic position system and geographic information system technologies in the management and deployment of mobile emergency response equipment and personnel. In designing and implementing this demonstration project, the office shall consult with the space enterprise community and, in cooperation with the providers of these technologies, shall demonstrate their application to the entities in command and control of mobile emergency response equipment and personnel as they would be used following a terrorist or natural disaster event.

(b) Consistent with existing state law, the office shall comply with all applicable state contracting requirements in conducting the demonstration project pursuant to this section.

(c) (1) No later than January 1, 2005, the office shall report to the Governor, the Legislature, and the Department of Justice on the results of the demonstration project, at which time the demonstration project shall be terminated.

(2) The report shall include a detailed cost analysis of the demonstration project, as well as the estimated future cost of maintaining such a program statewide.

(d) It is the intent of the Legislature that no state funds shall be expended for the purposes of the demonstration project. Therefore, the demonstration project shall not be implemented until the Director of Emergency Services certifies to the Department of Finance that sufficient nonstate funding is available to the office for that purpose.

CHAPTER 185

An act to amend Section 17539.3 of the Business and Professions Code, to amend Section 32311 of the Education Code, to amend Section 7162 of the Government Code, to amend Section 38040 of the Health and Safety Code, to amend Sections 17020.5, 17020.11, 17054, 17072, 17140.5, 17509, 17510, 17856, 18006, 18036.5, 18037, 18038, 18039, 18155.5, 18171, 18171.5, 18177, 19023, 19182, 23036, 23043.5, 23772, 23809, 24872.4, and 24991 of, and to repeal Sections 17088.5, 17088.6, 18037.3, 18037.5, 18043, 18044, 19022, 19024, 19062, 24871.5, and 24872.5 of, the Revenue and Taxation Code, and to amend Section 5060 of the Vehicle Code, relating to taxation.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 17539.3 of the Business and Professions Code is amended to read:

17539.3. (a) Sections 17539.1 and 17539.2 do not apply to a game conducted to promote the sale of an employer's product or service by his or her employees, when those employees are the sole eligible participants.

(b) As used in Sections 17539.1 and 17539.2 ''person'' includes firm, corporation, or association, but does not include any charitable trust, corporation or other organization exempted from taxation under Section 23701d of the Revenue and Taxation Code or Section 501(c) of the Internal Revenue Code of 1954.

(c) Nothing in Sections 17539 to 17539.2, inclusive, shall be construed to permit any contest or any series of contests or any act or omission in connection therewith which is prohibited by any other provision of law.

(d) Nothing in Section 17539.1 or 17539.2 shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertisement relating to a contest, unless that publisher or broadcaster is the person conducting or holding that contest.

(e) As used in Sections 17539 to 17539.2, inclusive, the term contest includes any game, contest, puzzle, scheme or plan which holds out or offers to prospective participants the opportunity to receive or compete for gifts, prizes, or gratuities as determined by skill or any combination of chance and skill and that is, or in whole or in part may be, conditioned upon the payment of consideration;

(f) Sections 17539 to 17539.2, inclusive, do not apply to (1) the mailing or otherwise sending of an application for admission, or a notification or token evidencing the right of admission to, or (2) the operation of a contest, performance, sporting event or tournament of skill, speed, or power or endurance between participants physically present at that contest, performance, sporting event, or tournament.

SEC. 2. Section 32311 of the Education Code is amended to read:

32311. This article does not apply to:

(a) Any institution classified as an educational institution within the meaning and intent of Section 501 of the Internal Revenue Code of the United States or of Section 23701d of the Revenue and Taxation Code and that, nevertheless, pays general state and county taxes within this state upon any printing plant and printing equipment owned by it.

(b) The production of forms, materials, and supplies at any state educational institution under the exclusive management and control of the state and authorized by law.

(c) Any publication, printed and produced at any state educational institution under the exclusive management and control of the state for the dissemination of technical or scientific information and that is sold at cost.

(d) Printing which may be classified as ''instruction'' or ''student activity.''

SEC. 3. Section 7162 of the Government Code is amended to read:

7162. ''State tax lien'' means a lien created pursuant to Section 8048 of the Fish and Game Code, Section 3423 or 3772 of the Public Resources Code, Section 6757, 7872, 8996, 13610, 16063, 16810, 19221, 30322, 32363, or 38532 of the Revenue and Taxation Code, or Section 1703 of the Unemployment Insurance Code.

SEC. 4. Section 38040 of the Health and Safety Code is amended to read:

38040. As used in this chapter:

(a) ''Financial and compliance audit'' means a systematic review or appraisal to determine each of the following:

(1) Whether the financial statements of an audited organization fairly present the financial position and the results of financial operations in accordance with generally accepted accounting principles.

(2) Whether the organization has complied with laws and regulations that may have a material effect upon the financial statements.

(b) ''Public accountants'' means certified public accountants, or state licensed public accountants.

(c) ''Independent auditors'' means public accountants who have no direct or indirect relationship with the functions or activities being audited or with the business conducted by any of the officials or contractors being audited.

(d) ''Generally accepted auditing standards'' means the auditing standards set forth in the financial and compliance element of the ''Standards for Audit of Governmental Organizations, Programs, Activities, and Functions'' issued by the Comptroller General of the United States and incorporating the audit standards of the American Institute of Certified Public Accountants.

(e) ''Direct service contract'' means any contract provided by a state agency pursuant to Chapter 4 (commencing with Section 38030).

(f) ''Nonprofit organization'' means an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under Section 501(a) of that code or any nonprofit, scientific or educational organization qualified under Section 23701d of the Revenue and Taxation Code.

SEC. 5. Section 17020.5 of the Revenue and Taxation Code is amended to read:

17020.5. For purposes of this part, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, Section 7701(g) of the Internal Revenue Code, relating to nonrecourse indebtedness, applies, except as otherwise provided.

SEC. 6. Section 17020.11 of the Revenue and Taxation Code is amended to read:

17020.11. Section 7701(h) of the Internal Revenue Code, relating to motor vehicle operating leases, applies, except as otherwise provided.

SEC. 7. Section 17054 of the Revenue and Taxation Code is amended to read:

17054. In the case of individuals, the following credits for personal exemption may be deducted from the tax imposed under Section 17041 or 17048, less any increases imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(a) In the case of a single individual, a head of household, or a married individual making a separate return, a credit of fifty-two dollars ($52).

(b) In the case of a surviving spouse (as defined in Section 17046), or a husband and wife making a joint return, a credit of one hundred four dollars ($104). If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for all or any portion of the taxable year, the personal exemption shall be divided equally.

(c) In addition to any other credit provided in this section, in the case of an individual who is 65 years of age or over by the end of the taxable year, a credit of fifty-two dollars ($52).

(d) (1) A credit of two hundred twenty-seven dollars ($227) for each dependent (as defined in Section 17056) for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents. The credit allowed under this subdivision for taxable years beginning on or after January 1, 1999, shall

not be adjusted pursuant to subdivision (i) for any taxable year beginning before January 1, 2000.

(2) The credit allowed under paragraph (1) may not be denied on the basis that the identification number of the dependent, as defined in Section 17056, for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents, is not included on the return claiming the credit.

(e) A credit for personal exemption of fifty-two dollars ($52) for the taxpayer if he or she is blind at the end of his or her taxable year.

(f) A credit for personal exemption of fifty-two dollars ($52) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(g) For the purposes of this section, an individual is blind only if either (1) his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or (2) his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(h) In the case of an individual with respect to whom a credit under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to that individual for that individual's taxable year is zero.

(i) For each taxable year beginning on or after January 1, 1989, the Franchise Tax Board shall compute the credits prescribed in this section. That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent home ownership for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1), and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding taxable year credits by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

(4) In computing the credits pursuant to this subdivision, the credit provided in subdivision (b) shall be twice the credit provided in subdivision (a).

SEC. 8. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, applies, except as otherwise provided.

(b) The deduction allowed by Section 17204, relating to interest on education loans, is allowed in computing adjusted gross income.

SEC. 9. Section 17088.5 of the Revenue and Taxation Code is repealed.

SEC. 10. Section 17088.6 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 17140.5 of the Revenue and Taxation Code is amended to read:

17140.5. Gross income does not include compensation for military or naval service within the meaning of Section 574 of Title 50 of the United States Code (Soldiers' and Sailors' Civil Relief Act of 1940) performed by a nonresident not domiciled in this state and attributable to a resident spouse solely because of the application of any community property law or rule.

SEC. 12. Section 17509 of the Revenue and Taxation Code is amended to read:

17509. Sections 413(b)(6) and 413(c)(5) of the Internal Revenue Code, relating to liability for funding tax, do not apply.

SEC. 13. Section 17510 of the Revenue and Taxation Code is amended to read:

17510. Section 7701(j) of the Internal Revenue Code, relating to Federal Thrift Savings Funds, applies, except as otherwise provided.

SEC. 14. Section 17856 of the Revenue and Taxation Code is amended to read:

17856. Section 751(d)(3) of the Internal Revenue Code, relating to appreciated inventory items subject to tax as a gain on foreign investment company stock, does not apply.

SEC. 15. Section 18006 of the Revenue and Taxation Code is amended to read:

18006. For purposes of determining a credit under Section 18001 (relating to residents) or Section 18002 (relating to nonresidents), both of the following apply:

(a) A member of a partnership is allowed to treat his, her, or its pro rata share of net income taxes paid to another state by the partnership as if those taxes had been paid directly by the partner.

(b) (1) A shareholder of a corporation that is an S corporation under Chapter 4.5 (commencing with Section 23800) of Part 11 is allowed to treat his or her pro rata share of net income taxes paid to another state by the S corporation as if those taxes had been paid by the shareholder.

(2) This subdivision applies only if either of the following requirements is met:

(A) The state imposing the tax does not allow corporations to elect to be treated as an S corporation.

(B) The state imposes a tax on S corporations and the corporation referred to in paragraph (1) has elected to be treated as an S corporation in the other state.

SEC. 16. Section 18036.5 of the Revenue and Taxation Code is amended to read:

18036.5. In addition to the adjustments to basis provided by Section 1016(a) of the Internal Revenue Code, a proper adjustment shall also be made in the case of property the acquisition of which resulted under Section 18038.5 in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in paragraph (4) of subdivision (b) of Section 18038.5.

SEC. 17. Section 18037 of the Revenue and Taxation Code is amended to read:

18037. An election made by a taxpayer pursuant to Section 1033(g)(3) of the Internal Revenue Code, relating to the election to treat outdoor advertising displays as real property, may not be denied because the taxpayer has, on his or her federal return, elected to expense the asset.

SEC. 18. Section 18037.3 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 18037.5 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 18038 of the Revenue and Taxation Code is amended to read:

18038. Section 1040 of the Internal Revenue Code, relating to transfer of certain real property, does not apply.

SEC. 21. Section 18039 of the Revenue and Taxation Code is amended to read:

18039. Section 1052 of the Internal Revenue Code, relating to basis established by prior revenue acts, is modified as follows:

(a) Section 1052(c) of the Internal Revenue Code does not apply.

(b) If the property was acquired, after February 28, 1913, in a transaction to which the Personal Income Tax Law of 1954 applied, and the basis thereof, for purposes of the Personal Income Tax Law of 1954, was prescribed by Section 17747, 17751, 17755, 17756, 17757, 17758, or 17788 of that law, then for purposes of this part the basis shall be the same as the basis therein prescribed in the Personal Income Tax Law of 1954.

SEC. 22. Section 18043 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 18044 of the Revenue and Taxation Code, as added by Section 27 of Chapter 954 of the Statutes of 1996, is repealed.

SEC. 24. Section 18155.5 of the Revenue and Taxation Code is amended to read:

18155.5. Section 1223 of the Internal Revenue Code, relating to holding period of property, is modified to additionally provide that in determining the period for which the taxpayer has held property the acquisition of which resulted under Section 18038.5 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which that other property has been held as of the date of the sale.

SEC. 25. Section 18171 of the Revenue and Taxation Code is amended to read:

18171. Section 1250(b) of the Internal Revenue Code, relating to additional depreciation, is modified as follows:

(a) ''Depreciation adjustments,'' as defined in Section 1250(b)(3) of the Internal Revenue Code, do not include the following:

(1) For taxable years beginning on or after January 1, 1983, amortization under Section 17251 or under Section 188 of the Internal Revenue Code.

(2) For taxable years beginning prior to January 1, 1983, amortization under former Section 17226, relating to pollution control facilities, or former Section 17227, relating to trademarks.

(b) ''Additional depreciation,'' as defined in Section 1250(b)(4) of the Internal Revenue Code, includes the following:

(1) For taxable years beginning on or after January 1, 1983, amortization under Section 167(k) of the Internal Revenue Code.

(2) For taxable years beginning before January 1, 1983, amortization under former Section 17211.7, relating to low-income rental housing, or former Section 17228.5, relating to certified historic structures.

SEC. 26. Section 18171.5 of the Revenue and Taxation Code is amended to read:

18171.5. Section 1250(a) of the Internal Revenue Code is modified as follows:

(a) The date ''December 31, 1970'' is substituted for ''July 24, 1969,'' and ''December 31, 1969.''

(b) The date ''January 1, 1971'' is substituted for ''January 1, 1970.''

(c) The date ''December 31, 1976'' is substituted for ''December 31, 1975.''

(d) The date ''January 1, 1977'' is substituted for ''January 1, 1976.''

SEC. 27. Section 18177 of the Revenue and Taxation Code is amended to read:

18177. Section 1275(a)(3) of the Internal Revenue Code, relating to the definition of tax-exempt obligations, does not apply but instead the

term ''tax-exempt obligation'' means an obligation the interest on which is exempt from tax under this part.

SEC. 28. Section 19022 of the Revenue and Taxation Code is repealed.

SEC. 29. Section 19023 of the Revenue and Taxation Code is amended to read:

19023. For purposes of this article, in the case of a corporation or an organization described in Section 23731, the term ''estimated tax'' means the amount which the corporation or organization described in Section 23731 estimates as the amount of the tax imposed by Part 11 (commencing with Section 23001) and the amount of its liability for the tax of each wholly owned subsidiary under Section 23800.5; but in no event shall the estimated tax of a corporation subject to the tax imposed by Article 2 (commencing with Section 23151) of Chapter 2 of Part 11 be less than the minimum tax prescribed in Section 23153.

SEC. 30. Section 19024 of the Revenue and Taxation Code is repealed.

SEC. 31. Section 19062 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 19182 of the Revenue and Taxation Code is amended to read:

19182. (a) A penalty shall be imposed for failure to furnish information pursuant to Section 18628 and the penalty amount shall be determined in accordance with Section 6707 of the Internal Revenue Code.

(b) If the person required to register the tax shelter has complied, for federal purposes, with the requirements of Section 6111(d) of the Internal Revenue Code, relating to certain confidential arrangements treated as tax shelters, the person required to register the tax shelter is deemed to have complied with the requirements of Section 18628 for purposes of this part and no penalty shall be imposed under subdivision (a).

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) does not apply in respect of the assessment or collection of any penalty imposed under this section.

SEC. 33. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term ''tax'' includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term ''tax'' does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term ''tax'' also includes all of the following:

(1) The tax on limited partnerships, imposed under Section 17935, the tax on limited liability companies, imposed under Section 17941, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits is allowed against the ''tax'' in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the ''tax,'' allow the excess to be carried over to offset the ''tax'' in succeeding taxable years, except for those credits that are allowed to reduce the ''tax'' below the tentative minimum tax, as defined by Section 23455. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits that are allowed to reduce the ''tax'' below the tentative minimum tax, as defined by Section 23455.

(5) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following applies:

(1) No credit may reduce the ''tax'' below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by former Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by former Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by former Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) The credit allowed by former Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by former Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax may reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) is allowed to be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative is allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part is computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity is limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit is allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-through entity" means any partnership or S corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year a credit is operative.

(3) This subdivision applies to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 34. Section 23043.5 of the Revenue and Taxation Code is amended to read:

23043.5. For purposes of this part, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, Section 7701(g) of the Internal Revenue Code, relating to nonrecourse indebtedness, applies, except as otherwise provided.

SEC. 35. Section 23772 of the Revenue and Taxation Code is amended to read:

23772. (a) For the purposes of this part—

(1) Except as provided in paragraph (2), every organization exempt from taxation under Section 23701 and every trust treated as a private foundation because of Section 4947(a)(1) of the Internal Revenue Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and any other information for the purpose of carrying out the laws under this part as the Franchise Tax Board may by rules or regulations prescribe, and shall keep any records, render under oath any statements, make any other returns, and comply with any rules and regulations as the Franchise Tax Board may from time to time prescribe. The return shall be filed on or before the 15th day of the fifth full calendar month following the close of the taxable year.

(2) Exceptions from filing—

(A) Mandatory exceptions—Paragraph (1) does not apply to—

(i) Churches, their integrated auxiliaries, and conventions or association of churches,

(ii) Any organization (other than a private foundation as defined in Section 23709), the gross receipts of which in each taxable year are normally not more than twenty-five thousand dollars ($25,000), or

(iii) The exclusively religious activities of any religious order.

(B) Discretionary exceptions—The Franchise Tax Board may permit the filing of a simplified return for organizations based on either gross receipts or total assets or both gross receipts and total assets, or may permit the filing of an information statement (without fee), or may permit the filing of a group return for incorporated or unincorporated branches of a state or national organization where it determines that an information return is not necessary to the efficient administration of this part.

(3) An organization that is required to file an annual information return shall pay a filing fee of ten dollars ($10) on or before the due date for filing the annual information return (determined with regard to any extension of time for filing the return) required by this section. In case of failure to pay the fee on or before the due date, unless it is shown that the failure is due to reasonable cause, the filing fee shall be twenty-five dollars ($25). All collection remedies provided in Article 5 (commencing with Section 18661) of Chapter 2 of Part 10.2 are applicable to collection of the filing fee. However, the filing fee does not apply to the organization described in paragraph (4).

(4) Paragraph (3) does not apply to: (A) a religious organization exempt under Section 23701d; (B) an educational organization exempt under Section 23701d, if that organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; (C) a charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under Section 23701d, if that organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public; (D) an organization exempt under Section 23701d, if that organization is operated, supervised, or controlled by or in connection with a religious organization described in subparagraph (A).

(b) Every organization described in Section 23701d that is subject to the requirements of subdivision (a) is required to furnish annually information, at the time and in the manner as the Franchise Tax Board may by rules or regulations prescribe, setting forth all of the following:

(1) Its gross income for the year.

(2) Its expenses attributable to gross income and incurred within the year.

(3) Its disbursements within the year for the purposes for which it is exempt.

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of that year.

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors.

(6) The names and addresses of its foundation manager (within the meaning of Section 4946 of the Internal Revenue Code) and highly compensated employees.

(7) The compensation and other payments made during the year to each individual described in paragraph (6).

(8) In the case of an organization with respect to which an election under Section 23704.5 is effective for the taxable year, the following amounts for that organization for that taxable year:

(A) The lobbying expenditures (as defined in Section 4911(c)(1) of the Internal Revenue Code).

(B) The lobbying nontaxable amount (as defined in Section 4911(c)(2) of the Internal Revenue Code).

(C) The grassroots expenditures (as defined in Section 4911(c)(3) of the Internal Revenue Code).

(D) The grassroots nontaxable amount (as defined in Section 4911(c)(4) of the Internal Revenue Code). For purposes of this paragraph, if Section 23740 applies to the organization for the taxable

year, the organization shall furnish the amounts with respect to the affiliated group as well as with respect to the organization.

(9) Other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in Sections 23701a to 23701w, inclusive (other than Sections 23701d, 23701k, and 23701t), as the Franchise Tax Board may require to prevent either of the following:

(A) Diversion of funds from the organization's exempt purpose.

(B) Misallocation of revenue or expense.

(10) Any other relevant information as the Franchise Tax Board may prescribe.

(c) For the purposes of this part—

(1) In the case of a failure to file a return required under this section on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the exempt organization or trust failing so to file, five dollars ($5) for each month or part thereof during which the failure continues, but the total amount imposed hereunder on any organization for failure to file any return may not exceed forty dollars ($40).

(2) The Franchise Tax Board may make written demand upon a private foundation failing to file under paragraph (1) of this subdivision specifying therein a reasonable future date by which the filing shall be made, and if the filing is not made on or before that date, and unless it is shown that failure so to file is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing so to file, in addition to the penalty prescribed in paragraph (1), a penalty of five dollars ($5) each month or part thereof after the expiration of the time specified in the written demand during which the failure continues, but the total amount imposed hereunder on all persons for the failure to file shall not exceed twenty-five dollars ($25). If more than one person is liable under this paragraph for a failure to file, all of those persons shall be jointly and severally liable with respect to the failure. The term ''person'' as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

SEC. 36. Section 23809 of the Revenue and Taxation Code is amended to read:

23809. There is hereby imposed a tax on built-in gains attributable to California sources, determined in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, as modified by this section.

(a) (1) The rate of tax specified in Section 1374(b)(1) of the Internal Revenue Code is equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an ''S corporation'' that is also a financial corporation, the rate of tax specified in paragraph (1) is increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(b) The provisions of Section 1374(b)(3) of the Internal Revenue Code, relating to credits, are modified to provide that the tax imposed under subdivision (a) may not be reduced by any credits allowed under this part.

(c) The provisions of Section 1374(b)(4) of the Internal Revenue Code, relating to coordination with Section 1201(a), do not apply.

SEC. 37. Section 24871.5 of the Revenue and Taxation Code is repealed.

SEC. 38. Section 24872.4 of the Revenue and Taxation Code is amended to read:

24872.4. (a) Section 856(d)(7)(C)(ii) of the Internal Revenue Code is modified by substituting the phrase ''if received by an organization described in subdivision (b) of Section 17651 of Part 10 or Section 23731'' for the phrase ''if received by an organization described in section 511(a)(2).''

(b) (1) An election under Section 856(e)(5) of the Internal Revenue Code for federal income tax purposes is treated for purposes of this part as an election made by the real estate investment trust under Section 856(e)(5) of the Internal Revenue Code for state purposes and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 is not allowed.

(2) Any revocation of an election under Section 856(e)(5) of the Internal Revenue Code for federal income tax purposes is treated for purposes of this part as a revocation of the election made by the real estate investment trust under Section 856(e)(5) of the Internal Revenue Code for state purposes and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 is not allowed with respect to the property for any subsequent taxable year.

(3) If the real estate investment trust fails to make an election under Section 856(e)(5) of the Internal Revenue Code for federal income tax purposes with respect to any property, that property may not be treated for purposes of this part as foreclosure property, an election under Section 856(e)(5) of the Internal Revenue Code for state purposes with respect to that property is not allowed, and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 is not allowed with respect to that property.

SEC. 39. Section 24872.5 of the Revenue and Taxation Code is repealed.

SEC. 40. Section 24991 of the Revenue and Taxation Code is amended to read:

24991. Section 1275(a)(3) of the Internal Revenue Code, relating to the definition of tax-exempt obligation, does not apply but instead the term "tax-exempt obligation" means an obligation the interest on which is exempt from tax under this part.

SEC. 41. Section 5060 of the Vehicle Code is amended to read:

5060. (a) An organization may apply to the department for participation in a special interest license plate program and the department shall issue special license plates for that program if the issuance of those plates is required by this article, the sponsoring organization complies with the requirements of this section, and the organization meets all of the following criteria:

(1) Qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and Section 23701d of the Revenue and Taxation Code.

(2) Submits a financial plan describing the purposes for which the revenues described in paragraph (2) of subdivision (e) will be used.

(3) Submits a design of the organization's proposed special interest license plate that, among other things, provides for the placement of the number and letter characters in a manner that allows for law enforcement to readily identify those characters.

(b) Any person described in Section 5101 may apply for special interest license plates, in lieu of the regular license plates.

(c) The design criteria for a special interest license plate are as follows:

(1) The license plate for a passenger vehicle, commercial vehicle, or trailer shall provide a space not larger than 2 inches by 3 inches to the left of the numerical series and a space not larger than five-eighths of an inch in height below the numerical series for a distinctive design, decal, or descriptive message as authorized by this article. The plates shall be issued in sequential numerical order or, pursuant to Section 5103, in a combination of numbers or letters.

(2) Special interest license plates authorized under this article may be issued for use on a motorcycle. That license plate shall contain a five digit configuration issued in sequential numerical order or, pursuant to Section 5103, in a combination of numbers or letters. There shall be a space to the left of the numerical series for a distinctive design or decal and the characters shall contrast sharply with the uniform background color. No motorcycle plate containing a full plate graphic design is authorized. Those particular special interest license plates that were issued prior to the discontinuation provided by this paragraph may

continue to be used and attached to the vehicle for which they were issued and may be renewed, retained, or transferred pursuant to this code.

(d) (1) No organization may be included in the program until not less than 7,500 applications for the particular special interest license plates are received. Each organization shall collect and hold applications for the plates. Once the organization has received at least 7,500 applications, it shall submit the applications, along with the necessary fees, to the department. The department shall not issue any special interest license plate until an organization has received and submitted to the department not less than 7,500 applications for that particular special interest license plate within the time period prescribed in this section. Advanced payment to the department by an organization representing the department's estimated or actual administrative costs associated with the issuance of a particular special interest license plate shall not constitute compliance with this requirement. The organization shall have 12 months, following the effective date of the enactment of the specific legislation enabling the organization to participate in this program, to receive the required number of applications. If, after that 12 months, 7,500 applications have not been received, the organization shall immediately do either of the following:

(A) Refund to all applicants any fees or deposits that have been collected.

(B) Contact the department to indicate the organization's intent to undertake collection of additional applications and fees or deposits for an additional period, not to exceed 12 months, in order to obtain the minimum 7,500 applications. If an organization elects to exercise the option under this paragraph, it shall contact each applicant who has submitted an application with the appropriate fees or deposits to determine if the applicant wishes a refund of fees or deposits or requests the continuance of the holding of the application and fees or deposits until that time that the organization has received 7,500 applications. The organization shall refund the fees or deposits to any applicant so requesting. In no event shall an organization collect and hold applications for a period exceeding 24 months following the date of authorization as described in paragraph (2) of subdivision (a).

(C) Sequential plate fees shall be paid for the original issuance, renewal, retention, replacement, or transfer of the special interest license plate as determined by the organization and authorized by department's regulations. Those plates containing a personalized message are subject to the fees required pursuant to Sections 5106 and 5108 in addition to any fees required by the special interest license plate program.

(2) (A) If the number of currently outstanding and valid special interest license plates in any particular program provided for in this

article is less than 7,500, the department shall notify the sponsoring organization of that fact and shall inform the organization that if that number is less than 7,500 one year from the date of that notification, the department will no longer issue or replace those special interest license plates.

(B) Those particular special interest license plates that were issued prior to the discontinuation provided by subparagraph (A) may continue to be used and attached to the vehicle for which they were issued and may be renewed, retained, or transferred pursuant to this code.

(e) (1) The department shall deduct its costs to develop and administer the special interest license plate program from the revenues collected for the plates.

(2) The department shall deposit the remaining revenues from the original issuance, renewal, retention, replacement, or transfer of the special interest license plate in a fund which shall be established by the Controller.

(f) When payment of renewal fees is not required as specified in Section 4000, or when a person determines to retain the special interest license plate upon a sale, trade, or other release of the vehicle upon which the plate has been displayed, the person shall notify the department and the person may retain and use the plate as authorized by department regulations.

(g) An organization that is eligible to participate in a special interest license plate program pursuant to this article and receives funds from the additional fees collected from the sale of special license plates shall not expend annually more than 25 percent of those funds on administrative costs, marketing, or other promotional activities associated with encouraging application for, or renewal of, the special license plates.

(h) (1) Every organization authorized under this article to offer special interest license plates shall prepare and submit an annual accounting report to the department by June 30. The report shall include an accounting of all revenues and expenditures associated with the special interest license plate program.

(2) If an organization submits a report pursuant to paragraph (1) indicating that the organization violated the expenditure restriction set forth in subdivision (g), the department shall immediately cease depositing fees in the fund created by the Controller for that organization under paragraph (2) of subdivision (e) and, instead, shall deposit those fees that would have otherwise been deposited in that fund in a separate fund created by the Controller, which fund is subject to appropriation by the Legislature. The department shall immediately notify the organization of this course of action. The depositing of funds in the account established pursuant to this paragraph shall continue until the organization demonstrates to the satisfaction of the department that the

organization is in compliance or will comply with the requirements of subdivision (g). If one year from the date that the organization receives the notice described in this paragraph, the organization is still unable to satisfactorily demonstrate to the department that it is in compliance or will comply with the requirements of subdivision (g), the department shall no longer issue or replace those special interest license plates associated with that organization. Those particular special interest license plates that were issued prior to the discontinuation provided by this paragraph may continue to be used and attached to the vehicle for which they were issued and may be renewed, retained, or transferred pursuant to this code.

(3) Upon receiving the reports required under paragraph (1), the department shall prepare and transmit an annual consolidated report to the Legislature containing the revenue and expenditure data.

SEC. 42. Any section of any act enacted by the Legislature during the 2003 calendar year that takes effect on or before January 1, 2004, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

CHAPTER 186

An act to amend Section 10222 of the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 10222 of the Public Contract Code is amended to read:

10222. (a) Each bond shall equal at least one-half of the contract price, except as otherwise provided in Section 3248 of the Civil Code, in the California Toll Bridge Authority Act (Chapter 1 (commencing with Section 30000) of Division 7 of the Streets and Highways Code), or in subdivision (b).

(b) Notwithstanding subdivision (a), for projects with a contract price greater than two hundred fifty million dollars ($250,000,000), the Department of Transportation shall have the discretion to specify that the

payment bond shall equal not less than one-half of the contract price or five hundred million dollars ($500,000,000), whichever is less.

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

In order to ensure that the Department of Transportation will be allowed to secure competitive bids for the department's urgently needed major construction projects in the state, including bridge seismic retrofit projects, it is necessary that this act take effect immediately.

CHAPTER 187

An act to amend Section 90404 of, to amend and repeal Section 41205 of, and to repeal Section 89911 of, the Education Code, and to amend Section 8880.5 of the Government Code, relating to the California State University.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 41205 of the Education Code, as added by Chapter 82 of the Statutes of 1989, is repealed.

SEC. 2. Section 41205 of the Education Code, as amended by Chapter 153 of the Statutes of 1994, is amended to read:

41205. The Legislature hereby finds and declares that the only state agencies that provide direct elementary and secondary level instructional services within the meaning of Section 41302.5 are those state agencies enumerated in Section 8880.5 of the Government Code, or in any successor to that section, not including any agency enumerated in any of subdivisions (a) to (e), inclusive, of that section, and California Indian education centers as established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20. The amount of any appropriation made to a state agency for direct elementary and secondary level instruction services shall be determined by applying the definition of those services, as defined in the California School Accounting Manual, to the expenditures of the agency. However, for the Diagnostic Schools for Neurologically Handicapped Children, as established pursuant to Article 1 (commencing with Section 59200) of Chapter 3 of Part 32, all expenditures of the agency shall be considered

appropriations made to a state agency for direct elementary and secondary level instruction.

SEC. 3. Section 89911 of the Education Code is repealed.

SEC. 4. Section 90404 of the Education Code is amended to read:

90404. In addition to the functions set forth in subdivision (b) of Section 66010.4, the California State Polytechnic University and the California Polytechnic State University shall be authorized to emphasize the applied fields of agriculture, engineering, business, home economics and other occupational and professional fields. This article shall be liberally construed.

SEC. 5. Section 8880.5 of the Government Code is amended to read:

8880.5. Allocations for education:

The California State Lottery Education Fund is created within the State Treasury, and is continuously appropriated for carrying out the purposes of this chapter. The Controller shall draw warrants on this fund and distribute them quarterly in the following manner, provided that the payments specified in subdivisions (a) to (g), inclusive, shall be equal per capita amounts.

(a) Payments shall be made directly to public school districts, including county superintendents of schools, serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law and adjusted pursuant to subdivision (*l*).

(b) Payments shall also be made directly to public school districts serving community colleges, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(c) Payments shall also be made directly to the Board of Trustees of the California State University on the basis of an amount for each unit of equivalent full-time enrollment. Funds received by the trustees shall be deposited in and expended from the California State University Lottery Education Fund, which is hereby created or, at the discretion of the trustees, deposited in local trust accounts in accordance with subdivision (j) of Section 89721 of the Education Code.

(d) Payments shall also be made directly to the Regents of the University of California on the basis of an amount for each unit of equivalent full-time enrollment.

(e) Payments shall also be made directly to the Board of Directors of the Hastings College of the Law on the basis of an amount for each unit of equivalent full-time enrollment.

(f) Payments shall also be made directly to the Department of the Youth Authority for educational programs serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(g) Payments shall also be made directly to the two California Schools for the Deaf, the California School for the Blind, and the three Diagnostic Schools for Neurologically Handicapped Children, on the basis of an amount for each unit of equivalent full-time enrollment.

(h) Payments shall also be made directly to the State Department of Developmental Services and the State Department of Mental Health for clients with developmental or mental disabilities who are enrolled in state hospital education programs, including developmental centers, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(i) No Budget Act or other statutory provision shall direct that payments for public education made pursuant to this chapter be used for purposes and programs (including workload adjustments and maintenance of the level of service) authorized by Chapters 498, 565, and 1302 of the Statutes of 1983, Chapter 97 or 258 of the Statutes of 1984, or Chapter 1 of the Statutes of the 1983–84 Second Extraordinary Session.

(j) School districts and other agencies receiving funds distributed pursuant to this chapter may at their option utilize funds allocated by this chapter to provide additional funds for those purposes and programs prescribed by subdivision (i) for the purpose of enrichment or expansion.

(k) As a condition of receiving any moneys pursuant to subdivision (a) or (b), each district and county superintendent of schools shall establish a separate account for the receipt and expenditure of those moneys, which account shall be clearly identified as a lottery education account.

(*l*) Commencing with the 1998–99 fiscal year, and each year thereafter, for the purposes of subdivision (a), average daily attendance shall be increased by the statewide average rate of excused absences for the 1996–97 fiscal year as determined pursuant to the provisions of Chapter 855 of the Statutes of 1997. The statewide average excused absence rate, and the corresponding adjustment factor required for the operation of this subdivision, shall be certified to the State Controller by the Superintendent of Public Instruction.

(m) It is the intent of this chapter that all funds allocated from the California State Lottery Education Fund shall be used exclusively for the education of pupils and students and no funds shall be spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose.

SEC. 6. The Legislature finds and declares that Section 5 of this act furthers the purposes of the California State Lottery Act of 1984.

CHAPTER 188

An act to amend Section 35401.7 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 35401.7 of the Vehicle Code is amended to read:

35401.7. (a) The limitations of access specified in subdivision (d) of Section 35401.5 do not apply to licensed carriers of livestock when those carriers are directly enroute to or from a point of loading or unloading of livestock on those portions of State Highway Route 101 located in the Counties of Del Norte, Humboldt, and Mendocino from its junction with State Highway Route 1 near Leggett north to the Oregon border, if the travel is necessary and incidental to the shipment of the livestock.

(b) The exemption allowed under this section does not apply unless all of the following conditions are met:

(1) The length of the truck tractor, in combination with the semitrailer used to transport the livestock, does not exceed a total of 70 feet.

(2) The distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet.

(c) The exemption allowed under this section does not apply to travel conducted on the day prior to, or on the day of, any federally recognized holiday.

(d) The Department of the California Highway Patrol, in consultation with the Department of Transportation and in accordance with recommendations from the Department of the California Highways Patrol's study issued on May 1, 2003, of the effects of the statutory exemption, shall continue the comprehensive study on the effect that the exemption provided under this section has on the public safety during the extended effective period of the exemption. The findings of this additional study shall be reported to the Legislature on or before January 1, 2006.

(e) 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 189

An act to amend Section 18803 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

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

(a) On April 6, 2002, a decade-long effort was realized as thousands gathered in Sacramento for the dedication and unveiling of the California Firefighters' Memorial in Capitol Park—a lasting tribute honoring 855 California firefighters who made the ultimate sacrifice in service to their fellow citizens.

(b) The California Firefighters' Memorial is the only completely self-sustaining memorial in Capitol Park, as its funding is raised through a specialty license plate sold only to active and retired firefighters and private donations from firefighters and supporters.

(c) The California Fire Foundation, a nonprofit, public benefit corporation, formed in 1987, was initially established to recognize the courage of firefighters and the perseverance and sacrifice of fire victims. It was later enlisted to help raise money for the design, construction, and maintenance of the California Firefighters' Memorial, as well as for future ceremonies honoring our state's fallen heroes.

(d) In addition to its successful fundraising efforts since its formation nearly 20 years ago, the California Fire Foundation has proven to be an invaluable resource for honoring the memory of fallen firefighters and assisting surviving loved ones, including its involvement in California's Day of Remembrance memorial service on October 9, 2001—a day proclaimed by Governor Davis to honor the families of the victims, firefighters, and other emergency personnel who lost their lives during the terrorist attacks that struck our nation on September 11, 2001.

(e) Other public benefit goals of the California Fire Foundation include serving as the resource center to aid the victims and families devastated by uncontrolled fires and other disasters, such as organizing a special fund for emergency assistance to fire victims, educating Californians about fire safety and the toxic effects of fires by facilitating and reporting on scientific research, and sponsoring fire related public education programs.

SEC. 2. Section 18803 of the Revenue and Taxation Code is amended to read:

18803. (a) All money transferred to the California Firefighters' Memorial Fund, upon appropriation by the Legislature, shall be allocated as follows:

(1) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(2) To the California Fire Foundation.

(b) The money transferred to the California Firefighters' Memorial Fund pursuant to Section 18802, and allocated pursuant to paragraph (2) of subdivision (a), shall be used for the following purposes:

(1) Maintenance and repair of the California Firefighters' Memorial on the grounds of the State Capitol.

(2) Ceremonies to honor the memory of fallen firefighters and to assist surviving loved ones, but only from contributions made on tax returns filed on and after January 1, 2004.

(3) An information guide detailing survivor benefits to assist the spouses and children of fallen firefighters, but only from contributions made on tax returns filed on and after January 1, 2004.

CHAPTER 190

An act to amend Sections 3540.1, 3544.1, and 3544.7 of the Government Code, relating to public school employees.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

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

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

(c) ''Confidential employee'' means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to

confidential information that is used to contribute significantly to the development of management positions.

(d) ''Employee organization'' means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. ''Employee organization'' shall also include any person of the organization authorized to act on its behalf.

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

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

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

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

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

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement may not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and

general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) ''Public school employee'' or ''employee'' means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

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

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

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

SEC. 2. Section 3544.1 of the Government Code is amended to read:

3544.1. The public school employer shall grant a request for recognition filed pursuant to Section 3544, unless any of the following apply:

(a) The public school employer doubts the appropriateness of a unit.

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. The evidence shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence. If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, a question of representation exists and the board shall conduct a representation

election pursuant to Section 3544.7, unless subdivision (c) or (d) of this section applies.

(c) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(d) The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

SEC. 3. Section 3544.7 of the Government Code is amended to read:

3544.7. (a) Upon receipt of a petition filed pursuant to Section 3544.3 or 3544.5, the board shall conduct inquiries and investigations or hold any hearings it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearing. However, if the board finds on the basis of the evidence that a question of representation exists, or a question of representation exists pursuant to subdivision (b) of Section 3544.1, it shall order that an election be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on each ballot the statement: ''no representation.'' No voter shall record more than one choice on his or her ballot. Any ballot upon which there is recorded more than one choice shall be void and shall not be counted for any purpose. If at any election no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) An election may not be held and the petition shall be dismissed if either of the following exist:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

CHAPTER 191

An act to add Section 31537 to the Government Code, relating to county employees' retirement systems.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 31537 is added to the Government Code, to read:

31537. The board shall provide to any organization that is recognized by the board as representing the retired employees of the county or district reasonable advance notice of any proposed changes to the retirement benefits offered by the system or the use or uses of excess funds of the retirement system. The organization shall have a reasonable opportunity to comment prior to any formal action by the board on the proposed changes.

CHAPTER 192

An act to amend Sections 605, 705, and 706 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), relating to water.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 605 of the San Gabriel Basin Water Quality Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 605. The authority may impose an annual pumping right assessment, not to exceed ten dollars ($10) per acre-foot, to construct facilities and acquire property, to retire promissory notes, bond anticipation notes, bonds and certificate of participation and other evidences of indebtedness, to pay for administrative costs, and to pay for operations and maintenance of projects constructed by and for the authority. The authority shall impose an assessment pursuant to this section for operation and maintenance purposes only if, and to the extent that, money for operation and maintenance purposes is not received from other sources after reasonable efforts have been made to secure that funding. However, no assessment shall be imposed for water extracted

pursuant to a conjunctive use storage agreement between the producer and the watermaster, which the authority has approved.

SEC. 2. Section 705 of the San Gabriel Water Basin Quality Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 705. On or before January 1, 2004, the State Water Resources Control Board shall report to the Legislature on the progress of the authority with regard to actions undertaken pursuant to Article 4 (commencing with Section 401), and any recommendations regarding actions for improving the progress of the authority.

SEC. 3. Section 706 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 706. (a) Except as provided in this section, this act shall remain in effect only until July 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2010, deletes or extends that date.

(b) Upon the repeal of this act, the assets and debts of the authority shall be administered as follows:

(1) The Los Angeles Regional Water Quality Control Board shall dispose of the property and assets as appropriate. The Los Angeles Regional Water Quality Control Board shall receive reimbursement for actual costs incurred related to the disposition of the property and assets. The cost recovery shall be from the proceeds of the disposition pursuant to this section. The proceeds, if any, of the disposition shall be transferred to the Treasurer to be applied to pay the debts of the authority and, if any proceeds remain, shall be transferred to the Treasurer for deposit in the Hazardous Substance Cleanup Fund for use in financing groundwater contamination investigation and remediation in the basin. Preference shall be given in the disposition of assets of the authority to transfers to producers who may be able to use the assets for the benefit of water distribution systems and to provide for continued operation and maintenance of the assets in order to further the purposes of this act.

(2) The Treasurer shall administer the payment of debts of the authority. The Treasurer shall apply the proceeds from the disposition of assets to the payment of the debts. If debts remain after application of the proceeds from disposition of assets, the Treasurer may continue to collect, in lieu of the authority, the pumping right assessments authorized under either (A) Section 602 if the debt relates to administrative costs or (B) Section 605 if the debt is to repay warrants, notes, bonds, and other evidences of indebtedness, or both, to make payments pursuant to leases or installment sale agreements in connection with certificates of participation, to pay for operation and maintenance costs of facilities, and to make payments pursuant to any other financial obligations. All provisions set forth in Article 6 (commencing with Section 601) relating to the levy and collection of the

pumping right assessments are not repealed and shall continue in effect until the debts of the authority are paid, as determined by the Treasurer, who shall notify the Secretary of State. Upon receipt by the Secretary of State of the Treasurer's notice, Article 6 (commencing with Section 601) is repealed. The Treasurer's authority to levy and collect assessments under this act is limited according to the provisions of this act and shall cease when all debts of the authority have been paid.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 193

An act to amend Section 51335 of, and to add Section 51065.5 to, the Health and Safety Code, relating to housing.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 51065.5 is added to the Health and Safety Code, to read:

51065.5. The agency may make unsecured loans or loans secured by assets other than real property to local public entities. The loans may be funded by the proceeds of bonds or other agency funds to assist local public entities in providing or making affordable housing available to low- or moderate-income persons or families.

SEC. 2. Section 51335 of the Health and Safety Code is amended to read:

51335. (a) (1) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of sale of each bond issuance of the agency shall be for occupancy on a priority basis by lower income households. If a multifamily rental housing development is located within a targeted area, as defined by Section 143(j) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this

chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households.

The rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. If the sponsor elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size, the agency shall assume that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(2) The local agency issuing permits for the development of the multifamily rental housing development shall consider opportunities to contribute to the economic feasibility of the units and to the provision of units for very low income households through concessions and inducements such as the following:

(A) Reductions in construction and design requirements.

(B) Reductions in setback and square footage requirements and the ratio of vehicular parking spaces that would otherwise be required.

(C) Granting density bonuses.

(D) Providing expedited processing of permits.

(E) Modifying zoning code requirements to allow mixed use zoning.

(F) Reducing or eliminating fees and charges for filing and processing applications, petitions, permits, planning services, water and sewer connections, and other fees and charges.

(G) Reducing or eliminating requirements relating to monetary exactions, dedications, reservations of land, or construction of public facilities.

(H) Other financial incentives or concessions for the multifamily rental housing development which result in identifiable cost reductions, as determined by the agency. The agency shall ensure that the local agency issuing permits for the development considers its responsibilities under this section and makes a good faith effort to enhance the feasibility of the project and to provide housing for lower income households and very low income households.

(3) The agency shall not permit a selection criteria to be applied to certificate holders under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) that is any more burdensome than the criteria applied to all other prospective tenants.

(4) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for lower income households, very low income households, and persons and families of low or moderate income. To that end, the quality of materials and the amenities provided should not be excessive so as to hinder the prospect of achieving the stated goal. The Legislature finds and declares that the design standards utilized by the agency in the past including, but not limited to, the design requirements adopted to govern the new construction program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), are substantially in excess of those required for a decent, healthy, and safe residential unit and intends, by the amendment adding this paragraph to this section by the Statutes of 1985, that the agency finance multifamily rental developments with substantially less costly design requirements than those required by the agency prior to January 1, 1986.

(5) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for families. To that end, developments with three- and four-bedroom units affordable to larger families shall have priority over competing developments.

(b) As a condition of financing pursuant to this chapter, the housing sponsor shall enter into a regulatory agreement with the agency providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy until the bonds are retired. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor and, notwithstanding any other provision of law, these burdens of the regulatory agreement shall run with the land. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the agency as grantee.

(c) The agency shall ensure that units occupied by lower income households are of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants.

(d) (1) The agency shall give priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees for multifamily rental housing developments which incorporate innovative and energy-efficient techniques which reduce development or operating costs and which have the lowest feasible per unit cost, as determined by the agency, based on efficiency of design, the elimination of improvements that are not required by applicable building standards, or a reduction in the amount of local fees imposed on the development.

(2) The agency shall give equal priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees on multifamily rental housing developments which do any of the following:

(A) Utilize federal housing or development assistance.

(B) Utilize redevelopment funds or other local financial assistance, including, but not limited to, contributions of land, or for which local fees have been reduced.

(C) Are sponsored by a nonprofit housing organization.

(D) Provide a significant number of housing units, as determined by the agency, as part of a coordinated jobs and housing plan adopted by a local government.

(E) Exceed a ratio whereby 20 percent of the units are reserved for occupancy by lower income households, or whereby 10 percent of the units are reserved for occupancy by very low income households, or which provide units for lower income households or very low income households for the longest period of time beyond the minimum number of years.

(e) (1) New and existing rental housing developments may be syndicated after prior written approval of the agency. The agency shall grant that approval only after the agency determines that the terms and conditions of the syndication comply with this section.

(2) The terms and conditions of the syndication shall not reduce or limit any of the requirements of this chapter or regulations adopted or documents executed pursuant to this chapter. No requirements of the state shall be subordinated to the syndication agreement. A syndication shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

(f) At the option of the agency, the amendments to this section made by Chapter 907 of the Statutes of 1983 may be made applicable to any multifamily rental housing development financed by the issuance, on or after September 3, 1982, of bonds authorized by this chapter.

CHAPTER 194

An act to amend Sections 5060, 5070, 5101.6, 5108, 5132, 5302.5, 5303, 5361, 10301, 10311.1, 10353, and 10366 of, to add Sections 5132.1, 5132.2, 5132.3, and 5132.4 to, and to repeal Sections 5108.1, 5108.2, 5220, 5221, 5222, 10310, 10310.2, and 10311 of, the Streets and Highways Code, relating to local agency assessments.

[Approved by Governor August 3, 2003. Filed with
Secretary of State August 4, 2003.]

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

SECTION 1. Section 5060 of the Streets and Highways Code is amended to read:

5060. The provisions of Chapter 1 (commencing with Section 6000) of Division 7 of Title 1 of the Government Code shall not have any application to any publication provided for in this division.

SEC. 2. Section 5070 of the Streets and Highways Code is amended to read:

5070. Whenever in this division notice is required to be given by mail, notice shall be given in accordance with the provisions of Section 53753 of the Government Code.

SEC. 3. Section 5101.6 of the Streets and Highways Code is amended to read:

5101.6. Following the levy of an assessment pursuant to this division to pay, in whole or in part, the costs and expenses of works, system or facilities authorized by subdivision (a) of Section 5101.5 upon a district benefited thereby, and annually on or before June 30th, the legislative body may prepare and approve an estimate of the expenditures required during the ensuing fiscal year for the maintenance, operation, repair and improvement of such works, system or facilities and shall deduct from such estimate the amount of revenues, if any, which the legislative body estimates will accrue during such year from the operation of such works, system or facilities and will be available to pay costs of such maintenance, operation, repair and improvement.

The legislative body may increase the assessment in accordance with the provisions of Section 53753 of the Government Code. The proceeds of the assessment shall be placed in a separate fund of the city and shall be expended only for the maintenance, operation, repair or improvement of such works, system or facilities.

SEC. 4. Section 5108 of the Streets and Highways Code is amended to read:

5108. Approval of the owners of land for any improvements specified in Section 5101.4 shall be secured in accordance with the provisions of Section 53753 of the Government Code.

SEC. 5. Section 5108.1 of the Streets and Highways Code is repealed.

SEC. 6. Section 5108.2 of the Streets and Highways Code is repealed.

SEC. 7. Section 5132 of the Streets and Highways Code is amended to read:

5132. The resolution of intention shall be sufficient if it states in general terms the class or kinds of work contemplated, such as grading, paving, sewering and other work, and gives in general the location of the proposed work and refers to plans, profiles, detailed drawings and specifications or such of them as may be suitable or proper for the full and detailed description of the proposed work, and if it refers to any agreement entered into pursuant to Section 5103. The resolution of intention shall contain also a notice of the day, hour, and place of the public hearing where any and all persons having any objections to the proposed work or work and acquisition may appear before the legislative body and show cause why the proposed work or work and acquisition should not be carried out in accordance with the resolution of intention.

The notice shall also contain the name and telephone number of a local department or agency designated by the legislative body to answer inquiries regarding the hearing proceedings. That notice shall be omitted if the hearing of objections is not required as provided hereunder. The hearing of objections shall not be less than 45 days from the date of the passage of the resolution.

SEC. 8. Section 5132.1 is added to the Streets and Highways Code, to read:

5132.1. In addition to the notice included in the resolution of intention, the legislative body shall give notice by mail to the record owner of each identified parcel prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution. Each such notice shall comply with the provisions of subdivision (b) of Section 53753 of the Government Code.

SEC. 9. Section 5132.2 is added to the Streets and Highways Code, to read:

5132.2. Each notice sent pursuant to Section 5132.1 shall contain an assessment ballot that includes that legislative body's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. The form of the assessment ballot shall comply with the provisions of subdivision (c) of Section 53753 of the Government Code.

SEC. 10. Section 5132.3 is added to the Streets and Highways Code, to read:

5132.3. At the time, date, and place stated in the notice mailed pursuant to Section 5132.1, the legislative body shall conduct a public hearing upon the proposed assessment in accordance with the provisions of subdivision (d) of Section 53753 of the Government Code. At the conclusion of the public hearing, the legislative body shall tabulate the assessment ballots submitted and not withdrawn, in accordance with the

provisions of subdivision (e) of Section 53753 of the Government Code. If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the legislative body shall not impose, extend, or increase the assessment.

SEC. 11. Section 5132.4 is added to the Streets and Highways Code, to read:

5132.4. If the legislative body has complied with the notice, protest, and hearing provisions set forth in this article, or if the legislative body is not required to comply with those requirements because the assessment is exempt from the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, then those requirements shall not apply in subsequent fiscal years unless the assessment methodology is changed to increase the assessment, or the amount of that assessment is proposed to exceed an assessment formula or range of assessments adopted by an agency in accordance with Article XIII D of the California Constitution or Section 53753 of the Government Code.

SEC. 12. Section 5220 of the Streets and Highways Code is repealed.

SEC. 13. Section 5221 of the Streets and Highways Code is repealed.

SEC. 14. Section 5222 of the Streets and Highways Code is repealed.

SEC. 15. Section 5302.5 of the Streets and Highways Code is amended to read:

5302.5. If the legislative body, in the resolution of intention, declares that any lot or parcel of land owned and used as provided in Section 5301 shall be included in the assessment, or if no declaration is made respecting any such lot or parcel of land then any assessment upon such lot or parcel of land shall be an enforceable obligation against the owner of such property and shall be paid, within 30 days after the date of recording the assessment, by the officer, officers, or board having charge of the disbursement of the funds of the owner of such lot or parcel of land and, if not paid within said 30 days, shall bear interest until paid at the rate stated in the resolution of intention for the bonds proposed to be issued, and if no bonds are proposed to be issued then at the rate of not more than 7 percent per annum until paid; provided, however, that if said assessment is not paid within said 30-day period the city may, and if the city has so provided in its resolution of intention shall, at the expiration thereof, forthwith advance the necessary sum and pay the assessment and shall collect the amount of said assessment and interest thereon from the said obligated owner and may enforce the collection thereof by writ of mandate or other proper remedy. If for any reason there

are not moneys available for the payment of said assessment, then the legislative body of the public entity which owns said property so assessed may elect to cause said assessment to be payable in a number of installments not to exceed the number of installments of and at the same interest rate as bonds issued in the proceedings creating the assessment, or if no bonds are to be issued, for a number of installments not to exceed the number of installments of annual payments as provided by Section 6462 of this code for payment of bonds issued under the provisions of this division and for a rate of interest to be specified. In the event the legislative body of the entity whose property is assessed decides that said assessment shall be payable in installments, then the officer, officers or board whose duty it is to levy taxes for said obligated owner, including school districts but not limited thereto, shall include in the next tax levy an amount, in addition to moneys for all other purposes, sufficient to pay the annual installment of principal and interest upon said assessment with interest on the unpaid principal of the assessment to date of the payments, and shall include in each succeeding tax levy a like amount or more, in addition to moneys for all other purposes, until the principal of said assessment and all interest on unpaid portions thereof, shall be paid in full. In the event the officer, officers, or board whose duty it is to levy taxes fails to discharge the principal of the assessment and the interest thereon, the owner of the assessment may compel the levy thereof in the manner hereinabove set forth by writ of mandate. No statute of limitations shall bar any right provided for herein to enforce the collection of an assessment of the type described herein and any interest due thereon until four years after the due date of the last principal payment due upon said assessment. The owner of an assessment described herein may use mandamus or other appropriate remedy to compel the officer, officers or board whose duty it is to levy taxes for said obligated owner to levy an amount in a given year equal to the amount necessary to pay the installment of principal and interest on the assessment in said year, and may continue to use mandamus or other remedy to cause like installments of the amount of principal and interest accruing to be levied each year until the whole of the assessment due has been paid.

If the owner of an assessment is successful in any action to compel the levy of a tax under this section he shall be awarded reasonable attorneys' fees as fixed by the court and costs and said attorneys' fees and costs shall be included in said tax levy.

SEC. 16. Section 5303 of the Streets and Highways Code is amended to read:

5303. If the legislative body, in the resolution of intention, declares that any lot or parcel of land used as provided in Section 5301 and owned by the United States or any department thereof or the State of California

or any department thereof shall be included in the assessment, then the city shall be liable for such sum as may thereafter be assessed against such lot or parcel of land and which is unpaid after 30 days from the recordation of the assessment. Such sum shall be payable by the city out of the general fund unless the legislative body shall in its resolution of intention designate another fund. The foregoing provisions of this section shall not apply to any assessment pursuant to Chapter 14 (commencing with Section 5320) of Part 3 of this division against any such land owned by the State of California or department thereof, but the city shall advance the amount of any such assessment in such assessment proceedings and shall in such case become the owner of such assessment and entitled to repayment of such amount with interest thereon at the rate provided in that chapter from the State of California or any department thereof.

SEC. 17. Section 5361 of the Streets and Highways Code is amended to read:

5361. The assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with all incidental expenses, the amount of each assessment against each lot or portion of a lot, the number of each lot or portion or portions of a lot so assessed, the additional information required by subdivision (b) of Section 53753 of the Government Code, and shall have attached thereto a diagram exhibiting each street or street crossing, place, property or rights of way on which any work has been done, showing the relative location of each lot or portion of lot to the work done, numbered to correspond with the numbers of the assessments.

SEC. 18. Section 10301 of the Streets and Highways Code is amended to read:

10301. After passing on the report, the legislative body shall by resolution appoint the time and place for hearing protests to the proposed assessment and shall cause notice of that hearing and a public meeting required by Section 54954.6 of the Government Code to be mailed as provided in subdivision (c) of that section. If new, increased, or extended assessments are proposed, the legislative body shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

SEC. 19. Section 10310 of the Streets and Highways Code is repealed.

SEC. 20. Section 10310.2 of the Streets and Highways Code is repealed.

SEC. 21. Section 10311 of the Streets and Highways Code is repealed.

SEC. 22. Section 10311.1 of the Streets and Highways Code is amended to read:

10311.1. If it shall be necessary, in order to find whether a majority protest exists, to determine whether any or all of the signers of written protests are the "owners" of property to be assessed, the legislative body shall make such determination from the last equalized assessment roll. The legislative body shall be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership shall be final and conclusive.

SEC. 23. Section 10353 of the Streets and Highways Code is amended to read:

10353. Before ordering any changes made, other than as provided in Section 10352, the legislative body shall adopt a resolution briefly describing the changes proposed to be made, stating the amount of the estimated increase or decrease in the cost of the improvement by reason of the proposed changes and giving notice of a time and place when and where any interested person having any objection to the changes proposed to be made may appear before the legislative body and show cause why the changes should not be ordered. The resolution shall also contain the name and telephone number of a local department or agency designated by the legislative body to answer inquiries regarding the hearing proceedings. The resolution may describe the changes by referring to maps, plats, plans, profiles, detailed drawings, or specifications on file in the office of the clerk of the legislative body or engineer, which shall indicate the changes proposed to be made and which shall govern for all details thereof. The resolution shall be published pursuant to Section 6061 of the Government Code, at least 10 days prior to the date of the hearing. If new, increased, or extended assessments are proposed, the legislative body shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

SEC. 24. Section 10366 of the Streets and Highways Code is amended to read:

10366. (a) For purposes of proceeding under this chapter, the notice shall contain the following elements:

(1) A statement of the time, place, and purpose of the hearing on the resolution of intention and report.

(2) A statement of the total estimated cost of the proposed improvement and of the maximum cost of the improvement.

(3) The estimated and maximum amounts, as shown by the report, to be assessed against the particular parcel covered by the notice.

(4) A statement that any person interested may file a protest in writing as provided in this division.

(b) If new, increased, or extended assessments are proposed, the legislative body shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

CHAPTER 195

An act to amend Section 9410 of the Government Code, relating to legislative committee hearings.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 9410 of the Government Code is amended to read:

9410. (a) If, in response to a question posed, or a command to produce documents or other materials issued, by the Senate, the Assembly, or a committee, a witness asserts his or her privilege against self-incrimination, and the person presiding over the proceeding directs the witness that, notwithstanding that assertion of privilege, he or she is required to answer the question or produce the documents or other materials, the witness may not refuse to testify or produce the documents or other materials on the basis of his or her privilege against self-incrimination. However, if a witness is compelled to testify or produce documents or other materials notwithstanding his or her assertion of the privilege against self-incrimination, as described in this subdivision, both of the following shall apply:

(1) The witness may not be held to answer criminally or be subject criminally to any penalty or forfeiture for any fact or act touching upon either testimony that he or she was so compelled to provide, or documents or other materials that he or she was so compelled to produce.

(2) Any testimony or documents or other materials that the witness is so compelled to provide shall not be competent evidence in any criminal proceeding against the witness except in a prosecution for perjury or contempt.

(b) In the case of a subpoena that requires a witness to produce documents or other materials but does not require the witness to personally appear, the witness under subpoena may assert his or her privilege against self-incrimination only by communicating an assertion of the privilege to the President pro Tempore of the Senate, if the subpoena was issued by the Senate, the Speaker of the Assembly, if the subpoena was issued by the Assembly, or the chair of the committee, if

the subpoena was issued by a committee. The Senate, the Assembly, or committee, as the case may be, may compel the witness to produce the documents or materials notwithstanding the privilege against self-incrimination as to those documents or other materials only by (1) issuing a subsequent subpoena calling for the witness to personally appear, (2) upon that appearance, asking the witness whether he or she continues to assert the privilege, and, if so, (3) directing the witness that, notwithstanding that assertion of privilege, he or she is required to produce the documents or other materials called for by the subpoena as to which that assertion of privilege was made.

(c) Immunity is conferred upon a witness pursuant to this chapter only if the witness is compelled, as specified by this section, to testify or produce documents or other materials notwithstanding the assertion of the constitutional privilege against self-incrimination.

CHAPTER 196

An act to amend Sections 17550.4, 17550.13, 17550.14, 17550.20, 17550.21, 17550.30, 17550.37, 17550.41, and 17550.47 of, to add Section 17550.42 to, and to repeal Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 and Sections 17550.34 and 17550.59 of, the Business and Professions Code, relating to sellers of travel.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code is repealed.

SEC. 2. Section 17550.4 of the Business and Professions Code is amended to read:

17550.4. An air carrier is a transporter by air of persons that operates under a certificate of convenience and necessity issued by the United States Department of Transportation or under the certification of a foreign government that is recognized by the United States Department of Transportation.

SEC. 3. Section 17550.13 of the Business and Professions Code is amended to read:

17550.13. (a) A seller of travel shall not receive any money or other valuable consideration in payment for air or sea transportation or other

travel services offered by the seller of travel unless at the time of or prior to the receipt of payment the seller of travel first furnishes to the person making that payment written materials conspicuously setting forth the following information:

(1) The name and business address and telephone number of the seller of travel.

(2) The total amount to be paid by or on behalf of the passenger, amount paid to date, the date of any future payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The name of the provider of the air or sea transportation, and the date, time, and place of each departure, or the circumstances under which the date, time, and place of departure will be determined.

(4) All terms and conditions relating to the air or sea transportation or travel services being purchased by the passenger, including cancellation conditions. An air carrier's or an ocean carrier's standard contract of carriage is not required to be disclosed prior to the seller of travel receiving any money or other valuable consideration.

There is no violation of this subdivision if both of the following occur:

(A) Compliance was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel.

(B) The seller of travel obtains from each passenger written acknowledgment that the passenger has not received disclosure of the terms and conditions required by this section.

(5) A clear and conspicuous statement that upon cancellation of the transportation or travel services, where the passenger is not at fault and has not canceled in violation of any terms and conditions previously clearly and conspicuously disclosed to and agreed to by the passenger, all sums paid to the seller of travel for services not provided will be promptly paid to the passenger, unless the passenger otherwise advises the seller of travel in writing, after cancellation.

(6) If the seller of travel is required by this article to have a trust account or bond, a clear and conspicuous disclosure stating: ''California law requires certain sellers of travel to have a trust account or bond. This business has [a trust account] or [a bond issued by (company) in the amount of ($X)].''

(7) If the seller of travel is a participant in the Travel Consumer Restitution Fund and the passenger, or the person making payment for the passenger, was located in California at the time of the sale of air or sea transportation or travel services, a clear and conspicuous notice of the right of the passenger, or the right of the person making payment for the passenger, to make a claim on that fund. The notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(8) If the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

(9) If the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

(10) If the seller of travel is not a participant, a clear and conspicuous disclosure that the seller of travel is not a participant in the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(11) If the seller of travel is a participant in the Travel Consumer Restitution Fund and the passenger is located outside California, a clear and conspicuous disclosure that the transaction is not covered by the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(b) If a seller of travel offers, sells, provides, or distributes a travel certificate as defined in Section 17550.10 and any passenger payment is nonrefundable, in whole or in part, the seller of travel shall obtain the written acknowledgment of that limitation from the end user prior to, or at the time of, receipt of any money or other valuable consideration.

(c) Notwithstanding any other provision of this section, if money or other valuable consideration is received from a customer to whom the seller of travel has sold air or sea transportation within the preceding 12 months and the disclosures required by this section are substantially the same as the disclosures given in connection with the prior travel, the disclosures required by this section shall be made within five days of receipt of that money or other valuable consideration.

(d) Notwithstanding any other provision of this section, if money or other valuable consideration is received in payment for air transportation and (1) the seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation and (2) the seller of travel forwards the amount paid, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to the airline providing the transportation or to the Airlines Reporting Corporation, the disclosures required by this section with respect to that air transportation may be made orally.

SEC. 4. Section 17550.14 of the Business and Professions Code is amended to read:

17550.14. (a) The seller of travel has an obligation either to provide the air or sea transportation or travel services purchased by the passenger or to make a refund as provided by this section. The seller of travel shall return to the passenger all moneys paid for air or sea transportation or travel services not actually provided to the passenger, within either of the following periods, whichever is earlier:

(1) Thirty days from one of the following dates:

(A) The scheduled date of departure.

(B) The day the passenger requests a refund.

(C) The day of cancellation by the seller of travel.

(2) Three days from the day the seller of travel is first unable to provide the air or sea transportation or travel services.

As used in this section, ''unable to provide'' includes, but is not limited to, any day on which the passenger's funds are not in the trust account required by Section 17550.15 and subdivision (g) of Section 17550.21 or the funds necessary to provide the passenger's transportation or travel services have been disbursed other than as allowed by Section 17550.15 or subdivision (a) of Section 17550.16.

(b) If the seller of travel has disbursed the passenger's funds pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) of Section 17550.15, the seller of travel may, instead of providing a refund, provide to the passenger a written statement accompanied by bank records establishing that the passenger's funds were disbursed as required by those provisions and, if disbursed to a seller of travel, proof of current registration of that seller of travel. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who is in compliance with subdivision (a) of Section 17550.16 may comply with this section by maintaining and providing to the passenger documentary proof of disbursement in compliance with subdivision (a) of Section 17550.16, and proof of current registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16. This subdivision does not apply to refunds subject to subdivision (c) or subdivision (d).

(c) If terms and conditions relating to a refund upon cancellation by the passenger have been disclosed and agreed to by the passenger and the passenger elects to cancel for any reason other than a seller of travel being unable to provide the air or sea transportation or travel services purchased, the making of a refund in accordance with those terms and conditions shall be deemed to constitute compliance with this section.

(d) Any material misrepresentation by the seller of travel shall be deemed to be a violation of this article and cancellation by the seller of travel, necessitating a refund as required by subdivision (a).

SEC. 5. Section 17550.20 of the Business and Professions Code is amended to read:

17550.20. (a) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and a filing fee of one hundred dollars ($100) for each location from which the seller of travel conducts business. A late fee of five dollars ($5) per day, up to a maximum of five hundred dollars ($500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be issued or approved until the late fee, and the filing and late fees for each year the seller of travel operated without being registered, have been paid. A seller of travel shall be deemed to do business in this state if the seller of travel solicits business from locations in this state or solicits prospective purchasers who are located in this state.

(b) Registration shall be valid for one year from the effective date thereof shown on the registration issued by the office of the Attorney General and may be annually renewed by making the filing required by Section 17550.21 and paying a filing fee of one hundred dollars ($100) for each location from which the seller of travel conducts business. A late fee of five dollars ($5) per day, up to a maximum of five hundred dollars ($500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be renewed until the late fee, and the filing and late fees for each year the seller of travel operated without being registered, have been paid.

(c) Whenever, prior to expiration of a seller of travel's annual registration, there is a material change in the information required by Section 17550.21, the seller of travel shall, within 10 days, file an addendum updating the information with the Consumer Law Section of the office of the Attorney General.

(d) (1) Not less than 10 days prior to the transfer or sale of any interest in a seller of travel, the selling or transferring owner shall file with the office of the Attorney General, Seller of Travel Program, a notice of encumbrance, sale, or transfer of ownership, using a form provided for that purpose by the office of the Attorney General. The notice shall provide the information required pursuant to subdivision (d) of Section 17550.21 as to each transferee.

(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling,

encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

(e) The office of the Attorney General shall suspend the registration of any seller of travel who (1) fails to make any payment required pursuant to Article 2.7 (commencing with Section 17550.35) or (2) submits a check in payment of a registration fee or late fee required by this section that is not honored by the institution on which it is drawn. The Attorney General shall provide written notice to the seller of travel by first-class mail at the seller of travel's place of business set forth in the registration statement that the seller of travel's registration has been suspended until all fees that are due have been paid. The registration of the seller of travel shall be suspended until all such payments due have been collected.

(f) The Attorney General may, at his or her discretion and subject to supervision by the Attorney General or his or her delegate, contract out all or any part of the processing of registrations required by this section.

(g) This section does not apply to an individual, natural person who meets all of the following conditions:

(1) Has a written contract with a registered seller of travel to act on that registered seller of travel's behalf in offering or selling air or sea transportation and other travel goods or services in connection with the transportation.

(2) Acts only on behalf of a registered seller of travel with whom the person has a written contract in the offer or sale to a passenger of air or sea transportation and other goods or services in connection with the transportation and sells no other air or sea transportation or travel services to that passenger.

(3) Provides air or sea transportation or travel services that are offered or sold pursuant to the official agency appointment of the registered seller of travel with whom the person has a written contract.

(4) Does not receive any consideration for air or sea transportation or other travel services from the passenger.

(5) Requires the passenger to pay all consideration for air or sea transportation or other travel services directly to the air carrier or ocean carrier or to the registered seller of travel.

(6) Discloses both of the following:

(A) The person is acting on behalf of a registered seller of travel.

(B) The name, address, telephone number, and registration number of the registered seller of travel on whose behalf the person is acting.

The person shall make the disclosures required by this paragraph in writing to the passenger at the same time the passenger receives notice under Section 17550.13. If the person transacts business in this state on

the Internet, the disclosures also shall appear on the home page of the person's Web site and shall be prominently set forth in the first electronic mail message sent to the passenger that refers to the passenger's purchase of air or sea transportation or travel services.

(h) Whenever the Attorney General determines that a registration application is accurate and complete, the application shall be processed and a registration certificate shall be issued to the seller of travel within 21 days.

SEC. 6. Section 17550.21 of the Business and Professions Code is amended to read:

17550.21. Each filing pursuant to Section 17550.20 shall contain the following information:

(a) The name or names of the seller of travel, including the name under which the seller of travel is doing or intends to do business, if different from the name of the seller of travel.

(b) The seller of travel's business form and place of organization and, if operating under a fictitious business name, the location where the fictitious name has been registered. If the seller of travel does business in California from one or more locations in this state but does not maintain its principal place of business in this state, the seller of travel shall state whether it meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1.

(c) The complete street address or addresses of all locations from which the seller of travel will be conducting business, including, but not limited to, locations at which telephone calls will be received from, or made to, passengers or other sellers of travel. The statement shall designate which location is the principal place of business.

(d) The complete business and residential addresses and telephone numbers, the driver's license number and state of issuance or equivalent personal identification, the social security number, and the date of birth of each owner and principal of the seller of travel. ''Owner'' means a person who owns or controls 10 percent or more of the equity of, or otherwise has claim to 10 percent or more of the net income of, a seller of travel. ''Principal'' means an owner, an officer of a corporation, a general partner of a partnership, or a sole proprietor of a sole proprietorship.

(e) A statement as to whether the seller of travel, any owner, or principal, or any other seller of travel owned or managed by any owner or principal of the seller of travel, or the seller of travel itself has had entered against that person or entity any judgment, including a stipulated judgment, order, made a plea of nolo contendere, or been convicted of any criminal violation. The statement shall identify the person, the court or administrative agency rendering the judgment, order, or conviction, the docket number of the matter, and the date of the judgment, order, or

conviction; where the judgment, order, or record of conviction is filed; and the nature of the case or judgment. This subdivision does not require disclosure of marital dissolution, child support, or child custody proceedings.

(f) A copy of the travel certificates, if any, that are or will be sold, marketed, or distributed to any person or entity by the seller of travel.

(g) The seller of travel shall file with the Attorney General a signed and dated statement indicating (1) the account number of each trust account required by this article, (2) the name and address of each financial institution at which the seller of travel maintains a trust account required by this article, (3) any registration number issued to the seller of travel by the Airline Reporting Corporation or the International Association of Travel Agents Network, and (4) a consent form consenting to the Attorney General, a district attorney, or their representatives obtaining directly from the Airlines Reporting Corporation, International Association of Travel Agents Network, a seller of transportation, provider of transportation, provider of travel services, and any financial institution where passenger funds have been deposited, any information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.

(h) A statement signed by each owner and principal granting permission to the office of the Attorney General to obtain from any financial institution or credit union at which any trust account required by Section 17550.15 is maintained, information relating to that trust account, as set forth in paragraph (2) of subdivision (f) of Section 17550.15.

(i) The name, address, and telephone number of each person described in subdivision (g) of Section 17550.20 with whom the seller of travel contracts.

(j) The information required by this section shall be verified by a declaration signed and dated by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date and location of signing. Upon reregistration by a previously registered seller of travel, the information required by this section may be verified by the chief executive officer of a corporation, managing partner of a partnership, or manager of a limited liability company.

SEC. 7. Section 17550.30 of the Business and Professions Code is amended to read:

17550.30. (a) The Travel Seller Fund is hereby created in the State Treasury. All fines, penalties, and fees, including late fees, collected pursuant to this article, or any moneys collected for a violation of this article or Article 2.7 (commencing with Section 17550.35) shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article.

(b) All money paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants, and the dissemination of information, including consumer education regarding this article and Article 2.7 (commencing with Section 17750.35).

(c) The sum of three hundred ninety-five thousand dollars ($395,000) is hereby appropriated from the Travel Seller Fund to the Department of Justice for purposes of the Sellers of Travel Program established pursuant to Article 2.6 (commencing with Section 17550).

SEC. 8. Section 17550.34 of the Business and Professions Code is repealed.

SEC. 9. Section 17550.37 of the Business and Professions Code is amended to read:

17550.37. (a) ''Person aggrieved,'' as used in this article, means a passenger, as defined in Section 17550.3, located in California at the time of sale, or a person located in California at the time of sale who made any payment on behalf of the passenger for air or sea transportation or travel services, who has sustained a loss as a result of the failure of a seller of travel to refund payments made by or on behalf of a passenger as payment for air or sea transportation or travel services, where a refund is due as a result of the bankruptcy, insolvency, cessation of operations, or material failure to provide the transportation or travel services purchased by the passenger. ''Loss,'' as used herein, shall be limited to losses that are incurred in a transaction with a seller of travel who, at the time of sale, was a paid-up participant in the Travel Consumer Restitution Fund and was registered pursuant to Section 17550.20. ''Person aggrieved'' shall not mean or include a passenger, or person making payment on behalf of a passenger, in a transaction where the air or sea transportation or travel services are furnished by a business entity that (a) is located and providing transportation or travel services outside of the United States and (b) is not in compliance with Article 2.6 (commencing with Section 17550).

(b) Any person aggrieved who files a claim for payment from the Travel Consumer Restitution Fund thereby waives his or her right to

bring any action at law or equity that (1) is against the seller of travel as to whom the claim is made and (2) arises from the transaction that is the subject of the claim against the restitution fund. The claim form required by Section 17550.46 shall include a clear and conspicuous notice of the waiver.

(c) The waiver of rights provided for by subdivision (b) shall not apply to any claimant whose claim is denied on any of the following grounds, as set forth in the statement of decision required by subdivision (d) of Section 17550.47:

(1) The seller of travel was not, at the time of sale, a paid-up participant in the Travel Consumer Restitution Fund, as required by subdivision (a).

(2) The seller of travel was not, at the time of sale, registered pursuant to Section 17550.20.

(3) The claimant was not located in California at the time of sale, as required by subdivision (a).

SEC. 10. Section 17550.41 of the Business and Professions Code is amended to read:

17550.41. (a) The Board of Directors of the Travel Consumer Restitution Corporation shall be composed of six directors, as follows:

(1) One public consumer representative member appointed by the Director of Consumer Affairs.

(2) One employee of the Department of Justice, assigned by the office of the Attorney General, who shall serve as an ex officio, nonvoting member.

(3) Four directors who are participants in the Travel Consumer Restitution Fund.

(b) The director appointed pursuant to paragraph (1) of subdivision (a) shall serve until the appointment is revoked or another appointment is made, or until the director resigns.

(c) Participant directors shall be elected by a balloting of all participants in the Travel Consumer Restitution Fund in an election to be conducted by the Travel Consumer Restitution Corporation in February of each year. Participant directors shall be elected to serve two-year terms, with two of the four participant directors being elected each year to staggered two-year terms.

(d) A person is eligible to be nominated and to serve as a participant director if the person satisfies all of the following conditions:

(1) The person's primary occupation, at the time of nomination and continuously during the previous three years, has been as the owner or manager of a seller of travel that is and has been in good standing both as a registered seller of travel and as a participant in the Travel Consumer Restitution Fund.

(2) The person has not been convicted of a crime, including a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(3) The person is not subject to a judgment or administrative order, whether entered after adjudication or stipulation, predicated on that person's commission of an act of dishonesty, fraud, deceit, or violation of this chapter or Chapter 5 (commencing with Section 17200) of Part 2 of Division 7.

(4) The person is not a defendant in a pending criminal or civil law enforcement action brought by a public prosecutor.

(5) The person has not served as a participant director of the Travel Consumer Restitution Fund at any time during the previous 18 months.

(6) Within five days after the end of the nomination period, the person nominated to be a director submits an application to the Travel Consumer Restitution Fund, signed under penalty of perjury, that attests to the person's satisfaction of all of the conditions specified in paragraphs (1) to (5), inclusive.

(e) The Travel Consumer Restitution Fund may not impose requirements for nomination to be a participant director in addition to the requirements described in subdivision (d).

(f) If a nominee does not satisfy the requirements of subdivision (d), the Travel Consumer Restitution Fund shall notify the nominee and the Attorney General in writing, within 30 days of the nominee's application, that the person has been rejected as a nominee and the specific grounds for the rejection.

(g) The nomination period shall be open for the period beginning 90 days and ending 30 days before the election. Any participant may nominate for election any participant who is eligible to serve as provided in subdivision (d).

(h) The Travel Consumer Restitution Fund shall enable nominees to submit, within 21 days before the election, written statements of up to 500 words in a reasonable format concerning their candidacy and shall mail those statements to participants in the Travel Consumer Restitution Fund and make those statements publicly available no later than 14 days before the election by means that may include disseminating the information on an Internet Web site or providing the information by electronic mail to any person who has requested the information and provided a valid electronic mail address.

(i) A director who does not qualify to be a participant or who otherwise becomes unable to serve shall not continue to serve as director. The board of the Travel Consumer Restitution Corporation shall adopt rules setting forth the procedures to determine that a director is no longer able to serve as a director and for the board to elect a successor to serve as director until the next election.

SEC. 11. Section 17550.42 is added to the Business and Professions Code, to read:

17550.42. (a) Within 30 days of the close of the fiscal year or other reasonable period established by the board of directors, the Travel Consumer Restitution Corporation shall make publicly available a statement of the following information concerning the most recently concluded fiscal year:

(1) The number of claims and approximate dollar amount of the claims received.

(2) The total number of claims and total dollar amount of claims paid.

(3) The approximate number and dollar amount of claims denied or abandoned.

(4) The dollar balance in the restitution fund.

(5) The amount of assessments received from participants and the operating and administrative costs and expenses of the corporation.

(6) The number of new participants and the amount of assessments received from them.

(b) The Travel Consumer Restitution Corporation shall make publicly available within 15 days of the board of directors' approval, or other reasonable period established by the board of directors, the following information:

(1) The approved minutes of meetings of the board of directors.

(2) The approved estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount to be paid for claims.

(3) The approved bylaws, as amended, of the Travel Consumer Restitution Corporation.

(c) Information may be made publicly available as required by this section by disseminating the information on an Internet Web site or providing the information by electronic mail to any person who has requested the information and provided a valid electronic mail address.

SEC. 12. Section 17550.47 of the Business and Professions Code is amended to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss of more than fifty dollars ($50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars ($35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars ($50).

(2) Any processing fee required by paragraph (1) shall be nonrefundable except where (A) a claim is denied on the basis as set forth in the statement of decision that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, or (B) the claim is granted in whole or in part. In either case, the processing fee shall be refunded to the person aggrieved upon denial or upon payment of the claim, whichever is applicable.

(3) In no event shall a person aggrieved have more than one year after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount not to exceed fifteen thousand dollars ($15,000) per person aggrieved, not to exceed the amount paid to the participant by or on behalf of the person aggrieved for the transportation or travel services. Payments from the restitution fund shall be limited to restitution for sums paid for transportation or travel services and shall not include any other amounts, including, but not limited to, payment for lost wages, pain and suffering, emotional distress, travel insurance, lost luggage, or any consequential damages. The person aggrieved shall not be entitled to receive attorney's fees in connection with a filed claim or on appeal.

(c) All claims are to be decided on the written record before the corporation, with no hearing to be held. The record shall consist of a fully executed and complete claim form, any other documentation submitted by the claimant or the participant, and any documents or reports submitted by staff or the designated representative of the office of the Attorney General. Claims are to be decided within 45 days of receipt unless (1) the designated representative of the office of the Attorney General requests a continuance to obtain and submit information, or (2) the Travel Consumer Restitution Corporation determines that additional information or documentation is required to decide the claim. In either case, the claim shall be decided within 45 days of receipt of all additional information or documentation. A claim not decided timely shall be deemed granted.

(d) Whenever the Travel Consumer Restitution Corporation denies a claim in whole or in part, it shall provide to the claimant a written statement of decision setting forth the factual and legal basis for the denial.

(e) A claimant may request reconsideration of an adverse decision of the Travel Consumer Restitution Corporation by mailing a written request, accompanied by a processing fee of fifty dollars ($50) paid by check or money order, within 20 days of the date a notice of denial and statement of decision was mailed to the claimant. Any check for the

processing fee that is returned unpaid to the Travel Consumer Restitution Corporation by the financial institution upon which it is drawn shall be returned to the claimant and the request for reconsideration shall not be determined until the claimant has paid the fifty dollar ($50) processing fee.

(f) The Travel Consumer Restitution Corporation shall, within 60 days of receipt of the request, either decide the request or advise the claimant that additional information or documentation is needed, and, if the decision is a denial in whole or in part, it shall provide to the claimant and seller of travel a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

(g) No decision of the Travel Consumer Restitution Corporation granting or denying a claim in whole or part shall be subject to review or appeal except as provided in this section. A claimant may seek review of the denial, in whole or part, of a claim by filing a notice of appeal after having served the notice by mail on the Travel Consumer Restitution Corporation. The notice of appeal shall be filed and served on the Travel Consumer Restitution Corporation not later than 30 days after a written statement of decision on a request for reconsideration has been mailed to the claimant. The notice of appeal from a decision of the Travel Consumer Restitution Corporation shall be filed with the clerk of the superior court either in the county in which the principal place of business of the Travel Consumer Restitution Corporation is located, or in the county in which the claimant was a resident at the time the claimant purchased the transportation or travel services in dispute.

(h) The claimant shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file its response and the record of the claim before the corporation with the clerk of the superior court within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall affirm the decision if it is supported by substantial evidence in light of the entire record. The pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right

to trial by jury, and the decision of the superior court shall be appealable by either party. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Corporation.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall not be entitled to an award in excess of the amount of the original claim.

(*l*) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for appeal has passed. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund whenever the judgment becomes final. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel Consumer Restitution Corporation ceases to operate pursuant to the terms of Section 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims accruing prior to the corporation ceasing to operate, after payment of outstanding debts and liabilities as provided in Section 17550.57.

(m) A claim shall require a majority of at least three affirmative votes for denial, otherwise it shall be deemed granted.

(n) (1) A director shall not participate in the decision of a claim if the director has a financial interest in the outcome of the decision, has a financial interest in or is employed by the seller of travel that is the subject of the claim, or has any familial relationship or close personal friendship with either the claimant or any owner, officer, director, or manager of the seller of travel that is the subject of the claim.

(2) The director shall disclose to the other directors before a claim is considered all matters that disqualify the director from participating in the decision of the claim as described in paragraph (1).

SEC. 13. Section 17550.59 of the Business and Professions Code is repealed.

SEC. 14. It is the intent of the Legislature that the Attorney General consider reasonable improvements to the operation and functioning of the seller of travel registration program to reduce operational costs, such as the implementation of electronic registration and registration renewals, if practicable and consistent with prudent management and continued or improved levels of consumer protection.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 197

An act to amend Sections 53601 and 53635 to the Government Code, relating to local agency investments.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 53601 of the Government Code is amended to read:

53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having money in a sinking fund or money in its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, ''counterparty'' means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to

maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

(f) Bankers acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers acceptances may not exceed 180 days' maturity or 40 percent of the agency's money that may be invested pursuant to this section. However, no more than 30 percent of the agency's money may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of ''prime'' quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

(1) The entity meets the following criteria:

(A) Is organized and operating in the United States as a general corporation.

(B) Has total assets in excess of five hundred million dollars ($500,000,000).

(C) Has debt other than commercial paper, if any, that is rated ''A'' or higher by a nationally recognized statistical-rating organization (NRSRO).

(2) The entity meets the following criteria:

(A) Is organized within the United States as a special purpose corporation, trust, or limited liability company.

(B) Has programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or surety bond.

(C) Has commercial paper that is rated ''A-1'' or higher, or the equivalent, by a nationally recognized statistical-rating organization (NRSRO).

Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, may invest no more than 25 percent of their money in eligible commercial paper. Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. Counties or a city and county may invest in commercial paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decisionmaking authority in the administrative office manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized

by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, ''significant banking relationship'' means any of the following activities of a bank:

(i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.

(ii) Financing of a local agency's activities.

(iii) Acceptance of a local agency's securities or funds as deposits.

(5) (A) ''Repurchase agreement'' means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) ''Securities,'' for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) ''Securities lending agreement'' means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated ''A'' or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may

not exceed 30 percent of the agency's money that may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more

than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an ''A'' or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of ''AA'' or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

SEC. 2. Section 53635 of the Government Code is amended to read:

53635. (a) This section shall apply to a local agency that is a county, a city and a county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. However, Section 53601 shall apply to all local agencies that pool money in deposits or investments exclusively with local agencies that have the same governing body.

This section shall be interpreted in a manner that recognizes the distinct characteristics of investment pools and the distinct administrative burdens on managing and investing funds on a pooled

basis pursuant to Article 6 (commencing with Section 27130) of Chapter 5 of Division 2 of Title 3.

A local agency that is a county, a city and county, or other local agency that pools money in deposits or investments with other agencies may invest in commercial paper pursuant to subdivision (g) of Section 53601, except that the local agency shall be subject to the following concentration limits:

(1) No more than 40 percent of the local agency's money may be invested in eligible commercial paper.

(2) No more than 10 percent of the local agency's money that may be invested pursuant to this section may be invested in the outstanding commercial paper of any single issuer.

(3) No more than 10 percent of the outstanding commercial paper of any single issuer may be purchased by the local agency.

(b) Notwithstanding Section 53601, the City of Los Angeles shall be subject to the concentration limits of this section for counties and for cities and counties with regard to the investment of money in eligible commercial paper.

CHAPTER 198

An act to add Section 33334.29 to the Health and Safety Code, and to amend Section 1011 of the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

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

(a) That the construction of a new veterans' home in Shasta County is an economic contributor to Shasta County and the state whereby skilled jobs are created and maintained by the construction and operation of the home.

(b) There is an established need for a veterans' home located in Shasta County to serve a population over a 12 county area. The construction of a veterans' home located in Shasta County, specifically in the City of Redding, and within one mile of an existing project area will address conditions of economic hardship and address blight within Redding.

(c) Due to the limited availability of federal matching funds, it is in the state's interest to secure a qualified site within Shasta County by

August 15, 2003, and that the use of redevelopment funds is an appropriate use.

SEC. 2. Section 33334.29 is added to the Health and Safety Code, to read:

33334.29. (a) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, the redevelopment agency of the City of Redding, of the County of Shasta, or of any other city located within the County of Shasta, may borrow and use up to two million three hundred thousand dollars ($2,300,000) from its Low and Moderate Income Housing Fund to provide financial assistance for the acquisition of property for a veterans home within the territorial jurisdiction of the agency of the City of Redding. As used in this section, ''veterans' home'' shall mean a veterans' home authorized pursuant to Division 5 (commencing with Section 1010) of the Military and Veterans Code.

(b) Funds borrowed pursuant to subdivision (a) shall be repaid within 15 years from the date they are loaned, with interest at the rate earned from time to time on funds deposited in the State of California Local Agency Investment Fund. The indebtedness created pursuant to this section shall not be considered to meet the requirements imposed by Section 33333.8, and the agency shall comply in full with that section. If a redevelopment agency described in subdivision (a) is required to remit an amount of tax increment funds to the county auditor for deposit in the county's Educational Revenue Augmentation Fund, created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, then the time limit on repayment of the funds borrowed pursuant to this section shall be suspended for one year after the funds are remitted to the county auditor. In addition, the agency shall receive and use tax increment funds to pay the loan described in subdivision (a) until the funds borrowed pursuant to subdivision (a) have been fully repaid. The agency may not incur any obligation with respect to loans, advance of money, or indebtedness, or whether funded, refunded, assumed or otherwise, that would impair or delay its ability or capacity to repay the funds loaned pursuant to this section; except that the agency may incur indebtedness against non-Low and Moderate Income Housing Fund moneys if the proceeds of the indebtedness will be used to repay the funds borrowed pursuant to this section.

SEC. 3. Section 1011 of the Military and Veterans Code is amended to read:

1011. (a) There is in the department a Veterans' Home of California, Yountville, situated at Veterans' Home, Napa County.

(b) (1) The department may establish and construct a second home that shall be situated in the County of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura. The home may be

located on one or more sites. The department shall operate the second home concurrently with the first home.

(2) The initial site is the Veterans' Home of California, Barstow, situated in Barstow, San Bernardino County. That site may provide skilled nursing care for up to 250 residents.

(3) When completed, the second site shall be the Veterans' Home of California, Chula Vista, situated in Chula Vista, San Diego County, pursuant to the recommendations made by the commission established pursuant to former Section 1011.5.

(4) When completed, the third site shall be the Veterans' Home of California, Lancaster, situated in Lancaster, Los Angeles County, pursuant to the recommendations made by the commission established pursuant to former Section 1011.5.

(5) When completed, the fourth site shall be the Veterans' Home of California, Ventura, situated in the community of Saticoy, Ventura County.

(6) There shall be an administrator for, and located at, each site of the southern California home.

(7) The department may complete any preapplication process necessary with the United States Department of Veterans Affairs for construction of the second home.

(c) The Legislature hereby finds and declares that the second home is a new state function. The department may perform any or all work in operating the second home by independent contractors, except the overall administration and management of the home. Any and all actions of the department taken before September 17, 1996, that are consistent with this subdivision are hereby ratified and confirmed, it having at all times been the intent of the Legislature that the department be so authorized.

(d) There shall be an administrator for each home or homesite, who shall be recommended by the Secretary of Veterans Affairs and appointed by the Governor, and shall be located at that home or homesite. The salary for each administrator shall be subject to the approval of the Department of Personnel Administration.

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 construct new veterans homes as soon as possible, it is necessary that this bill take effect immediately.

CHAPTER 199

An act to amend Sections 1610.8, 1614, 3371, 3692, 3698.5, 3698.7, 4112, 4675, and 5104 of, to add Sections 3794.3 and 4672.3 to, and to repeal Sections 1612 and 1613 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 3, 2003. Filed with Secretary of State August 4, 2003.]

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

SECTION 1. Section 1610.8 of the Revenue and Taxation Code is amended to read:

1610.8. After giving notice as prescribed by its rules, the county board shall equalize the assessment of property on the local roll by determining the full value of an individual property, by assessing any taxable property that has escaped assessment, correcting the amount, number, quantity, or description of property on the local roll, canceling assessments of any property not subject to taxation, and by reducing or increasing an individual assessment, as provided in this section. The full value of an individual property shall be determined without limitation by reason of the applicant's opinion of value stated in the application for reduction in assessment pursuant to subdivision (a) of Section 1603.

The applicant for a reduction in an assessment on the local roll shall establish the full value of the property by independent evidence. The records of the assessor may be used as part of such evidence.

The county board shall make a determination of the full value of each parcel for which an application for equalization is made.

SEC. 2. Section 1612 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 1613 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 1614 of the Revenue and Taxation Code is amended to read:

1614. (a) The clerk of the county board shall keep an accurate record of all changes to the roll and all orders made by the county board. No later than the second Monday of each month the clerk shall deliver the statement of all changes to the roll made by the county board during the preceding calendar month to the auditor.

(b) This section does not prohibit the clerk from transmitting to the auditor changes to the roll more frequently than once per month.

(c) This section shall not be construed to require the clerk to deliver the statement described in subdivision (a) for a month in which the county board has made no changes to the roll.

SEC. 5. Section 3371 of the Revenue and Taxation Code is amended to read:

3371. (a) Annually, on or before September 8, the tax collector shall publish the affidavit that the real property on which the taxes, assessments, penalties, and costs had not been fully paid are in default, together with a list of all that real property. However, in any county that mails delinquent notices to the assessees of record before June 30, the tax collector shall publish the affidavit and list of all that real property on or before September 8 of the year following the date of default.

(b) If the tax collector sends reminder notices prior to the close of the fiscal year and annually sends a redemption notice of prior year due taxes, the delinquent notice described in subdivision (a) may be published only for those properties that have been tax-delinquent for three or more years and for which the latest reminder notice or redemption notice was returned to the tax collector as undeliverable.

SEC. 6. Section 3692 of the Revenue and Taxation Code is amended to read:

3692. (a) The tax collector shall attempt to sell tax-defaulted property as provided in this chapter within four years of the time that the property becomes subject to sale for nonpayment of taxes unless by other provisions of law the property is not subject to sale. If there are no acceptable bids at the attempted sale, the tax collector shall attempt to sell the property at intervals of no more than six years until the property is sold.

(b) When oil, gas, or mineral rights are subject to sale for nonpayment of taxes, the tax collector may offer the interest at minimum bid to the holders of outstanding interests where the interest subject to sale is a partial interest or, where the interest subject to sale is a complete and undivided interest, to the owner or owners of the property to which the oil, gas, or mineral rights are appurtenant.

(c) When parcels that are rendered unusable by their size, location, or other conditions are subject to sale for nonpayment of taxes, the tax collector may offer the parcel at a minimum bid to owners of contiguous parcels. The tax collector shall require that the successful bidder request the assessor and the planning director to combine the unusable parcel with the bidder's own parcel as a condition of sale.

(d) Sealed bid sale procedures shall be used when offers are made pursuant to subdivision (b) or subdivision (c), and the property shall be sold to the highest eligible bidder. The offers shall remain in effect for 30 days or until notice is given pursuant to Section 3702, whichever is later.

(e) The Notice to the Board of Supervisors and Notice of Intended Sale of Tax-Defaulted Property shall indicate that any parcel remaining unsold may be reoffered within a 90-day period and any new parties of interest shall be notified in accordance with Section 3701. This

subdivision shall not apply to properties sold pursuant to Chapter 8 (commencing with Section 3771).

SEC. 7. Section 3698.5 of the Revenue and Taxation Code is amended to read:

3698.5. (a) Except as provided in Section 3698.7, the minimum price at which property may be offered for sale pursuant to this chapter shall be an amount not less than the total amount necessary to redeem, plus costs. For purposes of this subdivision:

(1) The ''total amount necessary to redeem'' is the sum of the following:

(A) The amount of defaulted taxes.

(B) Delinquent penalties and costs.

(C) Redemption penalties.

(D) A redemption fee.

(2) ''Costs'' are those amounts described in subdivision (c) of Section 3704.7, subdivisions (a) and (b) of Section 4112, Sections 4672, 4672.1, 4672.2, 4673, and subdivision (b) of Section 4673.1.

(b) This section shall not apply to property or interests that qualify for sale in accordance with the provisions of subdivisions (b) and (c) of Section 3692.

(c) Where property or property interests have been offered for sale at least once and no acceptable bids therefor have been received at the minimum price determined pursuant to subdivision (a), the tax collector may, in his or her discretion and with the approval of the board of supervisors, offer that same property or those interests at the same or next scheduled sale at a minimum price that the tax collector deems appropriate in light of the most current assessed valuation of that property or those interests, or any unique circumstance with respect to that property or those interests.

SEC. 8. Section 3698.7 of the Revenue and Taxation Code is amended to read:

3698.7. (a) With respect to property for which a property tax welfare exemption has been granted and that has become tax defaulted, the minimum price at which the property may be offered for sale pursuant to this chapter shall be the higher of the following:

(1) Fifty percent of the fair market value of the property. For the purposes of this paragraph, ''fair market value'' means the amount as defined in Section 110 as determined pursuant to an appraisal of the property by the county assessor within one year immediately preceding the date of the public auction. From the proceeds of the sale, there shall be distributed to the county general fund an amount to reimburse the county for the cost of appraising the property. The value of the property as determined by the assessor pursuant to an appraisal shall be conclusively presumed to be the fair market value of the property for the

purpose of determining the minimum price at which the property may be offered for sale.

(2) The total amount necessary to redeem, plus costs. For purposes of this paragraph:

(A) The ''total amount necessary to redeem'' is the sum of the following:

(i) The amount of defaulted taxes.

(ii) Delinquent penalties and costs.

(iii) Redemption penalties.

(iv) A redemption fee.

(B) ''Costs'' are those amounts described in subdivision (c) of Section 3704.7, subdivisions (a) and (b) of Section 4112, Sections 4672, 4672.1, 4672.2, and 4673, and subdivision (b) of Section 4673.1.

(b) This section shall not apply to property or interests that qualify for sale in accordance with the provisions of subdivisions (b) and (c) of Section 3692.

(c) Where property or property interests have been offered for sale at least once and no acceptable bids therefor have been received, the tax collector may, in his or her discretion and with the approval of the board of supervisors, offer that property or those interests at the next scheduled sale at a minimum price that the tax collector deems appropriate.

SEC. 9. Section 3794.3 is added to the Revenue and Taxation Code, to read:

3794.3. A sale under this chapter shall take place only if approved by the board of supervisors.

SEC. 10. Section 4112 of the Revenue and Taxation Code is amended to read:

4112. (a) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the tax collector shall collect all of the following, in addition to the amount required to redeem:

(1) A fee of thirty-five dollars ($35) that shall be distributed to the county general fund to reimburse the county for its cost of obtaining the names and last known mailing addresses of, and for mailing notices required by Section 3701 to, parties of interest as defined by Section 4675.

(2) A fee in the amount required by Section 27361.3 of the Government Code that shall be distributed to the county recorder for the cost of recordation of a rescission of the notice, as required by subdivision (c).

(3) A fee of one hundred fifty dollars ($150) if redemption is within 90 days of the proposed date for the tax sale of the redeemed property. In the case of unsold tax sale properties remaining on the abstract after the tax sale, the fee shall become a part of the redemption amount and collectible whenever the property is redeemed. The fee shall be

distributed to the county general fund to reimburse the county for costs incurred by the county in preparing to conduct that sale.

(4) The amount described in subdivision (c) of Section 3704.7 to reimburse the county for the cost of a personal contact required by that section.

(b) Notwithstanding subdivision (a), if the tax-defaulted property is redeemed prior to the proposed sale, but after the county has incurred notice or publication costs pursuant to Section 3702 in connection with a notice of intended sale, a fee in an amount reasonably necessary to reimburse the tax collector for those costs may be collected.

(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice in the form prescribed by the Controller. The rescission shall be acknowledged by the county clerk, without charge.

(d) Any fee imposed under paragraph (1) of subdivision (a) or subdivision (b) shall be subject to the requirements of Section 54986 of the Government Code.

SEC. 11. Section 4672.3 is added to the Revenue and Taxation Code, to read:

4672.3. (a) To reimburse the county for the costs of a personal contact, there shall be distributed to the tax collector a sum equal to the total amount of costs of the tax collector, but not to exceed one hundred dollars ($100), incurred in conducting the personal contact pursuant to Section 3704.7, for all or any portion of each separately valued parcel of real property subject to a power of sale and sold to private parties or a taxing agency.

(b) The amount of the costs shall be paid from the total amount to be distributed from the sold property, after satisfaction of the amount specified in Section 4672. If, after satisfaction of the amount specified in Section 4672, there is insufficient funds to pay the costs specified in subdivision (a), the costs shall be reduced accordingly.

SEC. 12. Section 4675 of the Revenue and Taxation Code is amended to read:

4675. (a) Any party of interest in the property may file with the county a claim for the excess proceeds, in proportion to his or her interest held with others of equal priority in the property at the time of sale, at any time prior to the expiration of one year following the recordation of the tax collector's deed to the purchaser.

(b) After the property has been sold, a party of interest in the property at the time of the sale may assign his or her right to claim the excess proceeds only by a dated, written instrument that explicitly states that the right to claim the excess proceeds is being assigned, and only after each party to the proposed assignment has disclosed to each other party to the

proposed assignment all facts of which he or she is aware relating to the value of the right that is being assigned. Any attempted assignment that does not comply with these requirements shall have no effect. This paragraph shall apply only with respect to assignments on or after the effective date of this paragraph.

(c) Any person or entity who in any way acts on behalf of, or in place of, any party of interest with respect to filing a claim for any excess proceeds shall submit proof with the claim that the amount of excess proceeds has been disclosed to the party of interest and that the party of interest has been advised of his or her right to file a claim for the excess proceeds on his or her own behalf.

(d) The claims shall contain any information and proof deemed necessary by the board of supervisors to establish the claimant's rights to all or any portion of the excess proceeds.

(e) No sooner than one year following the recordation of the tax collector's deed to the purchaser, and if the excess proceeds have been claimed by any party of interest as provided herein, the excess proceeds shall be distributed on order of the board of supervisors to the parties of interest who have claimed the excess proceeds in the order of priority set forth in subdivisions (a) and (b). For the purposes of this article, parties of interest and their order of priority are:

(1) First, lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority.

(2) Second, any person with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser.

(f) In the event that a person with title of record is deceased at the time of the distribution of the excess proceeds, the heirs may submit an affidavit pursuant to Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code, to support their claim for excess proceeds.

(g) Any action or proceeding to review the decision of the board of supervisors shall be commenced within 90 days after the date of that decision of the board of supervisors.

SEC. 13. Section 5104 of the Revenue and Taxation Code is amended to read:

5104. Any refund of taxes or assessments authorized pursuant to this article as a result of a reduction in the value of taxable property or as the result of corrections to the roll or cancellations after taxes or assessments were paid, may be paid to the latest recorded owner of that property as shown on the tax roll, rather than to the individual or entity who paid the amount of tax or assessment to be refunded, if both of the following conditions are met:

(a) There has been no transfer of the property during or since the fiscal year for which the taxes subject to refund were levied.

(b) The amount of the refund is less than five thousand dollars ($5,000).

CHAPTER 200

An act to add Part 7 (commencing with Section 106000) to Division 103 of the Health and Safety Code, relating to health care.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Part 7 (commencing with Section 106000) is added to Division 103 of the Health and Safety Code, to read:

PART 7. URBAN COMMUNITY HEALTH INSTITUTE

106000. The Urban Community Health Institute: Centers to Eliminate Health Disparities is hereby established at the Charles R. Drew University of Medicine and Science to address the problem of disparate health care in the Los Angeles County Service Planning Area (SPA 6) and other multicultural communities that have the worst health care status indicators, medical outcomes, and death rates in Los Angeles County. The institute shall be organized into three clinical centers and a shared resource core.

106005. (a) The duties of the institute shall include both of the following:

(1) Designing and conducting a series of complementary projects to eliminate racial, ethnic, cultural, and linguistic health disparities through culturally sensitive preventive health education, health risk appraisal, risk factor screening, and programs to facilitate appropriate medical followup and treatment.

(2) Providing integrated leadership in developing, implementing, evaluating, and sustaining services and programmatic partnerships between the scientific disciplines of the Charles R. Drew University of Medicine and Science, community-based organizations, and agencies in the public sector.

(b) The objectives of the institute shall include all of the following:

(1) Strengthening partnerships among community-based organizations in multicultural areas in the vicinity of Los Angeles.

(2) Building the capacity for community service of the Charles R. Drew University of Medicine and Science and local community-based

organizations while addressing specific community health care issues using a broadly based interdisciplinary integrative community service model of health care.

(3) Developing a well-defined central focus and an efficient and cost effective organizational structure in which each project of the institute is related to the shared resource core.

(c) The institute shall employ the following strategies to achieve its objectives:

(1) Assemble a multidisciplinary cadre of health professionals, public health experts, and community health workers to operate the clinical centers and shared resource core and implement community service programs, and provide the infrastructure to support the development, implementation, and evaluation of community-based programs to eliminate health disparities.

(2) Establish the administrative, educational, methodological, computational, and communication infrastructure, including personnel, facilities, and technology, to support the activities of the institute.

(3) Bring the diverse scientific and governmental resources of the community, local organizations, public sector, and the Charles R. Drew University of Medicine and Science together in an integrated effort to eliminate health disparities.

(4) Gather local and regional surveillance data and conduct primary and secondary data collection to assess the extent, severity, clinical characteristics, causes, and solutions to the problem of disparities in health outcomes, disease progression, morbidity, and mortality of stroke and hypertension, obesity and nutrition, and HIV/AIDS.

(5) Implement community-focused interventions and demonstration projects to eliminate disparities in the evaluation and treatment of stroke and hypertension, obesity and nutrition, and HIV/AIDS, based on information from the work of the institute and local and regional resources.

(6) Apply population-based sciences, including epidemiology, outcome assessment, and informatics, to projects that address risk factors as well as behavioral, environmental, clinical, and biological contributors to disparities in stroke and hypertension, obesity, diabetes, and HIV/AIDS.

(7) Serve as a community resource for technical assistance and training in the communication and dissemination of information, and for the synthesis, interpretation, and dissemination of health indicator data and public health information relevant to diverse communities.

(8) Facilitate the development of lasting academic and community partnerships that promote healthy lifestyles, prevent disease, reduce risk factors for disease, and increase ongoing access to culturally appropriate

health care for stroke and hypertension, obesity, diabetes, and HIV/AIDS.

106010. (a) The clinical centers described in Section 106000 shall include the Stroke and Hypertension Center, the Obesity and Nutrition Center, and the HIV/AIDS Center.

(b) The centers shall target and address illnesses that are related biologically and clinically and are characterized by outcomes that are disparate between minority populations and that of the overall community.

(c) The centers shall initially focus on health promotion, disease prevention, health risk assessment, and health screening services in connection with target medical conditions in minority populations that are experiencing disparate outcomes in relation to the overall community in regard to target conditions. However, overtime, each center shall develop a portfolio of projects that also address these target conditions in all racial, ethnic, and cultural groups.

106015. (a) The Stroke and Hypertension Center shall initially work in partnership with the American Heart Association in developing culturally appropriate, communitywide stroke awareness and training programs.

(b) The center shall also work towards providing additional services, including a stroke screening program directed by the Charles R. Drew University of Medicine and Science, using carotid ultrasound testing.

106020. The Obesity and Nutrition Center shall work in partnership with local elementary and middle schools to conduct culturally appropriate antiobesity, diet, nutrition, and exercise education programs, coupled with structured exercise and weight reduction activities.

106025. The HIV/AIDS Center shall conduct prevention, education, and counseling programs in high-risk populations identified through partnerships between the center and community-sponsored outreach programs in local neighborhoods and in local social gathering places of individuals with a high risk for HIV infection.

106030. (a) The shared resource core shall provide administrative, technical, educational, and health information dissemination services to multiple projects conducted, in collaboration, by the Charles R. Drew University of Medicine and Science and community-based organizations.

(b) The duties of the shared resource core shall include all of the following:

(1) Helping to provide program administration services, project management, fiscal support, resource allocation, and program evaluation.

(2) Assisting in the collection, management, and analysis of primary and secondary data, and providing methodological and computational support and training.

(3) Helping implement community-focused health promotion, disease prevention, and health screening interventions and demonstration projects.

(4) Aiding in the synthesis, interpretation, and dissemination of information on disparities in health indicators, medical outcomes, death rates, and other aspects of health inequalities.

(c) The objectives of the shared resource core shall include both of the following:

(1) To achieve economies of scale in effort, expertise, and equipment, and thereby build the capacity of the community and the Charles R. Drew University of Medicine and Science to develop, implement, and evaluate community programs to reduce health disparities.

(2) To pool services, expertise, equipment, and facilities to support several interrelated projects and collaborating organizations, thereby impacting health disparities with greater resources than those that would be provided separately to each project and without formal interaction among the Charles R. Drew University of Medicine and Science, community-based organizations, and public sector agencies.

106035. (a) The President of the Charles R. Drew University of Medicine and Science shall appoint an external advisory committee, composed of nine individuals who are nationally or regionally recognized for their expertise in eliminating health disparities, to oversee and evaluate all institute activities.

(b) The president shall appoint an internal steering committee, composed of leadership from the institute and members of community-based organizations, public sector agencies, and projects, to supervise the day-to-day activities of the institute.

(c) The institute shall sponsor and conduct an annual Urban Community Health Forum as a communitywide symposium. The forum shall provide a report on the progress of the institute, offer technical assistance workshops, and provide an overview of local, regional, and national efforts concerning health disparities.

106036. This part shall be implemented only to the extent that private or federal funding is received for this purpose.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable only to the County of Los Angeles, 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.

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CHAPTER 201

An act to amend Section 89416 of, and to amend the heading of Chapter 4.2 (commencing with Section 89416) of Part 55 of, the Education Code, relating to the California State University.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. The heading of Chapter 4.2 (commencing with Section 89416) of Part 55 of the Education Code is amended to read:

CHAPTER 4.2. THE AFRICAN AMERICAN POLITICAL AND ECONOMIC INSTITUTE

SEC. 2. Section 89416 of the Education Code is amended to read:

89416. (a) The trustees may establish an African American Political and Economic Institute at California State University, Dominguez Hills, with nonpublic funds or with other funds that the California State University, Dominguez Hills, is authorized to expend for, and makes available for, this purpose.

(b) (1) It is the intent of the Legislature that the institute be funded by grants and contributions from private sources.

(2) No funds, or resources supported by funds, available to the California State University for support of its educational mission, shall be redirected to support the institute, including General Fund moneys, funds from the California State Lottery Education Fund, student fee revenues, and reimbursements and other income that otherwise would be available for support of the educational mission of the California State University.

(3) If any funds, or resources supported by funds, specified in paragraph (2) are utilized for the initial startup costs of the institute, those funds shall be fully reimbursed by the institute from funding subsequently received by the institute through grants and contributions from private sources.

(c) An advisory board to the institute may be established only if private funds have been donated to the institute in an amount deemed by the trustees to be sufficient to defray the costs of that board.

CHAPTER 202

An act to amend Sections 120508 and 120521, and to add Section 120509 to, the Public Utilities Code, relating to transportation.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 120508 of the Public Utilities Code is amended to read:

120508. (a) This article also applies to the employee relations of employees of a nonprofit entity which operates public mass transit services and which is solely owned by the board. For employee relations regarding these employees, the term ''board,'' as used in this article, means the board and the board of directors of the nonprofit entity as the joint employer of the employees.

(b) The board may, at any time in its sole discretion, abolish any nonprofit entity.

(c) Upon abolishing a nonprofit entity pursuant to subdivision (b), the board shall become the sole employer of the employees of the nonprofit entity and shall assume sole responsibility to observe all existing labor contracts established and maintained pursuant to this article.

(d) Except as may be agreed upon through the collective bargaining process, nothing in this section shall prohibit or limit the right of the board to contract with common carriers of persons operating under a franchise, license, or other agreement. Any provision in an existing collective bargaining agreement made applicable to the board in its capacity as a joint employer with a nonprofit entity pursuant to subdivision (a) or sole successor employer pursuant to subdivision (b) that is intended to prohibit or limit the right of a nonprofit entity to contract out covered bargaining unit services to another common carrier of persons shall not be binding upon the board with respect to any contract for services entered into, renewed, or extended by the board prior to January 1, 2004, and thereafter shall apply only to contracts for bargaining unit services covered by an existing collective bargaining agreement assumed by the board unless otherwise agreed upon through the collective bargaining process.

SEC. 2. Section 120509 is added to the Public Utilities Code, to read:

120509. (a) Upon the request of the board, as defined in Section 120508, with the consent of any labor organization acting as the exclusive representative of employees whose collective bargaining rights are subject to Section 120508, the board may enter into a contract

to enroll the collectively bargained employees as members of the Public Employees' Retirement System or another retirement system.

(b) A contract to enroll employees in the Public Employees' Retirement System shall be subject to the provisions of Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code.

(c) Employees transferred from any existing retirement system or pension plan to the Public Employees' Retirement System or any other retirement system by operation of this section shall receive benefits immediately after enrollment in, or transfer to, the system that are at least equal to, or greater than, the benefits the employees would have been entitled to immediately before enrollment in, or transfer to, the system.

SEC. 3. Section 120521 of the Public Utilities Code is amended to read:

120521. (a) Whenever the board acquires ownership of existing facilities from a privately or publicly owned corporation or public utility, either in proceedings in eminent domain or otherwise, and terminates the corporation or operates the facilities itself, that has a pension plan in operation, the members and beneficiaries of the pension plan shall continue to have the rights, privileges, benefits, obligations, and status with respect to the plan.

The board shall consider, and take into account, the outstanding obligations and liabilities of the corporation or of the publicly or privately owned public utility, as the case may be, by reason of the pension plan, and may negotiate an allowance in the purchase price of the corporation or the utility for the assumption of those obligations and liabilities when acquiring the corporation or the utility.

(b) Instead of maintaining an existing pension plan applicable to bargaining unit employees of an acquired facility, the board, with the consent of any exclusive collective bargaining representative of employees of an acquired facility whose rights are protected by Section 120520, may enroll the employees in, or transfer them to, the Public Employees' Retirement System or another retirement system.

(c) A contract to enroll employees in the Public Employees' Retirement System shall be subject to the provisions of Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code.

(d) Employees participating in an existing pension plan shall receive benefits immediately after enrollment in, or transfer to, the system that are at least equal to, or greater than, the benefits the employees would have been entitled to immediately before enrollment in, or transfer to, the system.

CHAPTER 203

An act to add Section 511.3 to the Business and Professions Code, to amend Section 1375.7 of the Health and Safety Code, to add Section 10178.4 to the Insurance Code, and to add Section 4610 to the Labor Code, relating to health care.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 511.3 is added to the Business and Professions Code, to read:

511.3. (a) When a contracting agent sells, leases, or transfers a health providers contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(b) For purposes of this section, the following terms shall have the following meanings:

(1) ''Contracting agent'' has the meaning set forth in paragraph (2) of subdivision (d) of Section 511.1.

(2) ''Payor'' has the meaning set forth in paragraph (3) of subdivision (d) of Section 511.1.

SEC. 2. Section 1375.7 of the Health and Safety Code is amended 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 the 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) (1) When a contracting agent sells, leases, or transfers a health providers contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(2) For purposes of this subdivision, the following terms shall have the following meanings:

(A) ''Contracting agent'' has the meaning set forth in paragraph (2) of subdivision (d) of Section 1395.6.

(B) ''Payor'' has the meaning set forth in paragraph (3) of subdivision (d) of Section 1395.6.

(d) Any contract provision that violates subdivision (b) or (c) shall be void, unlawful, and unenforceable.

(e) The department shall compile the information submitted by plans pursuant to subdivision (h) of Section 1367 into a report and submit the report to the Governor and the Legislature 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 plans 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 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. 3. Section 10178.4 is added to the Insurance Code, to read:

10178.4. (a) When a contracting agent sells, leases, or transfers a health providers contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(b) For purposes of this section, the following terms shall have the following meanings:

(1) ''Contracting agent'' has the meaning set forth in paragraph (2) of subdivision (d) of Section 10178.3.

(2) ''Payor'' has the meaning set forth in paragraph (3) of subdivision (d) of Section 10178.3.

SEC. 4. Section 4610 is added to the Labor Code, to read:

4610. (a) When a contracting agent sells, leases, or transfers a health providers contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(b) For purposes of this section, the following terms shall have the following meanings:

(1) ''Contracting agent'' has the meaning set forth in paragraph (2) of subdivision (d) of Section 4609.

(2) ''Payor'' has the meaning set forth in paragraph (3) of subdivision (d) of Section 4609.

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 204

An act to amend Section 15372.61 of the Government Code, relating to tourism.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

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

(a) California's tourism industry created 6,000 new jobs in 2002.

(b) According to the California Travel and Tourism Commission, the percentage of tourists to all the United States who chose California as their destination increased from 9.7 percent in 1998 to 11.6 percent in 2001, representing billions of dollars in additional tourist spending and hundreds of millions in tax revenue for the state.

(c) The wide range and diversity of historic, cultural, and ethnic resources and artifacts at California's historic sites represent a largely untapped opportunity to increase the state's promotion of these sites as desirable tourist destinations.

(d) In a December 1988 report entitled ''Five Views, An Ethnic Sites Survey For California,'' the Office of Historic Preservation within the Department of Parks and Recreation identified historic sites in communities across the state that represent the culture of the five largest ethnic minority groups in California during the first 50 years after the signing of the Treaty of Guadalupe Hidalgo in 1848, which led to California statehood.

(e) The ethnic sites identified in the 1988 report, in addition to other sites representing the state's rich ethnic, historic, and cultural diversity, are valuable resources for inclusion in California's tourism marketing strategies.

(f) The California Arts Council has funded a cultural tourism grant program for county arts councils to test locally designed marketing programs.

(g) The California Cultural Tourism Coalition, comprised of arts and tourism organizations, has coordinated efforts to promote the rich cultural diversity of the state.

(h) It is the intent of this act to expand California's current tourism marketing strategies to include tourist destinations representing the state's cultural and ethnic heritage, including, but not limited to, the arts and humanities, community folk life, museums, festivals, and historic assets.

SEC. 2. (a) No later than July 1, 2005, the California Travel and Tourism Commission shall make recommendations to the Governor, the Legislature, and the Secretary of Technology, Trade, and Commerce regarding an implementation strategy and timeline for revision of the annual marketing plan required by Section 15372.75 of the Government Code to include promotion of the state's artistic, cultural, historical, and ethnic resources with a goal of expanding the economic benefits of tourism to more communities, both urban and rural, in California.

(b) In preparing the report required by subdivision (a), the commission shall consult with other organizations, including, but not limited to, the California Arts Council, the Office of Historic Preservation, the Department of Parks and Recreation, the State Historic Resources Commission, the California Association of Museums, and the California Cultural and Historical Endowment in the State Library.

SEC. 3. Section 15372.61 of the Government Code is amended to read:

15372.61. The Legislature hereby finds and declares all of the following:

(a) Tourism is among California's biggest industries, contributing more than seventy-five billion dollars ($75,000,000,000) to the state economy and employing more than one million Californians in 2001.

(b) In order to retain and expand the tourism industry in California, it is necessary to market travel to and within California.

(c) State funding, while an important component of marketing, has been unable to generate sufficient funds to meet the threshold levels of funding necessary to reverse recent losses of California's tourism market share.

(d) In regard to the need for a cooperative partnership between business and industry:

(1) It is in the state's public interest and vital to the welfare of the state's economy to expand the market for, and develop, California tourism through a cooperative partnership funded in part by the state that will allow generic promotion and communication programs.

(2) The mechanism established by this chapter is intended to play a unique role in advancing the opportunity to expand tourism in California, and it is intended to increase the opportunity for tourism to

the benefit of the tourism industry and the consumers of the State of California.

(3) Programs implemented pursuant to this chapter are intended to complement the marketing activities of individual competitors within the tourism industry.

(4) While it is recognized that smaller businesses participating in the tourism market often lack the resources or market power to conduct these activities on their own, the programs are intended to be of benefit to businesses of all sizes.

(5) These programs are not intended to, and they do not, impede the right or ability of individual businesses to conduct activities designed to increase the tourism market generally or their own respective shares of the California tourism market, and nothing in the mechanism established by this chapter shall prevent an individual business or participant in the industry from seeking to expand its market through alternative or complementary means, or both.

(6) (A) An individual business's own advertising initiatives are typically designed to increase its share of the California tourism market rather than to increase or expand the overall size of that market.

(B) In contrast, generic promotion of California as a tourism destination is intended and designed to maintain or increase the overall demand for California tourism and to maintain or increase the size of that market, often by utilizing promotional methods and techniques that individual businesses typically are unable, or have no incentive, to employ.

(7) This chapter creates a mechanism to fund generic promotions that, pursuant to the required supervision and oversight of the secretary as specified in this chapter, further specific state governmental goals, as established by the Legislature, and result in a promotion program that produces nonideological and commercial communication that bears the characteristics of, and is entitled to all the privileges and protections of, government speech.

(8) The programs implemented pursuant to this chapter shall be carried out in an effective and coordinated manner that is designed to strengthen the tourism industry and the state's economy as a whole.

(9) Independent evaluation of the effectiveness of the programs will assist the Legislature in ensuring that the objectives of the programs as set out in this section are met.

(e) An industry-approved assessment provides a private-sector financing mechanism that, in partnership with state funding, will provide the amount of marketing necessary to increase tourism marketing expenditures by California.

(f) The goal of the assessments is to assess the least amount per business, in the least intrusive manner, spread across the greatest practical number of tourism industry segments.

(g) The commission shall target an amount determined to be sufficient to market effectively travel and tourism to and within the state.

(h) In the course of developing its written marketing plan pursuant to Section 15372.75, the commission shall, to the maximum extent feasible, do both of the following:

(1) Seek advice and recommendations from all segments of California's travel and tourism industry and from all geographic regions of the state.

(2) Harmonize, as appropriate, its marketing plan with the travel and tourism marketing activities and objectives of the various industry segments and geographic regions.

(i) The commission's marketing budget shall be spent principally to bring travelers and tourists into the state. No more than 15 percent of the commission's assessed funds in any year shall be spent to promote travel within California, unless approved by at least two-thirds of the commissioners.

CHAPTER 205

An act to add Chapter 10 (commencing with Section 108920) to Part 3 of Division 104 of the Health and Safety Code, relating to toxic substances.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Chapter 10 (commencing with Section 108920) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 10. POLYBROMINATED DIPHENYL ETHERS

108920. The Legislature finds and declares all of the following:

(a) Chemicals known as brominated flame retardants (BFRs) are widely used in California. To meet stringent fire standards, manufacturers add BFRs to a multitude of products, including plastic housing of electronics and computers, circuit boards, and the foam and textiles used in furniture.

(b) Polybrominated diphenyl ether (PBDE), which is a subcategory of BFRs, has increased fortyfold in human breast milk since the 1970s. Women in California carry more PBDEs in their bodies than anyone else studied in the world.

(c) PBDE has the potential to disrupt thyroid hormone balance and contribute to a variety of developmental deficits, including low intelligence and learning disabilities. PBDE may also have the potential to cause cancer.

(d) Substantial efforts to eliminate BFRs from products have been made throughout the world, including private and public sectors. These efforts have made available numerous alternatives safe to human health while meeting stringent fire standards. To meet market demand, it is in the interest of California manufacturers to eliminate the use of BFRs.

(e) In order to protect the public health and the environment, the Legislature believes it is necessary for the state to develop a precautionary approach regarding the production, use, storage, and disposal of products containing brominated fire retardants.

108921. For purposes of this chapter, the following definitions apply:

(a) ''OctaBDE'' means octabrominated diphenyl ether.

(b) ''PBDE'' means polybrominated diphenyl ether.

(c) ''PentaBDE'' means pentabrominated diphenyl ether.

108922. (a) On and after January 1, 2008, a person may not manufacture, process, or distribute in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE, by mass.

(b) The term ''process,'' as used in subdivision (a), does not include the processing of metallic recyclables containing pentaBDE or octaBDE that is conducted in compliance with all applicable federal, state, and local laws.

108923. On or before March 1, 2004, the Senate Office of Research shall submit to the President pro Tempore of the Senate and the Senate Environmental Quality Committee recommendations regarding the regulation of PBDE, including relevant findings and rulings by the European Union.

CHAPTER 206

An act to amend Section 12947 of the Water Code, relating to water.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 12947 of the Water Code is amended to read:

12947. (a) The Legislature finds and declares that the growing water needs of the state require the development of cost effective and efficient water supply technologies. Desalination technology is now feasible to help provide significant new water supplies from seawater, brackish water, and reclaimed water. Desalination technology can also provide an effective means of treating some types of contamination in water supplies. Desalination is consistent with both state water supply and efficiency policy goals, and joint state-federal environmental and water policy and principles promoted by the Cal-Fed Bay Delta Program.

(b) It is the policy of this state that desalination projects developed by or for public water entities be given the same opportunities for state assistance and funding as other water supply and reliability projects, and that desalination be consistent with all applicable environmental protection policies in the state.

(c) It is the intention of the Legislature that the department shall undertake to find economic and efficient methods of desalting saline water so that desalted water may be made available to help meet the growing water requirements of the state.

CHAPTER 207

An act to amend Section 512 of the Labor Code, relating to employment.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 512 of the Labor Code is amended to read:

512. (a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be

waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

(c) Subdivision (a) does not apply to an employee in the wholesale baking industry who is subject to an Industrial Welfare Commission Wage Order and who is covered by a valid collective bargaining agreement that provides for a 35-hour workweek consisting of five seven-hour days, payment of 1 and $^1/_2$ the regular rate of pay for time worked in excess of seven hours per day, and a rest period of not less than 10 minutes every two hours.

CHAPTER 208

An act to amend Section 33590 of the Education Code, relating to special education.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 33590 of the Education Code is amended to read:

33590. (a) There is in the state government the Advisory Commission on Special Education consisting of the following 17 members:

(1) A Member of the Assembly appointed by the Speaker of the Assembly.

(2) A Member of the Senate appointed by the Senate Committee on Rules.

(3) Three public members appointed by the Speaker of the Assembly, two of whom shall be individuals with a disability or parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(4) Three public members appointed by the Senate Committee on Rules, two of whom shall be individuals with a disability or parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(5) Four public members appointed by the Governor, two of whom shall be parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(6) Five public members appointed by the State Board of Education, upon the recommendation of the Superintendent of Public Instruction or the members of the State Board of Education, three of whom shall be parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition, and one of whom shall be a representative of the charter school community.

(b) (1) Each member shall be selected to ensure that the commission is representative of the state population and composed of individuals involved in, or concerned with, the education of children with disabilities, including parents of children with disabilities; individuals with disabilities; teachers; representatives of higher education that prepare special education and related services personnel; state and local education officials; administrators of programs for children with disabilities; representatives of other state agencies involved in the financing or delivery of related services to children with disabilities; representatives of private schools and public charter schools; at least one representative of a vocational community or business organization concerned with the provision of transition services to children with disabilities; and representatives from the juvenile and adult corrections agencies.

(2) Each member shall be knowledgeable about the wide variety of disabling conditions that require special programs in order to achieve the goal of providing an appropriate education to all eligible pupils.

(3) A majority of the members of the commission shall be individuals with disabilities or parents of children with disabilities.

(c) The commission shall select one of its members to be chairperson of the commission. In addition to other duties, the chairperson shall notify the appointing bodies when a vacancy occurs on the commission and of the type of representative listed in subdivision (b) who is required to be appointed to fill the vacancy.

(d) The term of each public member is four years.

(e) A public member may not serve more than two terms.

CHAPTER 209

An act to add Section 12302.21 to the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 12302.21 is added to the Welfare and Institutions Code, to read:

12302.21. (a) For purposes of providing cost-efficient workers' compensation coverage for in-home supportive services providers under this article, the department shall assume responsibility for providing workers' compensation coverage for employees of nonprofit agencies and proprietary agencies who provide in-home supportive services pursuant to contracts with counties. The workers' compensation coverage provided for these employees shall be provided on the same terms as provided to providers under Section 12302.2 and 12302.5.

(b) A county that has existing contracts with nonprofit agencies or proprietary agencies whose employees will be provided workers' compensation coverage by the department pursuant to subdivision (a), shall reduce the contract hourly rate by fifty cents ($0.50) per hour, effective on the date that the department implements this section.

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

SEC. 3. 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 maintain a steady workforce within the In-Home Supportive Services program, it is necessary that this act take effect immediately.

CHAPTER 210

An act to amend Section 12012.85 of, and to add Section 12012.90 to, the Government Code, and to amend Sections 4369, 4369.1, 4369.2, 4369.3, and 4369.4 of, and to repeal Section 4369.5 of, the Welfare and Institutions Code, relating to gambling, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 12012.85 of the Government Code is amended to read:

12012.85. There is hereby created in the State Treasury a fund called the ''Indian Gaming Special Distribution Fund'' for the receipt and deposit of moneys received by the state from Indian tribes pursuant to the terms of tribal-state gaming compacts. These moneys shall be available for appropriation by the Legislature for the following purposes:

(a) Grants, including any administrative costs, for programs designed to address gambling addiction.

(b) Grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming.

(c) Compensation for regulatory costs incurred by the State Gaming Agency and the Department of Justice in connection with the implementation and administration of tribal-state gaming compacts.

(d) Payment of shortfalls that may occur in the Indian Gaming Revenue Sharing Trust Fund. This shall be the priority use of moneys in the Indian Gaming Special Distribution Fund.

(e) Disbursements for the purpose of implementing the terms of tribal labor relations ordinances promulgated in accordance with the terms of tribal-state gaming compacts ratified pursuant to Chapter 874 of the Statutes of 1999. No more than 10 percent of the funds appropriated in the Budget Act of 2000 for implementation of tribal labor relations ordinances promulgated in accordance with those compacts shall be expended in the selection of the Tribal Labor Panel. The Department of Personnel Administration shall consult with and seek input from the parties prior to any expenditure for purposes of selecting the Tribal Labor Panel. Other than the cost of selecting the Tribal Labor Panel, there shall be no further disbursements until the Tribal Labor Panel, which is selected by mutual agreement of the parties, is in place.

(f) Any other purpose specified by law.

SEC. 2. Section 12012.90 is added to the Government Code, to read:

12012.90. (a) (1) For each fiscal year commencing with the 2002–03 fiscal year, the California Gambling Control Commission shall determine the aggregate amount of shortfalls in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution as determined below:

(A) For each eligible recipient Indian tribe that received money for all four quarters of the fiscal year, the difference between one million one hundred thousand dollars ($1,100,000) and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(B) For each eligible recipient Indian tribe that received moneys for less than four quarters of the fiscal year, the difference between two hundred seventy-five thousand dollars ($275,000) for each quarter in the fiscal year that a recipient Indian tribe was eligible to receive moneys and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(2) For purposes of this section, ''eligible recipient Indian tribe'' means a noncompact tribe, as defined in Section 4.3.2(a)(i) of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution.

(b) Upon authorizing the final payment for each fiscal year from the Indian Gaming Revenue Sharing Trust Fund, the California Gambling Control Commission shall report the amount of the deficiency determined pursuant to subdivision (a) to the committee in the Senate and Assembly that considers the State Budget.

(c) Upon a transfer of moneys from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and appropriation from the trust fund, the California Gambling Control Commission shall distribute the moneys without delay to eligible recipient Indian tribes for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

SEC. 3. Section 4369 of the Welfare and Institutions Code is amended to read:

4369. There is within the State Department of Alcohol and Drug Programs, the Office of Problem and Pathological Gambling.

SEC. 4. Section 4369.1 of the Welfare and Institutions Code is amended to read:

4369.1. As used in this chapter, the following definitions shall apply:

(a) ''Department'' means the State Department of Alcohol and Drug Programs.

(b) ''Office'' means the Office of Problem and Pathological Gambling.

(c) ''Pathological gambling disorder'' means a progressive mental disorder meeting the diagnostic criteria set forth by the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition.

(d) ''Problem gambling'' means participation in any form of gambling to the extent that it creates a negative consequence to the gambler, the gambler's family, place of employment, or community. This includes patterns of gambling and subsequent related behaviors that compromise, disrupt, or damage personal, family, educational, financial, or vocational interests. The problem gambler does not meet the diagnostic criteria for pathological gambling disorder.

(e) ''Problem gambling prevention programs'' means programs designed to reduce the prevalence of problem and pathological gambling among California residents. These programs shall include, but are not limited to, public education and awareness, outreach to high-risk populations, early identification and responsible gambling programs.

SEC. 5. Section 4369.2 of the Welfare and Institutions Code is amended to read:

4369.2. (a) The office shall develop a problem gambling prevention program, which shall be the first priority for funding appropriated to this office. The prevention program shall be based upon the allocation priorities established by the department and subject to funding being appropriated for the purpose of this subdivision, and shall consist of all of the following:

(1) A toll-free telephone service for immediate crisis management and containment with subsequent referral of problem and pathological gamblers to health providers who can provide treatment for gambling related problems and to self-help groups.

(2) Public awareness campaigns that focus on prevention and education among the general public including, for example, dissemination of youth oriented preventive literature, educational experiences, and public service announcements in the media.

(3) Empirically driven research programs focusing on epidemiology/prevalence, etiology/causation, and best practices in prevention and treatment.

(4) Training of health care professionals and educators, and training for law enforcement agencies and nonprofit organizations in the identification of problem gambling behavior and knowledge of referral services and treatment programs.

(5) Training of gambling industry personnel in identifying customers at risk for problem and pathological gambling and knowledge of referral and treatment services.

(b) The office shall develop a program to support treatment services for California residents with problem and pathological gambling issues. The program shall be based upon the allocation priorities established by the department and subject to funding being appropriated for the purposes of this subdivision. These priorities shall also be based on the best available existing state programs as well as on continuing research into best practices and on the needs of California. The treatment program shall consist of all of the following components:

(1) Treatment services for problem and pathological gamblers and directly involved family members. These treatment services will be created through partnerships with established health facilities that can provide treatment for gambling related problems, substance abuse facilities, and providers. State funded treatment may include, but is not limited to, the following: self-administered, home-based educational programs; outpatient treatment; residential treatment; and inpatient treatment when medically necessary.

(2) A funding allocation methodology that ensures treatment services are delivered efficiently and effectively to areas of the state most in need.

(3) Appropriate review and monitoring of treatment programs by the director of the office or a designated institution, including grant oversight and monitoring, standards for treatment, and outcome monitoring.

(4) Treatment efforts shall provide services that are relevant to the needs of a diverse multicultural population with attention to groups with unique needs, including female gamblers, underserved ethnic groups, the elderly, and the physically challenged.

(c) The office shall make information available as requested by the Governor and the Legislature with respect to the comprehensive program.

SEC. 6. Section 4369.3 of the Welfare and Institutions Code is amended to read:

4369.3. In designing and developing the overall program, the office shall do all of the following:

(a) Develop a statewide plan to address problem and pathological gambling.

(b) Adopt any regulations necessary to administer the program.

(c) Develop priorities for funding services and criteria for distributing program funds.

(d) Monitor the expenditures of state funds by agencies and organizations receiving program funding.

(e) Evaluate the effectiveness of services provided through the program.

(f) Notwithstanding any other provision of law, any contracts required to meet the requirements of this chapter are exempt from the

requirements contained in the Public Contract Code and the State Administrative Manual, and are exempt from the approval of the Department of General Services.

(g) The first and highest priority of the office with respect to the use of any funds appropriated for the purposes of this chapter shall be to carry out subdivision (a).

(h) Administrative costs for the program may not exceed 10 percent of the total funding budgeted for the program.

SEC. 7. Section 4369.4 of the Welfare and Institutions Code is amended to read:

4369.4. All state agencies, including, but not limited to, the California Horse Racing Board, the California Gambling Control Commission, the Department of Justice, and any other agency that regulates casino gambling or cardrooms within the state, and the Department of Corrections, the California Youth Authority, the State Departments of Health Services, Alcohol and Drug Programs, and Mental Health, and the California State Lottery, shall coordinate with the office to ensure that state programs take into account, as much as practicable, problem and pathological gamblers. The office shall also coordinate and work with other entities involved in gambling and the treatment of problem and pathological gamblers.

SEC. 8. Section 4369.5 of the Welfare and Institutions Code is repealed.

SEC. 9. The sum of fifty million five hundred sixty-eight thousand seven hundred eighty-seven dollars and ninety-nine cents ($50,568,787.99) is hereby transferred from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and is hereby appropriated from that fund to the California Gambling Control Commission for distribution to each eligible recipient Indian Tribe pursuant to subdivision (c) of Section 12012.90 of the Government Code.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that provisions designed to prevent problem and pathological gambling are enacted as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 211

An act to add Section 8315 to the Government Code, relating to racial discrimination.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

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

(a) Section 31 of Article I of the California Constitution provides that ''The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.'' Thus, that constitutional provision prohibits ''racial discrimination.''

(b) ''Racial discrimination'' is not defined. The lack of a legal definition for that term has led to confusion and conflict over implementation of Section 31 of Article I of the California Constitution.

(c) The United Nations General Assembly on December 21, 1965, adopted, and the United States on September 28, 1966, signed, the International Convention on the Elimination of All Forms of Racial Discrimination. That international convention includes a definition of the term ''racial discrimination.''

(d) On June 24, 1994, the United States Senate adopted the Resolution of Advice and Consent to Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, subject to specified reservations, understanding, declarations, and proviso.

(e) The United States Senate's advice and consent are subject to the understanding that the International Convention on the Elimination of All Forms of Racial Discrimination shall be implemented by the federal government to the extent that it exercises jurisdiction over the matters covered by the convention, and otherwise by the state and local governments.

(f) To clarify confusion over the terms ''racial discrimination'' and ''discrimination on the basis of race,'' those terms as used in Section 31 of Article I of the California Constitution should have the same meaning as that contained in paragraphs 1 and 4 of Article 1 of Part I of the International Convention on the Elimination of All Forms of Racial Discrimination.

SEC. 2. Section 8315 is added to the Government Code, to read:

8315. (a) ''Racial discrimination'' or ''discrimination on the basis of race'' for the purposes of Section 31 of Article I of the California Constitution shall have the same meaning as the term ''racial discrimination'' as defined and used in paragraphs 1 and 4 of Article 1 of Part I of the International Convention on the Elimination of All Forms of Racial Discrimination, as adopted by the United Nations General Assembly on December 21, 1965, signed on behalf of the United States on September 28, 1966, and ratified by the United States Senate as Treaty Number 95-18 by United States Senate on June 24, 1994. The language contained in the pertinent provisions of the International Convention on the Elimination of All Forms of Racial Discrimination is set forth in subdivision (b).

(b) The International Convention on the Elimination of All Forms of Racial Discrimination, provides in paragraphs 1 and 4 of Article 1 of Part I, respectively, as follows:

> ''1. In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.''

> ''4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.''

(c) To allow the state to assist the United States Government in fulfilling its international obligation to pursue a policy to eliminate all forms of racial discrimination pursuant to paragraph 1 of Article 2 of Part I of the International Convention on the Elimination of All Forms of Racial Discrimination, as set forth in subdivision (d), the following provisions shall be used to interpret and implement Section 31 of Article I of the California Constitution:

(1) Section 31 of Article I of the California Constitution, except as to its prohibition of granting preferential treatment, shall not be interpreted as granting an individual a private cause of action to challenge any

special measures undertaken for the purpose of securing adequate advancement of those racial groups requiring the protection pursuant to paragraph 1 of Article 2 of Part I of the International Convention on the Elimination of All Forms of Racial Discrimination. Special measures shall not be interpreted as preferential treatment.

(2) Section 31 of Article I of the California Constitution shall not be construed as requiring the government to prove racial discrimination before undertaking special measures for the purpose of securing adequate advancement of those racial minority groups needing that protection pursuant to paragraph 1 of Article 2 of Part I of the International Convention on the Elimination of All Forms of Racial Discrimination.

(d) Paragraph 1 of Article 2 of Part I of the International Convention on the Elimination of All Forms of Racial Discrimination provides as follows:

> ''1. States Parties (member nations that have adopted the International Convention on the Elimination of All Forms of Racial Discrimination) condemn racial discrimination to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting the understanding among all races, and to this end:
>
> ''(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.
>
> ''(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations.
>
> ''(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.
>
> ''(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.
>
> ''(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial

division.''

CHAPTER 212

An act to amend Section 22658 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 22658 of the Vehicle Code is amended to read:

22658. (a) Except as provided in Section 22658.2, the owner or person in lawful possession of any private property, within one hour of notifying, by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency, may cause the removal of a vehicle parked on the property to the nearest public garage under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The person causing removal of the vehicle, if the person knows or is able to ascertain from the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the place to which the vehicle has been removed. If the vehicle is stored in a public garage, a copy of the

notice shall be given to the proprietor of the garage. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal. If the person does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the person causing removal of the vehicle shall comply with the requirements of subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(c) This section does not limit or affect any right or remedy which the owner or person in lawful possession of private property may have by virtue of other provisions of law authorizing the removal of a vehicle parked upon private property.

(d) The owner of a vehicle removed from private property pursuant to subdivision (a) may recover for any damage to the vehicle resulting from any intentional or negligent act of any person causing the removal of, or removing, the vehicle.

(e) Any owner or person in lawful possession of any private property, or an ''association'' pursuant to Section 22658.2, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

(f) Any owner or person in lawful possession of any private property, or an ''association'' pursuant to Section 22658.2, causing the removal of a vehicle parked on that property shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle. Any towing company that removes a vehicle from private property with the authorization of the property owner or the property owner's agent shall not be held responsible in any situation relating to the validity of the removal. Any towing company that removes the vehicle under this section shall be responsible for (1) any damage to the vehicle in the transit and subsequent storage of the vehicle and (2) the removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

(g) Possession of any vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner of private property or that owner's agent pursuant to this section if the owner of the vehicle or the owner's agent returns to the vehicle before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(i) (1) A charge for towing or storage, or both, of a vehicle under this section is excessive if the charge is greater than that which would have been charged for towing or storage, or both, made at the request of a law enforcement agency under an agreement between the law enforcement agency and a towing company in the city or county in which is located the private property from which the vehicle was, or was attempted to be, removed.

(2) If a vehicle is released within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for any vehicle released the same day that it is stored.

(3) If a request to release a vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's storage charge may be required to be paid until after the first business day. A business day is any day in which the lienholder is open for business to the public for at least eight hours. If a request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar day basis for each day, or part thereof, that the vehicle is in storage.

(j) Any person who charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (i), is liable to the vehicle owner for four times the amount charged.

(k) Persons operating or in charge of any storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing and storage by a registered owner or the owner's agent claiming the vehicle. A person operating or in charge of any storage facility who refuses to accept a valid bank credit card is liable to the registered owner of the vehicle for four times the amount of the towing and storage charges, but not to exceed five hundred dollars ($500). In addition, persons operating or in charge of the storage facility shall have sufficient moneys on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies as described in subdivision (i).

(*l*) (1) A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining

written authorization from the property owner or lessee, or an employee or agent thereof, who shall be present at the time of removal. General authorization to remove or commence removal of a vehicle at the towing company's discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with any entrance to, or exit from, the private property.

(2) If a towing company removes a vehicle without written authorization and that vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with any entrance to, or exit from, the private property, the towing company shall take, prior to the removal of that vehicle, a photograph of the vehicle which clearly indicates that parking violation. The towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph to the owner or an agent of the owner, when that person claims the vehicle.

(3) Any towing company, or any affiliate of a towing company, which removes, or commences removal of, a vehicle from private property without first obtaining written authorization from the property owner or lessee, or an employee or agent thereof, who is present at the time of removal or commencement of the removal, except as permitted by paragraph (1), is liable to the owner of the vehicle for four times the amount of the towing and storage charges, in addition to any applicable criminal penalty, for a violation of paragraph (1).

(m) (1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle owners or their agents by, among other things, allowing payment by credit cards for towing and storage services, thereby expediting the recovery of towed vehicles and concurrently promoting the safety and welfare of the public.

(2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety of the general public by ensuring that a private property owner or lessee has provided his or her authorization for the removal of a vehicle from his or her property, thereby promoting the safety of those persons involved in ordering the removal of the vehicle as well as those persons removing, towing, and storing the vehicle.

CHAPTER 213

An act to add Section 89536.1 to the Education Code, relating to the California State University.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 89536.1 is added to the Education Code, to read:

89536.1. (a) If, after considering the conclusions of a medical examination or medical reports from an employee's physician or other pertinent information, the trustees determine that the employee is unable to perform the work of his or her present position or any other position in the state university system, and the employee is eligible for, and does not waive the right to, retire for disability, the trustees shall file an application for disability retirement on the employee's behalf. The trustees shall give the employee 15 days' written notice of their intention to file the application and a reasonable opportunity to respond prior to the filing of the application. However, the decision to file the application is final, and is not appealable to the State Personnel Board.

(b) Notwithstanding Section 21153 of the Government Code, upon filing the application for disability retirement, the trustees may remove the employee from his or her job and place the employee on involuntary leave status. The employee may use any accrued leave during the period of the involuntary leave. If the employee's leave credits and programs are exhausted, or if they do not provide benefits that are at least equal to the estimated retirement allowance, the trustees shall pay the employee an additional temporary disability allowance so that the employee receives payment that is equal to the estimated retirement allowance. The trustees shall continue to make all employer contributions to the employee's health insurance plan during the period of involuntary leave.

(c) If the application for disability retirement is subsequently granted, the retirement system shall reimburse the trustees for the temporary disability allowance, which shall be deducted from any back disability retirement benefits that are otherwise payable to the employee. If the application is denied, the trustees shall reinstate the employee to his or her position, with back salary and benefits, less any temporary disability allowance paid by the trustees. The trustees shall also restore any leave credits that the employee used during the period of the involuntary leave.

CHAPTER 214

An act to amend Section 2664 of the Labor Code, relating to employment.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 2664 of the Labor Code is amended to read:

2664. (a) Any article or material which is being manufactured in a home in violation of any provision of this part may be confiscated by the division. Articles or material confiscated pursuant to this section shall be placed in the custody of the division, which shall be responsible for destroying or disposing of them pursuant to regulations adopted under Section 2666, provided that the articles or material shall not enter the mainstream of commerce and shall not be offered for sale. The division shall, by certified mail, give notice of the confiscation and the procedure for appealing the confiscation to the person whose name and address are affixed to the article or material as provided in this part. The notice shall state that failure to file a written notice of appeal with the Labor Commissioner within 15 days after service of the notice of confiscation shall result in the destruction or disposition of the confiscated article or material.

(b) To contest the confiscation of articles or material, a person shall, within 15 days after service of the notice of confiscation, file a written notice of appeal with the Office of the Labor Commissioner at the address that appears on the notice of confiscation. Within 30 days after the timely filing of a notice of appeal, the Labor Commissioner shall hold a hearing on the appeal. The hearing shall be recorded. Based on the evidence presented at the hearing, the Labor Commissioner may affirm, modify, or dismiss the confiscation, and may order the return of none, some, or all of the confiscated articles or material, under terms that the Labor Commissioner may specify. The decision of the Labor Commissioner shall consist of findings of fact, legal analysis, and an order. The decision shall be served by first-class mail on all parties to the hearing, to the last known address of the parties on file with the Labor Commissioner, within 15 days of the conclusion of the hearing. Service shall be complete pursuant to Section 1013 of the Code of Civil Procedure. Judicial review shall be by petition for writ of mandate, filed with the appropriate court, within 45 days of service of the decision.

CHAPTER 215

An act to amend Sections 3501, 3507, and 3509 of the Government Code, relating to employer-employee relations.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. It is the intent of the Legislature that the amendments made to Sections 3501, 3507, and 3509 of the Government Code by this act are intended to be technical and clarifying of existing law.

SEC. 2. Section 3501 of the Government Code is amended to read:

3501. As used in this chapter:

(a) ''Employee organization'' means either of the following:

(1) Any organization that includes employees of a public agency and that has as one of its primary purposes representing those employees in their relations with that public agency.

(2) Any organization that seeks to represent employees of a public agency in their relations with that public agency.

(b) ''Recognized employee organization'' means an employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency.

(c) Except as otherwise provided in this subdivision, ''public agency'' means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, ''public agency'' does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California.

(d) ''Public employee'' means any person employed by any public agency, including employees of the fire departments and fire services of counties, cities, cities and counties, districts, and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this state.

(e) ''Mediation'' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(f) ''Board'' means the Public Employment Relations Board established pursuant to Section 3541.

SEC. 3. Section 3507 of the Government Code is amended to read:

3507. (a) A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a

recognized employee organization or organizations for the administration of employer-employee relations under this chapter.

The rules and regulations may include provisions for all of the following:

(1) Verifying that an organization does in fact represent employees of the public agency.

(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 agency or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 3502.

(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) Any other matters that are necessary to carry out the purposes of this chapter.

(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 public agency shall unreasonably withhold recognition of employee organizations.

(d) Employees and employee organizations shall be able to challenge a rule or regulation of a public agency as a violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive, of Section 3509.

SEC. 4. Section 3509 of the Government Code is amended to read:

3509. (a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule.

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or

3507.5 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(d) Notwithstanding subdivisions (a) to (c), inclusive, the employee relations commissions established by, and in effect for, the County of Los Angeles and the City of Los Angeles pursuant to Section 3507 shall have the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary, consistent with and pursuant to the policies of this chapter.

(e) This section shall not apply to employees designated as management employees under Section 3507.5.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a public agency if that rule or regulation is itself in violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive.

CHAPTER 216

An act to amend Sections 3574 and 3577 of the Government Code, relating to higher education labor relations.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 3574 of the Government Code is amended to read:

3574. The higher education employer shall grant a request for recognition filed pursuant to Section 3573 unless any of the following occurs:

(a) The employer reasonably doubts that the employee organization has majority support or reasonably doubts the appropriateness of the requested unit. In that case, the employer shall notify the board, which

shall conduct a representation election or verify proof of majority support pursuant to Section 3577 unless subdivision (c) or (d) applies.

(b) Another employee organization either files with the employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. If the claim is evidenced by the support of at least 30 percent of the members of the proposed unit, a question of representation shall be deemed to exist and the board shall conduct a representation election pursuant to Section 3577. Proof of that support shall be submitted to either the board or to a mutually agreed upon third party.

(c) There is currently in effect a lawful written memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, unless the request for recognition is filed not more than 120 days and not less than 90 days prior to the expiration date of the memorandum of understanding, provided that, if the memorandum of understanding has been in effect for three years or more, there shall be no restriction as to the time of filing the request. The existence of a memorandum of understanding, or current certification as the exclusive representative, shall be the proof of support necessary to trigger a representation election pursuant to Section 3577 to determine majority support when a request for recognition is made by another employee organization.

(d) Within the previous 12 months, either another employee organization has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, or a majority of the votes cast in a representation election held pursuant to Section 3577 were cast for ''no representation.''

SEC. 2. Section 3577 of the Government Code is amended to read:

3577. (a) (1) (A) Upon receipt of a petition filed pursuant to Section 3575, the board shall conduct inquiries and investigations, or hold hearings, as it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearings.

(B) If the board finds, on the basis of the evidence, that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 3574, it shall, in a case where the criteria of subparagraph (A) of paragraph (2) are not met, order that an election shall be conducted by secret ballot placing on the ballot all employee organizations evidencing support of at least 10 percent of the members of an appropriate unit, and it shall certify the results of the election on the basis of which ballot choice received a majority of the

valid votes cast. There shall be printed on the initial ballot the choice of ''no representation.''

(C) If, at any election, no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(2) (A) If the petitioning employee organization provides proof of support of more than 50 percent of the members of the appropriate unit, and no other employee organization has provided proof of support of at least 30 percent of the members of the appropriate unit, the employee organization providing the proof of support of more than 50 percent of the appropriate unit shall be certified by the board as the exclusive representative, as provided in subdivision (a) of Section 3563 and, where applicable, in Section 3579. The procedures for determining proof of support shall be defined by regulations of the board.

(B) In the event the petitioning employee organization does not provide proof of support of more than 50 percent of the members of the appropriate unit, or another employee organization provides proof of support of at least 30 percent of the members of the appropriate unit, then the procedures of paragraph (1) shall apply.

(C) The existence of a memorandum of understanding, or current certification as the exclusive representative, shall be the proof of support necessary to trigger a representation election pursuant to this section to determine majority support when a request for recognition is made by another employee organization.

(3) An employee organization shall, at its discretion, submit proof of support for the purposes of this section either to the board or to a mutually agreed-upon third party.

(b) No election shall be held and the petition shall be dismissed whenever either of the following occurs:

(1) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the petition, unless the petition is filed not more than 120 days and not less than 90 days prior to the expiration date of that memorandum. If the memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition.

(2) Within the previous 12 months, either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described

in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) were cast for ''no representation.''

CHAPTER 217

An act to amend Sections 1639, 1679, 1781.3, and 10234.93 of the Insurance Code, relating to insurance.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 1639 of the Insurance Code is amended to read:

1639. The following types of licenses under this chapter may be issued to nonresidents:

(a) A fire and casualty broker-agent if the nonresident is duly licensed to transact more than one class of insurance, other than life insurance, disability insurance, title insurance, or life and disability insurance, under the laws of the state, territory of the United States, or province of Canada where he or she maintains a resident license to transact insurance.

(b) A personal lines broker-agent if the nonresident is duly licensed to transact those lines of insurance described in Section 1625.5, under the laws of the state, territory of the United States, or province of Canada where the resident license is maintained.

(c) A life agent if the nonresident possesses a resident license in another state, territory of the United States, or province of Canada to transact life insurance or disability insurance.

(d) A nonresident life agent may be granted authority to transact variable contracts if he or she has been granted that authority by the state where the resident license is maintained.

(e) A surplus line broker and a special lines surplus broker if the nonresident holds that type of license in the state or territory of the United States where the resident license is maintained.

(f) A credit insurance agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(g) A rental car agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(h) A cargo shipper's agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(i) A limited lines license if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained. As used in this section, ''limited lines license'' means any authority granted by the resident state that restricts the authority of the license to less than the total authority granted by any of the types of licenses identified in this section.

SEC. 2. Section 1679 of the Insurance Code is amended to read:

1679. (a) A nonresident applicant for a license shall be subject to the same qualifying examination as is required of a resident applicant. The examination may be administered to an eligible nonresident applicant through the insurance authority of the state, territory of the United States, or province of Canada of his or her residence; provided, however, that the commissioner may, in his or her discretion, enter into a reciprocal arrangement with the officer having supervision of the insurance business in any other state, territory of the United States, or province of Canada whose qualification standards for the applicant to be examined are substantially the same as or in excess of those of this state, to accept, in lieu of the examination of an applicant residing therein, a certificate of the officer to the effect that the applicant is licensed in that state, territory of the United States, or province of Canada in a capacity similar to that for which a license is sought in this state and has complied with its qualification standards in respect to the following:

(1) Experience or training,

(2) Reasonable familiarity with the broad principles of insurance licensing and regulatory laws and with the provisions, terms and conditions of the insurance which the applicant proposes to transact, and

(3) A fair and general understanding of the obligations and duties of a holder of the license sought.

(b) The provisions of this section shall not apply to a nonresident applicant who maintains a license in a jurisdiction that grants reciprocity to California residents in accordance with Section 1638.5.

SEC. 3. Section 1781.3 of the Insurance Code is amended to read:

1781.3. (a) No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this state unless licensed as follows:

(1) If the reinsurance intermediary-broker maintains an office, (either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation) in this state, the reinsurance intermediary-broker shall be a licensed producer in this state.

(2) If the reinsurance intermediary-broker does not maintain an office in this state, the reinsurance intermediary-broker shall be a licensed producer in this state or another state having a law substantially similar to this chapter or shall be licensed in this state as a nonresident reinsurance intermediary.

(3) Unless denied licensure pursuant to subdivision (e), a nonresident person shall receive a reinsurance intermediary-broker license if all of the following requirements are met:

(A) The person is currently licensed and in good standing in the state, territory of the United States, or province of Canada where he or she is licensed as a resident reinsurance intermediary-broker.

(B) The person has submitted the proper request for licensure and has paid the fees required by paragraph (3) of subdivision (d).

(C) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the state, territory of the United States, or province of Canada where he or she is licensed as a resident, or submitted or transmitted to the commissioner a completed National Association of Insurance Commissioners Uniform Nonresident Application.

(D) The state, territory of the United States, or province of Canada where the person holds a resident reinsurance intermediary-broker license awards nonresident reinsurance intermediary-broker licenses to residents of this state on the same basis.

(b) No person, firm, association, or corporation shall act as a reinsurance intermediary-manager:

(1) For a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.

(2) In this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.

(3) In another state for a nondomestic admitted insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or in another state having a law substantially similar to this chapter or the person is licensed in this state as a nonresident reinsurance intermediary.

(4) Unless denied licensure pursuant to subdivision (e), a nonresident person shall receive a reinsurance intermediary-manager license if all of the following requirements are met:

(A) The person is currently licensed and in good standing in the state, territory of the United States, or province of Canada where he or she is licensed as a resident reinsurance intermediary-manager.

(B) The person has submitted the proper request for licensure and has paid the fees required by paragraph (3) of subdivision (d).

(C) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the state, territory of the United States, or province of Canada where he or she is licensed as a resident, or submitted or transmitted to the commissioner a completed National Association of Insurance Commissioners Uniform Nonresident Application.

(D) The state, territory of the United States, or province of Canada where the person holds a resident reinsurance intermediary-manager license awards nonresident reinsurance intermediary-manager licenses to residents of this state on the same basis.

(c) The commissioner may require a reinsurance intermediary-manager subject to subdivision (b) to do both of the following:

(1) File a fidelity bond issued by an admitted surety in an amount determined by the commissioner for the protection of the reinsurer.

(2) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(d) (1) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the applicable requirements of this chapter. This license, when issued to a firm or association, authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all these persons shall be named in the application and any supplements thereto. This license, when issued to a corporation, authorizes all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all these persons shall be named in the application and any supplements thereto.

(2) Any application for licensure as a reinsurance intermediary under this subdivision shall be made on a form prescribed by the commissioner and shall be accompanied by an application fee of two hundred fifty dollars ($250).

(e) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, any person named on the application, or any member, principal, officer, or director of the applicant, is determined by the commissioner not to be trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of a reinsurance intermediary license, or has failed to comply with any prerequisite for the issuance of such a license. Upon written request therefor, the commissioner shall furnish the applicant with a summary of the basis for refusal to issue a reinsurance intermediary license, which document shall not be subject to inspection as a public record.

(f) Licensed attorneys at law when acting in their professional capacity as such shall be exempt from this section.

(g) A reinsurance intermediary-manager, when acting in that capacity and in compliance with this chapter, shall not be required to separately comply with Article 5.4 (commencing with Section 769.80) of Chapter 1 (if added by Senate Bill 1039 of the 1991–92 Regular Session) in order to engage in conduct authorized by both this chapter and that article.

SEC. 4. Section 10234.93 of the Insurance Code is amended to read:

10234.93. (a) Every insurer of long-term care in California shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Submit to the commissioner within six months of the effective date of this act, a list of all agents or other insurer representatives authorized to solicit individual consumers for the sale of long-term care insurance. These submissions shall be updated at least semiannually.

(4) Provide the following training and require that each agent or other insurer representative authorized to solicit individual consumers for the sale of long-term care insurance shall satisfactorily complete the following training requirements that, for resident licensees, shall be part of, and not in addition to, the continuing education requirements in Section 1749.3:

(A) For licensees issued a license after January 1, 1992, eight hours of training in each of the first four 12-month periods beginning from the date of original license issuance and thereafter and eight hours of training prior to each license renewal.

(B) For licensees issued a license before January 1, 1992, eight hours of training prior to each license renewal.

(C) For nonresident licensees that are not otherwise subject to the continuing education requirements set forth in Section 1749.3, the evidence of training required by this section shall be filed with and approved by the commissioner as provided in subdivision (g) of Section 1749.4.

Licensees shall complete the initial training requirements of this section prior to being authorized to solicit individual consumers for the sale of long-term care insurance.

The training required by this section shall consist of topics related to long-term care services and long-term care insurance, including, but not limited to, California regulations and requirements, available long-term care services and facilities, changes or improvements in services or facilities, and alternatives to the purchase of private long-term care insurance. On or before July 1, 1998, the following additional training topics shall be required: differences in eligibility for benefits and tax

treatment between policies intended to be federally qualified and those not intended to be federally qualified, the effect of inflation in eroding the value of benefits and the importance of inflation protection, and NAIC consumer suitability standards and guidelines.

(5) Display prominently on page one of the policy or certificate and the outline of coverage: ''Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.''

(6) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.

(7) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subdivision.

(8) Every insurer shall provide to a prospective applicant, at the time of solicitation, written notice that the Health Insurance Counseling and Advocacy Program (HICAP) provides health insurance counseling to senior California residents free of charge. Every agent shall provide the name, address, and telephone number of the local HICAP program and the statewide HICAP number, 1-800-434-0222.

(9) Provide a copy of the long-term care insurance shoppers guide developed by the California Department of Aging to each prospective applicant prior to the presentation of an application or enrollment form for insurance.

(b) In addition to other unfair trade practices, including those identified in this code, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

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CHAPTER 218

An act to amend Section 8510 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 8510 of the Fish and Game Code is amended to read:

8510. It is unlawful to take or land krill of any species of euphausiid for any purpose except scientific research pursuant to regulations adopted by the commission. This section applies to krill in the waters of this state and up to 200 miles offshore, as long as federal law does not regulate the taking of krill.

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 219

An act to amend Section 12283 of the Elections Code, relating to elections.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 12283 of the Elections Code is amended to read:

12283. (a) The governing body having jurisdiction over school buildings or other public buildings may authorize the use of its buildings for polling places on any election day, and may also authorize the use of its buildings, without cost, for the storage of voting machines and other vote-tabulating devices. However, if a city or county elections official specifically requests the use of a school building for polling places on

an election day, the governing body having jurisdiction over the particular school building shall allow its use for the purpose requested. When allowing use of a school building for polling places, the governing body may, but is not required to, do any of the following:

(1) Continue school in session, provided that the governing body shall identify to the elections official making the request the specific areas of the school buildings not occupied by school activities that will be allowed for use as polling places.

(2) Designate the day for staff training and development.

(3) Close the school to students and nonclassified employees. Classified employees are those so defined by Section 41401 of the Education Code.

(b) An elections official making a request for use of a school building pursuant to subdivision (a) shall include in his or her request a list of the schools from which the use of a building for polling places is needed. Requests must be made within sufficient time in advance of the school year for the governing body to determine, on a school-by-school or districtwide basis, whether to keep the affected schools in session, designate the schoolday for staff training and development, or close the school to students and nonclassified employees before school calendars are printed and distributed to parents.

(c) Once a governing body has approved the use of a school building as a polling place, the governing body shall instruct the school administrator to provide the elections official a site with an adequate amount of space that will allow the precinct board to perform its duties in a manner that will not impede, interfere, or interrupt the normal process of voting and to make a telephone line for Internet access available for use by local elections officials, if requested by those officials.

(d) The school administrator shall also make a reasonable effort to ensure that the site is accessible to the handicapped.

CHAPTER 220

An act to add Section 14999.37 to the Government Code, relating to economic development.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 14999.37 is added to the Government Code, to read:

14999.37. (a) A local or state public official involved in the granting of a film permit may not require directly or indirectly a charitable donation or any other consideration in exchange for granting, or supporting the granting of, a film permit.

(b) Nothing in this section shall be construed to limit the authority of a local agency to assess impact fees as part of the film permitting process.

(c) A local or state public official who fails to comply with subdivision (a) shall be subject to a civil penalty of not less than one thousand dollars ($1,000) and not to exceed five thousand dollars ($5,000).

(d) The local district attorney, city attorney, or the Attorney General may bring an action pursuant to this section to collect the penalty imposed pursuant to subdivision (b).

CHAPTER 221

An act to add Sections 13551 and 13552 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 13551 is added to the Revenue and Taxation Code, to read:

13551. Every payment on the tax imposed by this part is applied, first, to any interest due on the tax, secondly, to any penalty imposed by this part, and then, if there is any balance, to the tax itself.

SEC. 2. Section 13552 is added to the Revenue and Taxation Code, to read:

13552. All interest and penalties provided in this chapter shall be treated and collected in the same manner as taxes.

CHAPTER 222

An act to amend Sections 260 and 15210 of, and to add Section 35103 to, the Vehicle Code, relating to vehicles.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 260 of the Vehicle Code is amended to read:

260. (a) A ''commercial vehicle'' is a motor vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(b) Passenger vehicles and house cars that are not used for the transportation of persons for hire, compensation, or profit are not commercial vehicles. This subdivision shall not apply to Chapter 4 (commencing with Section 6700) of Division 3.

(c) Any vanpool vehicle is not a commercial vehicle.

(d) The definition of a commercial vehicle in this section does not apply to Chapter 7 (commencing with Section 15200) of Division 6.

SEC. 2. Section 15210 of the Vehicle Code is amended to read:

15210. Notwithstanding any other provision of this code, as used in this chapter:

(a) ''Commercial driver's license'' means a driver's license issued by a state or other jurisdiction, in accordance with the standards contained in Part 383 of Title 49 of the Code of Federal Regulations, which authorizes the licenseholder to operate a class or type of commercial motor vehicle.

(b) (1) ''Commercial motor vehicle'' means any vehicle or combination of vehicles which requires a class A or class B license, or a class C license with an endorsement issued pursuant to paragraph (4) of subdivision (a) of Section 15278.

(2) ''Commercial motor vehicle'' does not include any of the following:

(A) A recreational vehicle, as defined in Section 18010 of the Health and Safety Code.

(B) Military equipment operated by noncivilian personnel, which is owned or operated by the United States Department of Defense, including the National Guard, as provided in Parts 383 and 391 of Title 49 of the Code of Federal Regulations.

(C) An implement of husbandry operated by a person who is not required to obtain a driver's license under this code.

(D) Vehicles operated by persons exempted pursuant to Section 25163 of the Health and Safety Code or a vehicle operated in an emergency situation at the direction of a peace officer pursuant to Section 2800.

(c) ''Controlled substance'' has the same meaning as defined by the federal Controlled Substances Act (21 U.S.C. Sec. 802).

(d) ''Disqualification'' means a prohibition against driving a commercial motor vehicle.

(e) ''Employer'' means any person, including the United States, a state, or political subdivision of a state, who owns or leases a commercial motor vehicle or assigns drivers to operate that vehicle. A person who employs himself or herself as a commercial vehicle driver is considered to be both an employer and a driver for purposes of this chapter.

(f) ''Felony'' means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(g) ''Gross combination weight rating'' means the value specified by the manufacturer as the maximum loaded weight of a combination or articulated vehicle. In the absence of a value specified by the manufacturer, gross vehicle weight rating will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed units and any load thereon.

(h) ''Gross vehicle weight rating'' means the value specified by the manufacturer as the maximum loaded weight of a single vehicle, as defined in Section 390.

(i) ''Serious traffic violation'' includes any of the following:

(1) Excessive speeding, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(2) Reckless driving, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(3) A violation of any state or local law involving the safe operation of a motor vehicle, arising in connection with a fatal traffic accident.

(4) Any other similar violation of a state or local law involving the safe operation of a motor vehicle, as defined pursuant to the Commercial Motor Vehicle Safety Act (Title XII of P.L. 99-570).

(5) Driving a commercial motor vehicle without a commercial driver's license.

(6) Driving a commercial motor vehicle without the driver having in his or her possession a commercial driver's license, unless the driver provides proof at the subsequent court appearance that he or she held a valid commercial driver's license on the date of the violation.

(7) Driving a commercial motor vehicle when the driver has not met the minimum testing standards for that vehicle as to the class or type of cargo the vehicle is carrying.

In the absence of a federal definition, existing definitions under this code shall apply.

(j) ''State'' means a state of the United States or the District of Columbia.

(k) ''Tank vehicle'' means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is permanently or temporarily attached to the vehicle or the chassis, including, but not limited to, cargo tanks and portable tanks, as defined in Part 171 of Title 49 of the Code of Federal Regulations. This definition does not include portable tanks having a rated capacity under 1,000 gallons.

SEC. 3. Section 35103 is added to the Vehicle Code to read:

35103. (a) A vehicle used for recreational purposes may exceed the maximum width established under Section 35100 if the excess width is attributable to an appurtenance, excluding a safety device, that does not exceed six inches beyond either sidewall of the vehicle.

(b) For the purposes of subdivision (a), an appurtenance is an integral part of a vehicle and includes, but is not limited to, awnings, grab handles, lighting equipment, cameras, and vents. An appurtenance may not be used as a load carrying device.

CHAPTER 223

An act to add Section 14557 to the Government Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 14557 is added to the Government Code, to read:

14557. (a) The Legislature finds and declares that the Governor has issued a proclamation pursuant to paragraph (1) of subdivision (d) of Section 1 of Article XIX B of the California Constitution declaring that the transfer of revenues from the General Fund to the Transportation Investment Fund during the 2003–04 fiscal year pursuant to paragraph (a) of Section 1 of Article XIX B would have a significant negative fiscal impact on the range of functions of government funded by the General Fund of the state.

(b) Pursuant to paragraph (2) of subdivision (d) of Section 1 of Article XIX B, the transfer of revenues from the General Fund to the Transportation Investment Fund that would otherwise be required under paragraph (a) of Section 1 of Article XIX B is hereby partially suspended for the 2003–04 fiscal year. The amount of the transfer for the 2003–04 fiscal year shall be two hundred eighty-nine million dollars ($289,000,000).

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 partially suspend the transfer of funds from the General Fund to the Transportation Investment Fund for the 2003–04 fiscal year pursuant to Section 1 of Article XIX B of the California Constitution as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 224

An act to add Section 14557.1 to the Government Code, and to amend Section 7102 of, and to add Section 7105 to, the Revenue and Taxation Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 14557.1 is added to the Government Code, to read:

14557.1. (a) Notwithstanding Sections 14556.5 and 14556.6, the money transferred from the Transportation Investment Fund to the Traffic Congestion Relief Fund during the 2003–04 fiscal year, which amount is two hundred eighty-nine million dollars ($289,000,000) pursuant to subdivision (b) of Section 14557 and paragraph (1) of subdivision (c) of Section 7104 of the Revenue and Taxation Code, shall be allocated as follows:

(1) One hundred eighty-nine million dollars ($189,000,000) is appropriated to the department, for expenditure as directed by the commission, for the Traffic Congestion Relief Program, of which up to thirty-one million dollars ($31,000,000) shall be available to the department for capital outlay support for projects in that program.

(2) One hundred million dollars ($100,000,000) shall be transferred to the State Highway Account, as partial repayment of loans made to the Traffic Congestion Relief Fund from the State Highway Account pursuant to paragraph (2) of subdivision (a) of Section 14556.8, for expenditure by the department as directed by the commission on transportation capital improvement projects included in the State Transportation Improvement Program.

(b) The transfer from the Transportation Investment Fund to the Traffic Congestion Relief Fund under subdivision (a) shall occur on a quarterly basis, with one quarter of total funds available for the fiscal year to be transferred each quarter.

SEC. 2. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, credits or refunds pursuant to Section 60202, and refunds pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(A) For the 2001–02 fiscal year, those transfers may not be more than eighty-one million dollars ($81,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds eighty-one million dollars ($81,000,000).

(B) For the 2002–03 fiscal year, those transfers may not be more than thirty-seven million dollars ($37,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds thirty-seven million dollars ($37,000,000).

(C) For the 2003–04 fiscal year, no transfers shall be made pursuant to this paragraph, except that if the amount to be otherwise transferred pursuant to this paragraph is in excess of eighty-seven million four hundred fifty thousand dollars ($87,450,000), then the amount of that excess shall be transferred.

(2) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate, resulting from increasing, after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be

transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)) and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(5) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be made quarterly.

(d) Notwithstanding the designation of the Public Transportation Account as a trust fund pursuant to subdivision (a), the Controller may use the Public Transportation Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

(e) The Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section.

SEC. 3. Section 7105 is added to the Revenue and Taxation Code, to read:

7105. (a) The Transportation Deferred Investment Fund is hereby created in the State Treasury.

(b) On or before June 30, 2009, the Controller shall transfer an amount from the General Fund to the Transportation Deferred Investment Fund that is equal to the amount that was not transferred from

the General Fund to the Transportation Investment Fund for the 2003–04 fiscal year because of the partial suspension of the transfer pursuant to Section 14557 of the Government Code, plus interest calculated at the Pooled Money Investment Account rate relative to the amounts that would otherwise have been available for the transportation programs described in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104. The money in the Transportation Deferred Investment Fund is continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(c) The Controller, from money in the Transportation Deferred Investment Fund, shall make transfers and apportionments of those funds in the same manner and amounts that would have been made in the 2003-04 fiscal year from the Transportation Investment Fund pursuant to Section 7104, as that section read on January 1, 2003, if the transfer of funds from the General Fund to the Transportation Investment Fund had not been partially suspended for the 2003–04 fiscal year pursuant to Section 14557 of the Government Code. However, in making those transfers and apportionments, the Controller shall take into account and deduct therefrom any transfers and apportionments that were made from the Transportation Investment Fund in the 2003–04 fiscal year from funds made available pursuant to subdivision (b) of Section 14557 of the Government Code. It is the intent of the Legislature that upon completion of the transfer of funds pursuant to subdivision (b) from the General Fund to the Transportation Deferred Investment Fund that each of the transportation programs that was to have been funded during fiscal year 2003–04 from the Transportation Investment Fund pursuant to Section 7104 of the Revenue and Taxation Code shall have received the amount of funding that the program would have received in the absence of the suspension of the transfer pursuant to Section 14557 of the Government Code.

(d) The interest that is to be deposited in the Transportation Deferred Investment Fund pursuant to subdivision (b) shall be allocated proportionately to each program element in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104, based on the amount that each program did not receive in fiscal year 2003-04 due to suspension of the transfer pursuant to Section 14557 of the Government Code.

(e) The Legislature finds and declares that continued investment in transportation is essential for the California economy. That investment reduces traffic congestion, assists in economic development, improves the condition of local streets and roads, and provides high-quality public transportation.

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 adequate funding for the operation of state government, it is necessary that this act take effect immediately.

CHAPTER 225

An act to amend Sections 4055, 8810, 17400, and 17432 of, to add Section 17522.5 to, and to add and repeal Section 17560 of, the Family Code, to amend Sections 63049.1 and 63049.4 of the Government Code, to amend Sections 1522, 1523.1, 1523.2, 1534, 1568.05, 1569.185, 1569.33, 1596.803, 1596.871, 1597.09, 1597.55a, 1597.55b, 11970.4, and 127885 of, and to add Sections 11970.35 and 104558 to, the Health and Safety Code, to amend Sections 11001.5, 19271, and 19271.6 of the Revenue and Taxation Code, to amend Sections 1611, 1611.5, and 10533 of, and to add Sections 14003 and 14004 to, the Unemployment Insurance Code, and to amend Sections 9544, 9546, 9547, 11462, 11463, 11466.2, 11466.35, 12201, 18226, 19355.5, 19356, 19356.6, and 19356.7 of, to amend, repeal, and add Section 10088 of, and to add Sections 10544.2 and 18901.6 to, the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 4055 of the Family Code is amended to read:

4055. (a) The statewide uniform guideline for determining child support orders is as follows: CS = K [HN — (H%) (TN)].

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

Total Net Disposable Income Per Month	K
$0–800	0.20 + TN/16,000
$801–6,666	0.25
$6,667–10,000	0.10 + 1,000/TN
Over $10,000	0.12 + 800/TN

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is $1,000, K = (1 + 0.20) × 0.25, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is $1,000, K = (2 — 0.80) × 0.25, or 0.30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children. H% shall not be set as described above if the moving party in a default proceeding is the noncustodial parent or if the party who fails to appear after being duly

noticed is the custodial parent. A statement by the party who is not in default as to the percentage of time that the noncustodial parent has primary physical responsibility for the children shall be deemed sufficient evidence.

(7) In all cases in which the net disposable income per month of the obligor is less than one thousand dollars ($1,000), there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is 1,000 minus the obligor's net disposable income per month, and the denominator of which is 1,000.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases in which there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

(c) If a court uses a computer to calculate the child support order, the computer program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low-income adjustment is applied, the computer program shall not provide the amount of the low-income adjustment. Instead, the computer program shall ask the user whether or not to apply the low-income adjustment, and if answered affirmatively, the computer program shall provide the range of the adjustment permitted by paragraph (7) of subdivision (b).

SEC. 2. Section 8810 of the Family Code is amended to read:

8810. (a) Except as otherwise provided in this section, whenever a petition is filed under this chapter for the adoption of a child, the petitioner shall pay a nonrefundable fee to the department or to the delegated county adoption agency for the cost of investigating the adoption petition. Payment shall be made to the department or delegated

county adoption agency, within 40 days of the filing of the petition, for an amount as follows:

(1) For petitions filed on and after July 1, 2003, two thousand nine hundred fifty dollars ($2,950).

(2) For petitioners who have a valid preplacement evaluation at the time of filing a petition pursuant to Section 8811.5, seven hundred seventy-five dollars ($775) for a postplacement evaluation pursuant to Sections 8806 and 8807.

(b) Revenues produced by fees collected by the department pursuant to subdivision (a) shall be used, when appropriated by the Legislature, to fund only the direct costs associated with the state program for independent adoptions. Revenues produced by fees collected by the delegated county adoption agency pursuant to subdivision (a) shall be used by the county to fund the county program for independent adoptions.

(c) The department or delegated county adoption agency may only waive, or reduce the fee when the prospective adoptive parents are low income, according to the income limits published by the Department of Housing and Community Development, and making the required payment would be detrimental to the welfare of an adopted child. The department shall develop additional guidelines to determine the financial criteria for waiver or reduction of the fee under this subdivision.

SEC. 3. 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 to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1181.11 of the Labor 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 has 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 otherwise limits 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, any of the following:

(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.

(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 limits 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 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 10 percent or more.

(d) Application for relief under this section shall be filed together with an income and expense declaration or simplified financial statement or other information concerning income 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 party seeking to set aside the order.

(f) A motion for relief under this section shall be filed within one year of the first collection of money by the local child support agency or the obligee. The one-year time period shall run from the date that the local child support agency receives the first collection.

(g) Within three months from the date the local child support agency receives the first collection for any order established using presumed income, the local child support agency shall check all appropriate sources for income information, and if income information exists, the local child support agency shall make a determination whether the order qualifies for set aside under this section. If the order qualifies for set aside, the local child support agency shall bring a motion for relief under this section.

(h) 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.

(i) 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.

(j) The Judicial Council shall review and modify any relevant forms for purposes of this section. Any modifications to the forms shall be effective July 1, 2004. Prior to the implementation of any modified Judicial Council forms, the local child support agency or custodial parent may file any request to set aside a default judgment under this section using Judicial Council Form FL-680 entitled ''Notice of Motion (Governmental)'' and form FL-684 entitled ''Request for Order and Supporting Declaration (Governmental).''

SEC. 5. Section 17522.5 is added to the Family Code, to read:

17522.5. (a) Notwithstanding Section 8112 of the Commercial Code and Section 700.130 of the Code of Civil Procedure, when a local child support agency pursuant to Section 17522, or the Franchise Tax Board pursuant to Section 18670 or 18670.5 of the Revenue and Taxation Code and Section 17500, issues a levy upon, or requires by notice any employer, person, political officer or entity, or depository institution to withhold the amount of, as applicable, a financial asset for the purpose of collecting a delinquent child support obligation, the

person, financial institution, or securities intermediary (as defined in Section 8102 of the Commercial Code) in possession or control of the financial asset shall liquidate the financial asset in a commercially reasonable manner within 20 days of the issuance of the levy or the notice to withhold. Within five days of liquidation, the person, financial institution, or securities intermediary shall transfer to the local child support agency or the Franchise Tax Board, as applicable, the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

(b) If the value of the financial assets exceed the total amount of support due, the obligor may, within 10 days after the service of the levy or notice to withhold upon the person, financial institution, or securities intermediary, instruct the person, financial institution, or securities intermediary who possesses or controls the financial assets as to which financial assets are to be sold to satisfy the obligation for delinquent support. If the obligor does not provide instructions for liquidation, the person, financial institution, or securities intermediary who possesses or controls the financial assets shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the obligation for delinquent child support, and any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.

(c) For the purposes of this section, a financial asset shall include, but not be limited to, an uncertificated security, certificated security, or security entitlement (as defined in Section 8102 of the Commercial Code), security (as defined in Section 8103 of the Commercial Code), or a securities account (as defined in Section 8501 of the Commercial Code).

SEC. 6. Section 17560 is added to the Family Code, to read:

17560. (a) The department shall create a program establishing an arrears collection enhancement process pursuant to which the department may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code. The program shall operate uniformly across California and shall take into consideration the needs of the children subject to the child support order and the obligor's ability to pay.

(b) If the obligor owes current child support, the offer in compromise shall require the obligor to be in compliance with the current support order for a set period of time before any arrears and interest accrued thereon may be compromised.

(c) Absent a finding of good cause, any offer in compromise entered into pursuant to this section shall be rescinded, all compromised

liabilities shall be reestablished notwithstanding any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise may be refunded, if either of the following occurs:

(1) The department or local child support agency determines that the obligor did any of the following acts regarding the offer in compromise:

(A) Concealed from the department or local child support agency any income, assets, or other property belonging to the obligor or any reasonably anticipated receipt of income, assets, or other property.

(B) Intentionally received, withheld, destroyed, mutilated, or falsified any information, document, or record, or intentionally made any false statement, relating to the financial conditions of the obligor.

(2) The obligor fails to comply with any of the terms and conditions of the offer in compromise.

(d) Pursuant to subdivision (k) of Section 17406, in no event may the administrator, director, or director's designee within the department, accept an offer in compromise of any child support arrears owed directly to the custodial party unless that party consents to the offer in compromise in writing and participates in the agreement. Prior to giving consent, the custodial party shall be provided with a clear written explanation of the rights with respect to child support arrears owed to the custodial party and the compromise thereof.

(e) Subject to the requirements of this section, the director may delegate to the administrator of a local child support agency the authority to compromise an amount of child support arrears that does not exceed five thousand dollars ($5,000). Only the director or his or her designee may compromise child support arrears in excess of five thousand dollars ($5,000).

(f) For an amount to be compromised under this section, the following conditions shall exist:

(1) The administrator, director or director's designee within the department determines that acceptance of an offer in compromise is in the best interest of the state and that the compromise amount equals or exceeds what the state can expect to collect for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the absence of the compromise, based on the obligor's ability to pay.

(2) Any other terms and conditions that the director establishes that may include, but may not be limited to, paying current support in a timely manner, making lump sum payments, and paying arrears in exchange for compromise of interest owed.

(3) The obligor shall provide evidence of income and assets, including, but not limited to, wage stubs, tax returns, and bank statements and establish all of the following:

(A) That the amount set forth in the offer in compromise of arrears owed is the most that can be expected to be paid or collected from the obligor's present assets or income.

(B) That the obligor does not have reasonable prospects of acquiring increased income or assets that would enable the obligor to satisfy a greater amount of the child support arrears than the amount offered, within a reasonable period of time.

(C) That the obligor has not withheld payment of child support in anticipation of the offers in compromise program.

(g) A determination by the administrator, director or the director's designee within the department that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of child support arrears shall be final and not subject to the provisions of Chapter 5 (commencing with Section 17800) of Division 17, or subject to judicial review.

(h) Any offer in compromise entered into pursuant to this section shall be filed with the appropriate court. The local child support agency shall notify the court if the compromise is rescinded pursuant to subdivision (c).

(i) Any compromise of child support arrears pursuant to this section shall maximize to the greatest extent possible the state's share of the federal performance incentives paid pursuant to the Child Support Performance and Incentive Act of 1998 and shall comply with federal law.

(j) The department shall ensure uniform application of this section across the state.

(k) The department shall consult with the Franchise Tax Board in the development of the program established pursuant to this section.

(*l*) The department shall report to the Legislature on the results of the program established pursuant to this section no later than June 30, 2006.

(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 6.5. Section 63049.1 of the Government Code is amended to read:

63049.1. (a) Subject to subdivision (c), the bank is hereby authorized to sell for, and on behalf of, the state, solely as its agent, all or any portion of the tobacco assets to a special purpose trust which is hereby established as a not-for-profit corporation solely for that purpose and for the purposes necessarily incidental thereto, and to enter into one or more sales agreements with the special purpose trust as and on the terms it deems appropriate, which may include covenants of, and binding on, the state necessary to establish and maintain the security of the bonds and exemption of interest on the bonds from federal income

taxation. The principal office of the special purpose trust shall be located in Sacramento County. The articles of incorporation of the special purpose trust shall be prepared and filed, on behalf of the state, with the Secretary of State by the bank, and the five voting members of the State Public Works Board shall serve ex officio as the directors of the special purpose trust. Directors of the special purpose trust shall not be subject to personal liability for carrying out the powers and duties conferred by this article. The special purpose trust shall be treated as a separate legal entity with its separate corporate purpose as described in this article, and the assets, liabilities, and funds of the special purpose trust shall be neither consolidated nor commingled with those of the bank or the State Public Works Board.

The special purpose trust is hereby authorized to issue bonds, including, but not limited to, refunding bonds, on the terms it shall determine, and do all things contemplated by, and authorized by, this division with respect to the bank, and enjoy all rights, privileges, and immunities the bank enjoys pursuant to this division, or as authorized by Section 5140 of the Corporations Code with respect to public benefit nonprofit corporations, or as necessary or appropriate in connection with the issuance of bonds, and may enter into agreements with any public or private entity and pledge the tobacco assets that it purchased as collateral and security for its bonds. The pledge of any of these assets and of any revenues, reserves, and earnings pledged in connection therewith shall be valid and binding in accordance with its terms from the time the pledge is made and amounts so pledged and thereafter received shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. The special purpose trust, and its assets and income, and bonds issued by the special purpose trust, and their transfer and the income therefrom, shall be exempt from all taxation by the state and by its political subdivisions.

(b) (1) In order to assist the special purpose trust in financing or refinancing the purchase of tobacco assets by enhancing the security of the bonds issued for that purpose, upon request by the Director of Finance, the bank may include in, or add to, the sales agreement with the special purpose trust a covenant, binding on the state, to the effect that the Governor shall each year request from the Legislature an appropriation line item in the annual Budget Act, in a manner described further in this subdivision, from the General Fund for allocation by the Department of Finance to the special purpose trust in an amount equal to the debt service and operating expenses scheduled, or, in the case of bonds bearing variable rates of interest, estimated, to become due during the next succeeding fiscal year on the bonds, including refunding bonds, issued by the special purpose trust to finance or refinance the purchase of tobacco assets pursuant to that sales agreement.

(2) The appropriation referred to in paragraph (1) may provide that it will have an initial zero funding amount, but shall contain provisions authorizing the Director of Finance to make allocations in augmentation of the appropriation, without further legislative approval, from the General Fund, up to the amount certified by the special purpose trust to be necessary to cover the difference, if negative, between the amount of tobacco assets received by the special purpose trust pursuant to the sales agreement by the end of April of any calendar year, plus any other amounts available in the debt service reserve fund or other fund held by the trustee for the bonds, less the amount of debt service on the bonds and operating expenses scheduled, or in the case of bonds bearing variable rates of interest, estimated, to become due during the next succeeding 12 months.

(3) Any amounts appropriated as provided in this subdivision shall be disbursed to the trustee for the bonds for the purpose of paying the debt service on the bonds and operating expenses specified in the certificate of the special purpose trust. Notwithstanding any other provision of this article, the Legislature shall not be obligated by this subdivision or any covenant made in a sales agreement, or any other provision of law, to appropriate or otherwise make funds available to pay debt service on the bonds or operating expenses.

(c) Based upon the terms of the sale agreements and bonds as established by the special purpose trust pursuant to subdivision (a) or (b), tobacco assets may be sold pursuant to this article, whether at one time or from time-to-time, only in an amount or amounts necessary to provide the state with up to five billion dollars ($5,000,000,000) exclusive of capitalized interest on the bonds and any costs incurred by the bank or the special purpose trust in implementing this article, including, but not limited to, the cost of financing one or more reserve funds, any credit enhancements, costs incurred in the issuance of bonds, and operating expenses. The net proceeds of sale of any tobacco assets by the bank shall be deposited in the General Fund. The use and application of the proceeds of any sale of tobacco assets or bonds shall not in any way affect the legality or validity of that sale or those bonds.

SEC. 6.7. Section 63049.4 of the Government Code is amended to read:

63049.4. (a) On and after the effective date of each sale of tobacco assets, the state shall have no right, title, or interest in or to the tobacco assets sold, and the tobacco assets so sold shall be property of the special purpose trust and not of the state, the bank board, the State Public Works Board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the tobacco assets sold by the state pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ,

including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, the State Public Works Board, or the bank.

On or before the effective date of any sale, the state, acting through its Attorney General, upon direction of the bank, shall notify the California escrow agent under the Master Settlement Agreement and the California escrow agreement that the sold tobacco assets have been sold to the special purpose trust and irrevocably instruct the California escrow agent that, as of the applicable effective date, the tobacco assets sold are to be paid directly to the trustee for the applicable bonds of the special purpose trust. The state pledges to and agrees with the holders of any bonds issued by the special purpose trust that it will not amend the Master Settlement Agreement, the memorandum of understanding, or the California escrow agreement, or take any other action, in any way that would alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust pursuant to this article, nor in any way impair the rights and remedies of bondholders or the security for their bonds until those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged. The state further pledges and agrees that it shall enforce its rights to collect all moneys due from the participating tobacco products manufacturers under the Master Settlement Agreement and, in addition, shall diligently enforce the model statute as contemplated in the Master Settlement Agreement (Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code) against all tobacco product manufacturers selling tobacco products in the state and that are not signatories to the Master Settlement Agreement, in each case in the manner and to the extent necessary in the judgment of the Attorney General to collect all moneys to which the state is entitled under the Master Settlement Agreement. The special purpose trust may include these pledges and undertakings in its bonds. Notwithstanding these pledges and undertaking by the state, the Attorney General may in his or her discretion enforce any and all provisions of the Master Settlement Agreement, without limitation.

(b) Bonds issued pursuant to this article shall not be deemed to constitute a debt of the state or a pledge of the faith or credit of the state, and all bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the state or of any political subdivision thereof, other than the special purpose trust, is or shall be pledged to the payment of the principal of or the interest on the bonds.

(c) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(d) The special purpose trust and the bank shall be treated as public agencies for purposes of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

(e) Notwithstanding any other provision of law, the exclusive means to obtain review of a superior court judgment entered in an action brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any bonds to be issued, or any other contracts to be entered into, or any other matters authorized by this article, shall be by petition to the Supreme Court for writ of review. Any such petition shall be filed within 15 days following the notice of entry of the superior court judgment, and no extension of that period may be allowed. If no petition is filed within the time allowed therefore, or the petition is denied, with or without opinion, the decision of the superior court shall be final and enforceable as provided in subdivision (a) of Section 870 of the Code of Civil Procedure. In any case in which a petition has been filed within the time allowed therefor, the Supreme Court shall make any orders, as it may deem proper in the circumstances. If no answering party appeared in the superior court action, the only issues that may be raised in the petition are those related to the jurisdiction of the superior court.

SEC. 7. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04 fiscal year, no fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in

subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1).

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption shall not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensee who come into the home to visit for a length of time no longer than defined by the department in

regulations, provided that the adult friends and family of the licensee are not left alone with the foster children.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, foster parent, or both are also present.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal

Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services or sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the State Department of Social Services, as required by that section, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a

minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and

shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice or send them by electronic transmission in a manner approved by the State Department of Social Services. A foster family home licensee or foster family agency shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence. A licensee's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to

justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an

employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in the district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1999. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1999, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee for the costs of processing a set of live-scan fingerprints.

(2) The Department of Justice shall provide a report to the Senate and Assembly fiscal committees, the Assembly Human Services Committee, and to the Senate Health and Human Services Committee by April 15, 1999, regarding the completion of backlogged criminal record clearance requests for all facilities licensed by the State Department of Social Services and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (1).

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 8. 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		$1,250	$1,250
Other Community Care Facilities, Except Adult Day Programs	1–6	$375	$375
	7–15	$563	$563
	16–49	$750	$750
	50+	$938	$938
Adult Day Programs	1–15	$75	$75
	16–30	$125	$125
	31–60	$250	$250
	61–75	$313	$313
	76–90	$375	$375
	91–120	$500	$500
	121+	$625	$625

(2) Foster family homes shall be exempt from the fees imposed pursuant to this subdivision.

(3) Foster family agencies and their suboffices shall be annually assessed eighty dollars ($80) for each home certified by the agency or suboffice.

(4) 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. 9. Section 1523.2 of the Health and Safety Code is amended to read:

1523.2. (a) Beginning with the 1996–97 fiscal year, there is hereby created in the State Treasury the Technical Assistance Fund, from which money, upon appropriation by the Legislature in the Budget Act, shall be expended by the department to fund the creation and maintenance of new licensing staff positions to provide technical assistance to licensees paying fees pursuant to those sections specified in subdivision (b).

(b) In each fiscal year for fees collected by the department pursuant to Sections 1523.1, 1569.185, and 1596.803, that, in the aggregate, after deducting for administrative costs, total more than six million dollars ($6,000,000), the excess of six million dollars ($6,000,000) shall be expended by the department to fund the creation and maintenance of new licensing staff positions to provide technical assistance to licensees paying fees pursuant to the above specified sections.

(c) Notwithstanding subdivision (b), when revenues in the Technical Assistance Fund reach three million two hundred thirty-seven thousand dollars ($3,237,000) any fees collected over that amount shall remain in the General Fund.

SEC. 10. Section 1534 of the Health and Safety Code is amended to read:

1534. (a) (1) Every licensed community care facility shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

(i) When a license is on probation.

(ii) When the terms of agreement in a facility compliance plan require an annual evaluation.

(iii) When an accusation against a licensee is pending.

(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.

(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.

(B) The department shall conduct annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A). These unannounced visits shall be conducted based on a random sampling methodology developed by the department. If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by an additional 10 percent of the facilities not subject to an evaluation under subparagraph (A). The department may request additional resources to increase the random sample by 10 percent.

(C) Under no circumstance shall the department visit a community care facility less often than once every five years.

(D) In order to facilitate direct contact with group home clients, the department may interview children who are clients of group homes at any public agency or private agency at which the client may be found, including, but not limited to, a juvenile hall, recreation or vocational program, or a nonpublic school. The department shall respect the rights of the child while conducting the interview, including informing the child that he or she has the right not to be interviewed and the right to have another adult present during the interview.

(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located.

(b) (1) Nothing in this section shall limit the authority of the department to inspect or evaluate a licensed foster family agency, a certified family home, or any aspect of a program where a licensed community care facility is certifying compliance with licensing requirements.

(2) Upon a finding of noncompliance by the department, the department may require a foster family agency to deny or revoke the certificate of approval of a certified family home, or take other action the department may deem necessary for the protection of a child placed with the family home. The family home shall be afforded the due process provided pursuant to this chapter.

(3) If the department requires a foster family agency to deny or revoke the certificate of approval, the department shall serve an order of denial or revocation upon the certified or prospective foster parent and foster

family agency that shall notify the certified or prospective foster parent of the basis of the department's action and of the certified or prospective foster parent's right to a hearing.

(4) Within 15 days after the department serves an order of denial or revocation, the certified or prospective foster parent may file a written appeal of the department's decision with the department. The department's action shall be final if the certified or prospective foster parent does not file a written appeal within 15 days after the department serves the denial or revocation order.

(5) The department's order of the denial or revocation of the certificate of approval shall remain in effect until the hearing is completed and the director has made a final determination on the merits.

(6) A certified or prospective foster parent who files a written appeal of the department's order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The certified or prospective foster parent shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(7) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. In all proceedings conducted in accordance with this section the standard of proof shall be by a preponderance of the evidence.

(8) The department may institute or continue a disciplinary proceeding against a certified or prospective foster parent upon any ground provided by this section, enter an order denying or revoking the certificate of approval, or otherwise take disciplinary action against the certified or prospective foster parent, notwithstanding any resignation, withdrawal of application, surrender of the certificate of approval, or denial or revocation of the certificate of approval by the foster family agency.

(9) A foster family agency's failure to comply with the department's order to deny or revoke the certificate of employment by placing or retaining children in care shall be grounds for disciplining the licensee pursuant to Section 1550.

SEC. 11. Section 1568.05 of the Health and Safety Code is amended to read:

1568.05. (a) An annual fee adjusted by capacity shall be charged by the department for a license to operate a residential care facility or for processing any application therefor and, thereafter, shall be charged on each anniversary of the effective date of the license. The fee shall be assessed as follows:

Capacity	Annual Fee
1–6	$250 plus $10 per bed
7–15	$313 plus $10 per bed
16–25	$375 plus $10 per bed
26–50	$438 plus $10 per bed

(b) No local governmental entity 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.

(c) All fees collected pursuant to subdivision (a) shall be deposited in the Residential Care Facilities for Persons with Chronic, Life-Threatening Illness Fund, which is hereby created in the State Treasury. Moneys in the fund, upon an appropriation made in the annual Budget Act, shall be available to the department for the purposes specified in subdivision (d).

(d) The fund may be used for the purpose of financing a portion of the license application processing costs. In addition, the fund may be utilized by the department to finance postlicensure inspections pursuant to Section 1568.07, to allow increased monitoring of facilities with a history of noncompliance with this chapter and regulations adopted pursuant to this chapter, and other administrative activities in support of the licensing program administered pursuant to this chapter. The revenues collected in the fund shall be used in addition to any other moneys appropriated for the purposes specified in this subdivision.

(e) Fees established pursuant to this section shall not be effective unless licensing fees are established for all adult residential facilities licensed by the department.

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

(g) Failure to pay required license fees, including the finding of insufficient funds to cover bona fide business checks submitted for this purpose, may constitute grounds for denial or revocation of a license.

SEC. 12. Section 1569.185 of the Health and Safety Code is amended to read:

1569.185. (a) A fee adjusted by facility and capacity shall be charged by the department for the issuance of an original license to operate a residential care facility for the elderly 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 amount of 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

Capacity	Original Application	Annual
1–6	$375	$375
7–15	$563	$563
16–49	$750	$750
50+	$938	$938

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 when appropriated, shall be utilized by the department, to allow 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. The revenues collected shall be used in addition to any other funds appropriated 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, as approved by the Department 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 residential care facility for the elderly 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 this purpose, shall constitute grounds for denial of a license or special permit or forfeiture of a license or special permit.

SEC. 13. Section 1569.33 of the Health and Safety Code is amended to read:

1569.33. (a) Every licensed residential care facility for the elderly shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(b) The department shall conduct an annual unannounced visit of a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

(3) When an accusation against a licensee is pending.

(4) When a facility requires an annual visit as a condition of receiving federal financial participation.

(5) In order to verify that a person who has been ordered out of the facility for the elderly by the department is no longer at the facility.

(c) The department shall conduct annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subdivision (b). These unannounced visits shall be conducted based on a random sampling methodology developed by the department. If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of facilities not subject to an evaluation under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstance shall the department visit a residential care facility for the elderly less often than once every five years.

(e) The department shall notify the residential care facility for the elderly in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(f) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located.

(g) As a part of the department's annual evaluation process, the department shall review the plan of operation, training logs, and marketing materials of any residential care facility for the elderly that advertises or promotes special care, special programming, or a special environment for persons with dementia to monitor compliance with Sections 1569.626 and 1569.627.

SEC. 14. Section 1596.803 of the Health and Safety Code is amended to read:

1596.803. (a) (1) A fee adjusted by facility and capacity shall be charged by the department for the issuance of an original license to operate a child day care facility or for processing any application therefor. After initial licensure, the fee shall be charged by the department annually. The amount of 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 Fee
Family Day Care	1–8	$50	$50
	9–14	$100	$100
Day Care Centers	1–30	$200	$200
	31–60	$400	$400
	61–75	$500	$500
	76–90	$600	$600
	91–120	$800	$800
	121+	$1,000	$1,000

(2)No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home licensed under this act.

(b) (1) The revenues collected from licensing fees pursuant to this section, when appropriated, shall be utilized by the department to allow increased assistance and monitoring of facilities with a history of noncompliance with licensing laws and regulations pursuant to this act, and other administrative activities in support of the licensing program. The revenues collected shall be used in addition to any other funds appropriated 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, as approved by the Department 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 child day care facility may use a bona fide business or personal 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 or personal checks submitted for this purpose, shall constitute grounds for denial of a license or special permit or forfeiture of a license or special permit.

(e) The department shall assess the fees on an annual basis and may set time periods to spread the licensee's due dates throughout the year. The fees shall be considered delinquent 30 days after the billing date.

SEC. 15. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) (1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04 fiscal year, no fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(i) A volunteer providing time-limited specialized services shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.

(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of

the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.

(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.

(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.

(v) Any person similar to those described in this subdivision, as defined by the department in regulations.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal record clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprints shall then be submitted to the State Department of Social Services for processing. Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties

in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence,

notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime

against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred.

(i) Amendments to this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 16. Section 1597.09 of the Health and Safety Code is amended to read:

1597.09. (a) Each licensed child day care center shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(b) The department shall conduct an annual unannounced visit to a licensed child day care center under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a child day care center by the department is no longer at the facility.

(c) The department shall conduct an annual unannounced visit to no less than 10 percent of facilities not subject to an evaluation under subdivision (b). These unannounced visits shall be conducted based on a random sampling methodology developed by the department. If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of facilities not subject to an evaluation under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstance shall the department visit a licensed child day care center less often than once every five years.

SEC. 17. Section 1597.55a of the Health and Safety Code is amended to read:

1597.55a. Every family day care home shall be subject to unannounced visits by the department as provided in this section. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(a) The department shall conduct an announced site visit prior to the initial licensing of the applicant.

(b) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a family day care home by the department is no longer at the facility.

(c) The department shall conduct annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subdivision (b). These unannounced visits shall be conducted based on a random sampling methodology developed by the department. If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of the facilities not subject to an evaluation under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstance shall the department visit a licensed family day care home less often than once every five years.

(e) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(f) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853.

(g) An unannounced site visit shall adhere to both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(h) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 18. Section 1597.55b of the Health and Safety Code is amended to read:

1597.55b. No site visits, unannounced visits, or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the licensing of the applicant.

(b) A public agency under contract with the department may make spot checks if they do not result in any cost to the state. However, spot checks shall not be required by the department.

(c) An unannounced site visit to all licensed family day care homes shall be made annually and as often as necessary to ensure compliance.

(d) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint.

(e) The department shall annually make unannounced spot visits on 20 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, and shall be in addition to the visits required by subdivisions (b) and (c).

(f) An unannounced site visit shall comply with both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(g) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 18.5. Section 11970.35 is added to the Health and Safety Code, to read:

11970.35. (a) Any funding provided for this chapter in the 2003 Budget Act, and in subsequent fiscal years, shall be allocated, to counties that participated, in this program during the 2002–03 fiscal year in accordance with this section.

(b) A county may use funds, described in subdivision (a) to support drug courts serving adult offenders, subject to both of the following conditions:

(1) Any increased funding provided in the 2003 Budget Act that exceeds the funding level provided in the 2002 Budget Act shall be used exclusively to support drug courts that accept only defendants who have been convicted of felonies and placed on formal probation, conditioned on their participation in the drug court program. These drug courts shall operate in a manner that is consistent with the guidelines developed by the Drug Court Partnership Executive Steering Committee and approved by the department.

(2) The amount of funds identified in the county's most recent local plan, as of May 20, 2003, as supporting drug courts described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 11970.2 shall be used exclusively to support drug courts that accept only defendants who have been convicted of felonies and placed on formal probation, conditioned on their participation in the drug court program or for preplea drug courts that accept only felons who may not be eligible for another treatment program, such as a program pursuant to Section 1210.1 of the Penal Code, if they fail to complete drug court. Both preplea and postplea courts shall operate in a manner that is consistent with guidelines developed by the Drug Court Partnership Executive Steering Committee and approved by the department.

(c) The department shall transfer funds on a reimbursement basis to counties whose local plans are approved. No reimbursement shall be made unless and until the drug court is in full and complete compliance with all the data reporting requirements of the department and the Judicial Council.

(d) If funds are withheld for failure to comply with the requirements of this article for a period of more than six months, that county's funding shall be terminated and the remaining funds shall be redistributed to the remaining participating counties for the purpose of increasing the

number of defendants participating in each drug court program. Redistributed funds may only be used to fund drug courts serving adult offenders subject to the requirements of subdivision (b).

(e) A county may choose to decline funding to support drug courts serving adult offenders pursuant to subparagraph (A) of paragraph (2) of subdivision (a) of Section 11970.2, and may receive funding only for drug courts described in subparagraphs (B), (C), (D), and (E) of paragraph (2) of subdivision (a) of Section 11970.2, in the amount identified in the county's most recent local plan, as of May 20, 2003, as supporting those drug courts. Any funds not allocated as a result of a county selecting the option under this subdivision shall be reallocated to counties willing to receive and expend the funds under the conditions specified in subdivision (a).

SEC. 19. Section 11970.4 of the Health and Safety Code is amended to read:

11970.4. This article shall remain operative 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. 19.3. Section 104558 is added to the Health and Safety Code, to read:

104558. (a) In order to secure and protect the moneys to be received as a result of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556, in civil litigation under any legal theory involving a signatory, successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement that has not been brought to trial as of the effective date of this section, the amount of the required undertaking, bond, or equivalent surety to be furnished during the pendency of an appeal or any discretionary appellate review of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of the appellate review shall be set in accordance with applicable laws and rules of the court, except that the total undertaking, bond, or equivalent surety that is required per case, whether individual, aggregate, or otherwise, of all appellants, collectively, may not exceed 100 percent of the verdict or one hundred fifty million dollars ($150,000,000) whichever is lesser, regardless of the value of the judgment.

(b) Nothing in this section or any other provision of law shall be construed to eliminate the discretion of the court, for good cause shown, to set the undertaking or bond on appeal in an amount lower than that otherwise established by law.

(c) If the appellee proves by a preponderance of the evidence that a party bringing an appeal or seeking a stay of execution of judgment and for whom the undertaking has been limited under this section, is intentionally dissipating or diverting assets outside the ordinary course

of its business for the purpose of avoiding ultimate payment of the judgment, any limitation under subdivision (a) may be rescinded and the court may order any actions necessary to prevent dissipation or diversion of the assets.

SEC. 19.5. Section 127885 of the Health and Safety Code is amended to read:

127885. The office shall maintain a Health Professions Career Opportunity Program that shall include, but not be limited to, all of the following:

(a) Producing and disseminating a series of publications aimed at informing and motivating minority and disadvantaged students to pursue health professional careers.

(b) Conducting a conference series aimed at informing those students of opportunities in health professional training and mechanisms of successfully preparing to enter the training.

(c) Providing support and technical assistance to health professional schools and colleges as well as to student and community organizations active in minority health professional development.

(d) Conducting relevant manpower information and data analysis in the field of minority and disadvantaged health professional development.

(e) Providing necessary consultation, recruitment, and counseling through other means.

(f) Supporting and encouraging minority health professionals in training to practice in health professional shortage areas of California.

(g) This section shall be implemented only to the extent that funds are appropriated for its purposes in the annual Budget Act or other statute.

SEC. 20. Section 11001.5 of the Revenue and Taxation Code is amended to read:

11001.5. (a) (1) Notwithstanding Section 11001, and except as provided in paragraph 2 and in subdivision (b), 24.33 percent of the moneys collected by the department under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(2) For the period beginning on and after July 1, 2003, and ending on July 1, 2004, the Controller shall deposit an amount equal to 28.07 percent of the moneys collected by the department under this part in the State Treasury to the credit of the Local Revenue Fund. All other moneys collected by the department under this part shall continue to be deposited

to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(b) Notwithstanding Section 11001, net funds collected as a result of procedures developed for greater compliance with vehicle license fee laws in order to increase the amount of vehicle license fee collections shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Vehicle License Fee Collection Account of the Local Revenue Fund as established pursuant to Section 17600 of the Welfare and Institutions Code. All revenues in excess of fourteen million dollars ($14,000,000) in any fiscal year shall be allocated to cities and counties as specified in subdivisions (c) and (d) of Section 11005.

(c) Notwithstanding Section 11001, 25.72 percent of the moneys collected by the department on or after August 1, 1991, and before August 1, 1992, under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(d) This section shall cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal of either of the following:

(1) The allocation of funds from the Vehicle License Fee Account or the Vehicle License Fee Growth Account of the Local Revenue Fund established during the 1991–92 Regular Session is in violation of Section 15 of Article XI of the California Constitution.

(2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.

SEC. 20.5. Section 19271 of the Revenue and Taxation Code is amended to read:

19271. (a) (1) For purposes of this article:

(A) ''Child support delinquency'' means a delinquency defined in subdivision (c) of Section 17500 of the Family Code.

(B) ''Earnings'' may include the items described in Section 5206 of the Family Code.

(2) At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board

shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement.

(b) (1) (A) Except as otherwise provided in subparagraph (B), when a delinquency is transferred to the Franchise Tax Board pursuant to subdivision (c) of Section 17500 of the Family Code, the amount of the child support delinquency shall be collected by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability. Notwithstanding Sections 5208 and 5246 of the Family Code, the issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes is hereby authorized until the California Child Support Automation System is operational in all 58 California counties. When the California Child Support Automation System is operational in all 58 counties, any levy or other withholding of earnings of an employee by the Franchise Tax Board to collect an amount pursuant to this section shall be made in accordance with Sections 5208 and 5246 of the Family Code. Any other law providing for the collection of a delinquent personal income tax liability shall apply to any child support delinquency transferred to the Franchise Tax Board in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

(B) When a delinquency is transferred to the Franchise Tax Board, or at any time thereafter, if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, any involuntary collection action to collect the delinquent personal income tax liability, until the child support delinquency is paid in full. At any time, however, the Franchise Tax Board may mail any other notice to the taxpayer for voluntary payment of the delinquent personal income tax liability if the Franchise Tax Board determines that collection of the delinquent personal income tax liability will not jeopardize collection of the child support delinquency. However, the Franchise Tax Board may engage in the collection of a delinquent personal income tax liability if the obligor has entered into a payment agreement for the child support delinquency and is in compliance with that agreement, and the Franchise Tax Board determines that collection of the delinquent personal income tax liability would not jeopardize payments under the child support payment agreement.

(C) For purposes of subparagraph (B):

(i) ''Involuntary collection action'' includes those actions authorized by Section 18670, 18670.5, 18671, or 19264, by Article 3 (commencing with Section 19231), or by Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(ii) ''Delinquent personal income tax liability'' means any taxes, additions to tax, penalties, interest, fees, or other related amounts due and payable under Part 10 (commencing with Section 17001) or this part.

(iii) ''Voluntary payment'' means any payment made by obligated parents in response to any notice for voluntary payment mailed by the Franchise Tax Board.

(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the Franchise Tax Board in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent. A transferred child support delinquency shall be final and due and payable to the State of California upon written notice to the obligated parent by the Franchise Tax Board.

(3) For purposes of administering this article:

(A) This chapter and Chapter 7 (commencing with Section 19501) shall apply, except as otherwise provided by this article.

(B) Any services, information, or enforcement remedies available to a local child support agency or the Title IV-D agency in collecting child support delinquencies or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support delinquencies under this article, including, but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19548. However, in no event shall the Franchise Tax Board take any additional enforcement remedies if a court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the parent is in compliance with that order, unless the Franchise Tax Board is specifically authorized to take an enforcement action to collect a child support delinquency by another provision of law.

(C) A request by the Franchise Tax Board for information from a financial institution shall be treated in the same manner and to the same extent as a request for information from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code for purposes of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code (relating to governmental access to financial records), notwithstanding any other provision of law which is inconsistent or contrary to this paragraph.

(D) The amount to be withheld in an order and levy to collect child support delinquencies under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure is the amount required to be withheld pursuant to an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(E) Nothing in this article shall be construed to modify the tax intercept provisions of Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) Interest on the delinquency shall be computed pursuant to Section 685.010 of the Code of Civil Procedure.

(d) (1) In no event shall a collection under this article be construed to be a payment of income taxes imposed under this part.

(2) In the event an obligated parent overpays a liability imposed under this part, the overpayment shall not be credited against any delinquency collected pursuant to this article. In the event an overpayment of a liability imposed under this part is offset and distributed to a local child support agency pursuant to Sections 12419.3 and 12419.5 of the Government Code or Section 708.740 of the Code of Civil Procedure, and thereby reduces the amount of the referred delinquency, the local child support agency shall immediately notify the Franchise Tax Board of that reduction, unless the Franchise Tax Board directs otherwise.

(e) (1) The Franchise Tax Board shall administer this article, in conjunction with regulations adopted by the Department of Child Support Services in consultation with the Franchise Tax Board, including those set forth in Section 17306 of the Family Code.

(2) The Franchise Tax Board may transfer to or allow a local child support agency to retain a child support delinquency for a specified purpose for collection where the Franchise Tax Board determines, pursuant to regulations established by the Department of Child Support Services, that the transfer or retention of the delinquency for the purpose so specified will enhance the collectibility of the delinquency. The Franchise Tax Board, with the concurrence of the Department of Child Support Services, shall establish a process whereby a local child support agency may request and shall be allowed to withdraw, rescind, or otherwise recall the transfer of an account that has been transferred to the Franchise Tax Board.

(3) If an obligor is disabled, meets the SSI resource test, and is receiving Supplemental Security Income/State Supplementary 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 Supplemental Security Income/State Supplementary Payments (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 child support delinquency shall not be referred to the Franchise Tax Board for collection, and if referred, shall be withdrawn, rescinded, or otherwise recalled from the Franchise Tax Board by the local child support agency. The Franchise Tax Board shall not take any collection action, or if the agency has already taken collection action, shall cease collection actions in the case of a disabled obligor when the delinquency is withdrawn, rescinded, or otherwise recalled by the local child support agency in accordance with the process established as described in paragraph (2).

(f) Except as otherwise provided in this article, any child support delinquency transferred to the Franchise Tax Board pursuant to this article shall be treated as a child support delinquency for all other purposes, and any collection action by the local child support agency or the Franchise Tax Board with respect to any delinquency referred pursuant to this article shall have the same priority against attachment, execution, assignment, or other collection action as is provided by any other provision of state law.

(g) Except as otherwise specifically provided in subparagraph (B) of paragraph (1) of subdivision (b), the child support collection activities authorized by this article shall not interfere with the primary mission of the Franchise Tax Board to fairly and efficiently administer the Revenue and Taxation Code for which it is responsible.

(h) Information disclosed to the Franchise Tax Board shall be considered information that may be disclosed by the Franchise Tax Board under the authority of Section 19548 and may be disseminated by the Franchise Tax Board accordingly for the purposes specified in Sections 17505 and 17506 of the Family Code (in accordance with, and to the extent permitted by, Section 17514 of the Family Code and any other state or federal law).

(i) A local child support agency may not apply to the Department of Child Support Services for an exemption from the transfer of responsibilities and authorities to the Franchise Tax Board under the Family Code or participation under Section 19271.6.

(j) Except in those cases meeting the specified circumstances described in the regulations or in accordance with the processes prescribed in paragraphs (2) and (3) of subdivision (e), a local child support agency shall not request or be allowed to retain, withdraw, rescind, or otherwise recall the transfer of a child support delinquency transferred to the Franchise Tax Board.

SEC. 21. Section 19271.6 of the Revenue and Taxation Code is amended to read:

19271.6. (a) The Franchise Tax Board, through a cooperative agreement with the Department of Child Support Services, and in coordination with financial institutions doing business in this state, shall operate a Financial Institution Match System utilizing automated data exchanges to the maximum extent feasible. The Financial Institution Match System shall be implemented pursuant to guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board. These guidelines shall include a structure by which financial institutions, or their designated data processing agents, shall receive from the Franchise Tax Board the file or files of past-due support obligors compiled in accordance with subdivision (c), that the institution shall match with its own list of accountholders to identify past-due support obligor accountholders at the institution. To the extent allowed by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the guidelines shall include an option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers, so that the Franchise Tax Board shall match that list with the file or files of past-due support obligors compiled in accordance with subdivision (c).

(b) The Financial Institution Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information provided pursuant to this section for any purpose other than the enforcement and collection of a child support delinquency, as set forth in Section 19271, shall be a violation of Section 19542.

(c) (1) Each county shall compile a file of support obligors with judgments and orders that are being enforced by local child support agencies pursuant to Section 17400 of the Family Code, and who are past due in the payment of their support obligations. The file shall be compiled, updated, and forwarded to the Franchise Tax Board, in accordance with the guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board.

(2) The Department of Child Support Services, shall compile a file of obligors with support arrearages from requests made by other states for administrative enforcement in interstate cases, in accordance with federal requirements (42 U.S.C. Sec. 666(a)(14)). This file shall be compiled and forwarded to the Franchise Tax Board in accordance with the guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board. The file shall include, to the extent possible, the obligor's address.

(d) To effectuate the Financial Institution Match System, financial institutions subject to this section shall do all of the following:

(1) Provide to the Franchise Tax Board on a quarterly basis the name, record address and other addresses, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at the institution and who owes past-due support, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number.

(2) Except as provided in subdivision (j), in response to a notice or order to withhold issued by the Franchise Tax Board, withhold from any accounts of the obligor the amount of any past-due support stated on the notice or order and transmit the amount to the Franchise Tax Board in accordance with Section 18670 or 18670.5.

(e) Unless otherwise required by applicable law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder, that the name, address, social security number, or other taxpayer identification number or other identifying information of that person has been received from or furnished to the Franchise Tax Board.

(f) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the Franchise Tax Board as required by this section.

(2) Failing to disclose to a depositor or accountholder that the name, address, social security number, or other taxpayer identification number or other identifying information of that person was included in the data exchange with the Franchise Tax Board required by this section.

(3) Withholding or transmitting any assets in response to a notice or order to withhold issued by the Franchise Tax Board as a result of the data exchange. This paragraph shall not preclude any liability that may result if the financial institution does not comply with subdivision (b) of Section 18674.

(4) Any other action taken in good faith to comply with the requirements of this section.

(g) Information required to be submitted to the Franchise Tax Board pursuant to this section shall only be used by the Franchise Tax Board to collect past-due support pursuant to Section 19271. If the Franchise Tax Board has issued an earnings withholding order and the condition described in subparagraph (C) of paragraph (1) of subdivision (i) exists with respect to the obligor, the Franchise Tax Board shall not use the information it receives under this section to collect the past-due support from that obligor.

(1) With respect to files compiled under paragraph (1) of subdivision (c), the Franchise Tax Board shall forward to the counties, in accordance with guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board, information obtained from the financial institutions pursuant to this section. No county shall use this information for directly levying on any account. Each county shall keep the information confidential as provided by Section 17212 of the Family Code.

(2) With respect to files compiled under paragraph (2) of subdivision (c), the amount collected by the Franchise Tax Board shall be deposited and distributed to the referring state in accordance with Section 19272.

(h) For those noncustodial parents owing past-due support for which there is a match under paragraph (1) of subdivision (d), the amount past due as indicated on the file or files compiled pursuant to subdivision (c) at the time of the match shall be a delinquency under this article for the purposes of the Franchise Tax Board taking any collection action pursuant to Section 18670 or 18670.5.

(i) A child support delinquency need not be referred to the Franchise Tax Board for collection if a jurisdiction outside this state is enforcing the support order.

(j) (1) Each county shall notify the Franchise Tax Board upon the occurrence of the circumstances described in the following subparagraphs with respect to an obligor of past-due support:

(A) A court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the obligor is in compliance with that order.

(B) An earnings assignment order or an order/notice to withhold income that includes an amount for past-due support has been served on the obligated parent's employer and earnings are being withheld pursuant to the earnings assignment order or an order/notice to withhold income.

(C) At least 50 percent of the obligated parent's earnings are being withheld for support.

(2) Notwithstanding Section 704.070 of the Code of Civil Procedure, if any of the conditions set forth in paragraph (1) exist, the assets of an obligor held by a financial institution are subject to levy as provided by paragraph (2) of subdivision (d). However, the first three thousand five hundred dollars ($3,500) of an obligor's assets are exempt from collection under this subdivision without the obligor having to file a claim of exemption.

(3) An obligor may apply for a claim of exemption pursuant to Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure for an amount that is less than or equal to the total amount levied. The sole basis for a claim of

exemption under this subdivision shall be the financial hardship for the obligor and the obligor's dependents.

(4) For the purposes of a claim of exemption made pursuant to paragraph (3), Section 688.030 of the Code of Civil Procedure shall not apply.

(5) For claims of exemption made pursuant to paragraph (3), the local child support agency responsible for enforcement of the obligor's child support order shall be the levying officer for the purpose of compliance with the provisions set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure except for the release of property required by subdivision (e) of Section 703.580 of the Code of Civil Procedure.

(6) The local child support agency shall notify the Franchise Tax Board within two business days of the receipt of a claim of exemption from an obligor. The Franchise Tax Board shall direct the financial institution subject to the order to withhold to hold any funds subject to the order pending notification by the Franchise Tax Board to remit or release the amounts held.

(7) The superior court in the county in which the local child support agency enforcing the support obligation is located shall have jurisdiction to determine the amount of exemption to be allowed. The court shall consider the needs of the obligor, the obligee, and all persons the obligor is required to support, and all other relevant circumstances in determining whether to allow any exemption pursuant to this subdivision. The court shall give effect to its determination by an order specifying the extent to which the amount levied is exempt.

(8) Within two business days of receipt of an endorsed copy of a court order issued pursuant to subdivision (e) of Section 703.580 of the Code of Civil Procedure, the local child support agency shall provide the Franchise Tax Board with a copy of the order. The Franchise Tax Board shall instruct the financial institution to remit or release the obligor's funds in accordance with the court's order.

(k) For purposes of this section:

(1) ''Account'' means any demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or a money market mutual fund account, whether or not the account bears interest.

(2) ''Financial institution'' has the same meaning as defined in Section 669A(d)(1) of Title 42 of the United States Code.

(3) ''Past-due support'' means any child support obligation that is unpaid on the due date for payment.

(*l*) Out of any money received from the federal government for the purpose of reimbursing financial institutions for their actual and reasonable costs incurred in complying with this section, the state shall

reimburse those institutions. To the extent that money is not provided by the federal government for that purpose, the state shall not reimburse financial institutions for their costs in complying with this section.

SEC. 21.5. Section 1611 of the Unemployment Insurance Code is amended to read:

1611. Money in the Employment Training Fund shall be expended only for the purposes of Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3, and for the costs of administering this article and Section 976.6, except:

(a) With the approval of the Legislature, the fund or contributions to it may be used to pay interest charged on federal loans to the Unemployment Fund.

(b) Commencing with allocations made to the Employment Training Panel in the 1992–93 fiscal year, any moneys allocated to the panel in a fiscal year that are not encumbered by the panel in that fiscal year, shall revert to the Unemployment Insurance Fund.

(c) It is the intent of the Legislature that the panel shall closely monitor program performance and expenditures for employment training programs administered by the panel, and that the panel shall expeditiously disencumber funds that are not needed for employment training program completion. Commencing with the 1992–93 fiscal year, those moneys that are disencumbered during the fiscal year that are not reencumbered during the same fiscal year shall revert to the Unemployment Insurance Fund.

SEC. 22. Section 1611.5 of the Unemployment Insurance Code is amended to read:

1611.5. Notwithstanding Section 1611, the Legislature may appropriate from the Employment Training Fund fifty-six million four hundred thirty-two thousand dollars ($56,432,000) in the Budget Act of 2003 to fund the local assistance portion of welfare-to-work activities under the CalWORKs program, provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, as administered by the State Department of Social Services.

SEC. 22.5. Section 10533 of the Unemployment Insurance Code is amended to read:

10533. (a) The Employment Development Department shall operate the State-Local Cooperative Labor Market Information Program as the primary component of the comprehensive labor market and occupational supply and demand information system provided in Section 10532. The department shall consult with agencies listed in Section 10530 in the development and operation of this program.

(b) The objectives of this program shall be to produce, through extensive local participation and for distribution in effective formats to

all local users, reliable occupational information, and to achieve cost-efficient production by avoiding duplication of efforts. The program shall be a primary source for local and statewide occupational information and shall be available in all labor market areas in the state.

(c) In producing this information, state and local agencies shall use state occupational forecasts and other indicators of occupational growth, combined with local employer surveys of recruitment practices, job qualifications, earnings and hours, advancement and outlook, to provide statistically valid occupational analyses for local job training and education programs.

(d) Local labor market information studies shall be conducted by the department or by a local entity and shall include the participation of local users of the information.

SEC. 23. Section 14003 is added to the Unemployment Insurance Code, to read:

14003. (a) Grants or contracts awarded under the federal Workforce Investment Act, codified in Chapter 30 (commencing with Section 2801) of Title 29 of the United States Code, or any other state or federally funded workforce development program, may not be awarded to organizations that are owned or operated as pervasively sectarian organizations.

(b) Grants or contracts awarded under the federal Workforce Investment Act, codified in Chapter 30 (commencing with Section 2801) of Title 29 of the United States Code, or any other state or federally funded workforce development program, shall comply with Section 4 of Article I and Section 5 of Article XVI of the California Constitution, state and federal civil rights laws, and the First Amendment to the United States Constitution in regard to pervasively sectarian organizations. These legal constraints include prohibitions on the discrimination against beneficiaries and staff based on protected categories and on the promoting of religious doctrine to advance sectarian beliefs.

SEC. 23.1. Section 14004 is added to the Unemployment Insurance Code, to read:

14004. To be eligible for state or federal workforce development funds awarded by the state under the California Community and Faith Based Initiative, an organization must be a separate nonprofit entity or affiliate that is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

SEC. 23.5. Section 9544 of the Welfare and Institutions Code is amended to read:

9544. (a) The Legislature finds and declares that the purpose of the Foster Grandparent Program shall be to provide personally meaningful volunteer community service opportunities to low-income older individuals through mentoring children with exceptional physical,

developmental, or behavioral needs, in accordance with the federal National and Community Service Trust Act of 1993 (42 U.S.C. Sec. 12651 et seq.).

(b) For purposes of this section, ''foster grandparent volunteer'' means an individual who is 60 years of age or older, has an insufficient income, as determined in accordance with Part 1208 of Title 45 of the Code of Federal Regulations, and provides at least four hours a day, five days a week of foster grandparent services under this chapter.

(c) Direct service contractors shall meet all of the following requirements:

(1) Be a city, county, city and county, or department of the state, or any suitable private, nonprofit organization, that demonstrates the ability to provide the specified services in a variety of settings, including, but not limited to, hospital pediatric wards, facilities for the physically, emotionally, or mentally impaired, correctional facilities, schools, day care centers, and residences.

(2) Recruit, select, train, and assign staff and volunteers.

(3) Provide volunteer participants with the same benefits, transportation, stipends, and income exemptions as provided to the foster grandparent volunteers funded through the Corporation for National Service.

(4) Provide or arrange for meals, transportation, and supervision for volunteers.

(5) Provide benefits and meaningful volunteer service opportunities to low-income individuals 60 years of age and older.

(6) Serve children under 21 years of age who have special needs or who are deprived of normal relationships with adults.

(7) Provide services to persons, including, but not limited to, any of the following:

(A) Premature and failure-to-thrive babies, or abused, neglected, battered, or chronically ill children in hospitals.

(B) Autistic children, children with cerebral palsy or developmentally disabled children placed in institutions for the developmentally disabled.

(C) Physically impaired children, mentally disabled children, emotionally disturbed children, developmentally disabled children, or children who are socially and culturally deprived in school settings or child care centers, dependent children, neglected children, mentally disabled children, emotionally disturbed or physically impaired children, battered or abused children in residential settings.

(D) Delinquent children or adolescents in correctional institutions.

(E) A child under 19 years of age, when the child has been charged with committing, or adjudged to have committed, an offense which is the equivalent to, a misdemeanor.

(8) Maintaining a systematic means of capturing and reporting all required community-based services program data.

(d) In addition to the opportunity to help children who have exceptional physical, developmental, or behavioral needs and are deprived of normal relationships with adults, foster grandparent volunteers shall receive all of the following:

(1) Expenses for transportation to and from their homes and the place where they render their services or may have transportation in buses or in other transportation made available to them.

(2) One free meal during each day in which the foster grandparent renders services.

(3) Accident insurance, an annual physical examination, and a nontaxable hourly stipend.

(e) This section shall be implemented only to the extent that funds are appropriated for its purposes in the annual Budget Act or in another statute.

SEC. 24. Section 9546 of the Welfare and Institutions Code is amended to read:

9546. (a) The purpose of the Respite Program shall be to provide temporary or periodic services for frail elderly or functionally impaired adults to relieve persons who are providing care, or recruitment and screening of providers and matching respite providers to clients.

(b) Direct services contractors shall do either one or more of the following:

(1) In acting as a respite care information and referral agency, recruiting and screening respite providers and matching respite providers to clients. Respite care registries shall consist of the names, addresses, and telephone numbers of providers, including, but not limited to, individual caregivers, volunteers, adult day care services, including adult day health care services and services provided by licensed residential care facilities for the elderly.

(2) Arranging for and purchasing respite services for program participants.

(3) Maintaining a systematic means of capturing and reporting all required community-based services program data.

(c) This section shall be implemented only to the extent that funds are appropriated for its purposes in the annual Budget Act or in another statute.

SEC. 25. Section 9547 of the Welfare and Institutions Code is amended to read:

9547. (a) The purpose of the Senior Companion Program shall be to provide personally meaningful volunteer community service opportunities to low-income older individuals for the benefit of adults who need assistance in their daily living. It is the purpose of this chapter

to enable older individuals to provide care and support on a person-to-person basis to adults with special needs, such as the frail elderly, physically impaired adults and those adults who are mentally or neurologically impaired, in accordance with the National and Community Service Trust Act of 1993 (42 U.S.C. Sec. 12651, et seq.).

(b) For the purposes of this chapter ''senior companion volunteer'' means an older individual who is 60 years of age or older, has an insufficient income, as determined in accordance with Part 1208 of Title 45 of the Code of Federal Regulations, and provides at least four hours a day, five days a week, of senior companion services under this chapter.

(c) Requirements of direct service contractors:

(1) Be a city, county, city and county, or department of the state, or any suitable private, nonprofit organization, that demonstrates the ability to provide the specified services in a variety of settings, including, but not limited to, in residential, nonresidential, institutional and in-home settings.

(2) Demonstrate the ability to recruit, select, train, and assign staff and volunteers.

(3) Provide volunteer participants with the same benefits, transportation, stipends, and income exemptions as provided to the senior companion volunteers funded through the Corporation for National Service.

(4) Provide or arrange for meals, transportation, and supervision for volunteers.

(5) Provide benefits and meaningful volunteer service opportunities to low-income individuals 60 years of age or older.

(6) Serve adults who are frail and have functional impairments.

(7) Provide services to, but not limited to, all of the following:

(A) Older individuals who were either formerly active and are now bedfast, too frail, or too ill to be transported to special programs.

(B) Physically impaired older individuals who cannot leave their homes due to the extent of their disabilities.

(C) Individuals who, due to functional impairments, fear of a fast-moving society, and the possibility of bodily harm, are afraid to go out.

(D) Physically impaired individuals who are capable of interacting in activities for the physically impaired, but because of their limitations have been overprotected by their guardians.

(E) Physically or mentally impaired older individuals who have become so depressed that they have withdrawn from all social interaction and are confined as a result of psychological problems.

(F) Physically impaired individuals who are eager to be enrolled in day care programs, but have to stay on waiting lists until there is an opening.

(8) Maintain a systematic means of capturing and reporting all required community-based services program data.

(d) In addition to the opportunity to help other adults who have special needs, such as the frail elderly, physically impaired adults and those adults who are mentally or neurologically impaired, senior companion volunteers shall receive all of the following:

(1) Expenses for transportation to and from their homes and the place where they render their services or transportation in buses or in other transportation made available to them.

(2) One free meal during each day in which the senior companion renders services.

(3) Accident insurance, an annual physical examination, and a nontaxable hourly stipend.

(e) Senior companions funded under this chapter shall not be assigned to individuals already receiving in-home supportive services.

(f) This section shall be implemented only to the extent that funds are appropriated for its purposes in the annual Budget Act or in another statute.

SEC 25.5. Section 10088 of the Welfare and Institutions Code is amended to read:

10088. (a) If the federal government imposes a penalty on California's child support program for failure to meet the federal automation requirements, the Department of Finance may allocate up to 25 percent of the penalty to counties. The department shall determine the share of the penalty to be allocated to each county based upon the local child support agency's proportionate share of all counties' local child support agencies' administrative costs.

(b) If the department allocates a portion of the federal penalty to counties, it shall, on a quarterly basis, notify the auditor and controller of each county regarding the amounts due to the state for that quarter. Within 30 days after notice is provided by the department, each county shall remit the amount due to the department. If a county does not remit the full quarterly amount within 30 days after the notice is provided by the department, any unpaid amount shall be deducted by the Controller, from any payment due to the county, as directed by the Department of Finance.

(c) For purposes of this section, ''administrative costs'' means the amount allocated to the local child support agency for administration of the child support program for the current year and the prior three fiscal years, excluding automation costs.

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

SEC. 26. Section 10088 is added to the Welfare and Institutions Code, to read:

10088. (a) If the federal government imposes a penalty on California's child support program for failure to meet the federal automation requirements, the penalty, for purposes of this chapter, shall be considered a reduction of federal financial participation in county and state administrative costs of the child support program, and shall be allocated to each local child support agency in proportion to its administrative costs. In such a case, the department may hold penalties in abeyance and supplant any dollar reduction to county administrative funding, up to 100 percent of the reduction, subject to the availability of funds in the annual Budget Act. The department and the Department of Finance shall establish criteria under which the penalties may be held in abeyance to each local child support agency. Criteria for which these penalties may be held in abeyance include, but are not limited to, the following: The local child support agency has entered into an AACA with the department; the local child support agency is meeting all due dates in its work plan, including steps to resolve any Year 2000 problems; the local child support agency has resolved any federal distribution requirement problems; and the county is otherwise cooperating in its current automation and AACA requirements and establishing the California Child Support Automation System.

(b) Any local child support agency that receives a reduction in federal funding as a result of the imposition of a federal penalty shall continue to comply with state and federal law and all requirements of the state plan and plans of cooperation, including the AACA.

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

SEC. 26.5. Section 10544.2 is added to the Welfare and Institutions Code, to read:

10544.2. CalWORKs performance incentive funds allocated to counties under Items 5180-101-0001 and 5180-101-0890 of the Budget Act of 2002 shall be available for encumbrance and expenditure by the county until all of the funds are expended, without regard to fiscal years.

SEC. 27. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is

organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(3) (A) The department shall determine, consistent with the requirements of this chapter and other relevant requirements under law, the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department.

(B) The department shall adopt regulations to implement this paragraph. The adoption, amendment, repeal, or readoption of a regulation authorized by this paragraph is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement to describe specific facts showing the need for immediate action.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, ''The Classification of Group Home Programs under the Standardized Schedule of Rates System,'' prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each RCL has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, ''standardized schedule of rates'' means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13

months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider, for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the fieldwork portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the

facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for the 2002–03 and 2003–04 fiscal years is:

Rate Classification Level	Point Ranges	FY 2002–03 and 2003–04 Standard Rate
1	Under 60	$1,454
2	60– 89	1,835
3	90–119	2,210
4	120–149	2,589
5	150–179	2,966
6	180–209	3,344
7	210–239	3,723
8	240–269	4,102
9	270–299	4,479
10	300–329	4,858
11	330–359	5,234
12	360–389	5,613
13	390–419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03 and 2003–04 fiscal years, the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for the 2002–03 and 2003–04 Fiscal Years
1	Under 54
2	54– 81

3	82–110
4	111–138
5	139–167
6	168–195
7	196–224
8	225–253
9	254–281
10	282–310
11	311–338
12	339–367
13	368–395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03 and 2003–04 fiscal years shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This

additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program that received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program that received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, ''program change'' means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the rate for a group home program shall not increase, as the result of a program

change, from the rate established for the program effective July 1, 2000, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3) (A) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the following conditions are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The department determines that the new program or program change will result in a reduction of referrals to state hospitals during the 1998–99 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care that may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

SEC. 28. Section 11463 of the Welfare and Institutions Code is amended to read:

11463. (a) (1) The department, with the advice, assistance, and cooperation of the counties and foster care providers, shall develop, implement, and maintain a ratesetting system for foster family agencies.

(2) No county shall be reimbursed for any percentage increases in payments, made on behalf of AFDC-FC funded children who are placed with foster family agencies, that exceed the percentage cost-of-living increase provided in any fiscal year beginning on January 1, 1990, as specified in subdivision (c) of Section 11461.

(b) The department shall develop regulations specifying the purposes, types, and services of foster family agencies, including the use of those agencies for the provision of emergency shelter care. A distinction, for ratesetting purposes, shall be drawn between foster family agencies that provide treatment of children in foster families and those that provide nontreatment services.

(c) The department shall develop and maintain regulations specifying the procedure for the appeal of department decisions about the setting of an agency's rate.

(d) On and after July 1, 1998, the schedule of rates, and the components used in the rate calculations specified in the department's regulations, for foster family agencies shall be increased by 6 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies.

(e) (1) On and after July 1, 1999, the schedule of rates and the components used in the rate calculations specified in the department's regulations for foster family agencies shall be adjusted by an amount equal to the California Necessities Index computed pursuant to Section 11453, rounded to the nearest dollar, subject to the availability of funds. The resultant amounts shall constitute the new schedule of rates for foster family agencies, subject to further adjustment pursuant to paragraph (2).

(2) In addition to the adjustment specified in paragraph (1), commencing January 1, 2000, the schedule of rates and the components used in the rate calculations specified in the department's regulations for foster family agencies shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies.

(f) For the 1999–2000 fiscal year, foster family agency rates that are not determined by the schedule of rates set forth in the department's regulations, shall be increased by the same percentage as provided in subdivision (e).

(g) For the 2000–01 fiscal year and each fiscal year thereafter, without a county share of cost, notwithstanding subdivision (c) of Section 15200, the foster family agency rate shall be supplemented by one hundred dollars ($100) for clothing per year per child in care, subject to the availability of funds. The supplemental payment shall be used to supplement, and shall not be used to supplant, any clothing allowance paid in addition to the foster family agency rate.

(h) In addition to the adjustment made pursuant to subdivision (e), the component for social work activities in the rate calculation specified in the department's regulations for foster family agencies shall be increased by 10 percent, effective January 1, 2001. This additional funding shall be used by foster family agencies solely to supplement staffing, salaries, wages, and benefit levels of staff performing social work activities. The schedule of rates shall be recomputed using the adjusted amount for social work activities. The resultant amounts shall constitute the new schedule of rates for foster family agencies. The department may require a foster family agency receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(i) (1) The department shall determine, consistent with the requirements of this section and other relevant requirements under law, the rate category for each foster family agency on a biennial basis. Submission of the biennial rate application shall be according to a schedule determined by the department.

(2) The department shall adopt regulations to implement this subdivision. The adoption, amendment, repeal, or readoption of a regulation authorized by this subdivision is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement to describe specific facts showing the need for immediate action.

SEC. 29. Section 11466.2 of the Welfare and Institutions Code is amended to read:

11466.2. (a) (1) The department shall perform or have performed group home program and fiscal audits as needed. Group home programs shall maintain all child-specific, programmatic, personnel, fiscal, and other information affecting group home ratesetting and AFDC-FC payments for a period not less than five years.

(2) Notwithstanding paragraph (1), the department shall not reduce a group home program's AFDC-FC rate or RCL, or establish an overpayment based upon a nonprovisional program audit, for a period of less than one year.

(b) (1) The department shall develop regulations to correct a group home program's RCL, and to adjust the rate and to recover any overpayments resulting from an overstatement of the projected level of care and services.

(2) The department shall modify the amount of the overpayment pursuant to paragraph (1) in cases where the level of care and services provided per child in placement equals or exceeds the level associated with the program's RCL. In making this modification, the department shall determine whether services other than child care supervision were

provided to children in placement in an amount that is at least proportionate, on a per child basis, to the amount projected in the group home's rate application. In cases where these services are provided in less than a proportionate amount, staffing for child care supervision in excess of its proportionate share shall not be substituted for non-child care supervision staff hours.

(c) (1) In any audit conducted by the department, the department, or other public or private audit agency with which the department contracts, shall coordinate with the department's licensing and ratesetting entities so that a consistent set of standards, rules, and auditing protocols are maintained. The department, or other public or private audit agency with which the department contracts, shall make available to all group home providers, in writing, any standards, rules, and auditing protocols to be used in those audits.

(2) The department shall provide exit interviews with providers whenever deficiencies found are explained and the opportunity exists for providers to respond. The department shall adopt regulations specifying the procedure for the appeal of audit findings.

SEC. 30. Section 11466.35 of the Welfare and Institutions Code is amended to read:

11466.35. (a) Any licensee who has been determined to owe a sustained overpayment under this chapter, and who, subsequent to notice of the sustained overpayment, has its group home rate terminated, shall be ineligible to apply or receive a rate for any future group home program until the overpayment is repaid.

(b) A rate application shall be denied for a group home provider that meets either of the following conditions:

(1) A provider owing a sustained overpayment under this chapter, upon the occurrence of any additional sustained overpayment, shall be ineligible to apply or receive a rate for an existing or future group home program until the sustained overpayments are repaid, unless a voluntary repayment agreement is approved by the department.

(2) A provider incurring a sustained overpayment that constitutes more than 60 percent of the provider's annual rate reimbursement shall be ineligible to apply or receive a rate for any existing or future group home programs until the sustained overpayments are repaid, unless a voluntary repayment agreement is approved by the department.

SEC. 31. Section 12201 of the Welfare and Institutions Code is amended to read:

12201. (a) Except as provided in subdivision (d), the payment schedules set forth in Section 12200 shall be adjusted annually to reflect any increases or decreases in the cost of living. Except as provided in subdivision (e), these adjustments shall become effective January 1 of each year. The cost-of-living adjustment shall be based on the changes

in the California Necessities Index, which as used in this section shall be the weighted average of changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change shall be determined for the 12-month period which ends 12 months prior to the January in which the cost-of-living adjustment will take effect, for each expenditure category specified in paragraph (1) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in paragraph (1) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current

year by (2) the sum of the expenditure amounts as determined in paragraph (4) for the prior year.

(b) The overall adjustment factor determined by the preceding computational steps shall be multiplied by the payment schedules established pursuant to Section 12200 as are in effect during the month of December preceding the calendar year in which the adjustments are to occur, and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules for the categories given under subdivisions (a), (b), (c), (d), (e), (f), and (g) of Section 12200, and shall be filed with the Secretary of State. The amount as set forth in subdivision (h) of Section 12200 shall be adjusted annually pursuant to this section in the event that the secretary agrees to administer payment under that subdivision. The payment schedule for subdivision (i) of Section 12200 shall be computed as specified, based on the new payment schedules for subdivisions (a), (b), (c), and (d) of Section 12200.

(c) The department shall adjust any amounts of aid under this chapter to insure that the minimum level required by the Social Security Act in order to maintain eligibility for funds under Title XIX of that act is met.

(d) (1) No adjustment shall be made under this section for the 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, and 2004 calendar years to reflect any change in the cost of living. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 12201.05, and no further reduction shall be made pursuant to that section.

(2) Any cost-of-living adjustment granted under this section for any calendar year shall not include adjustments for any calendar year in which the cost of living was suspended pursuant to paragraph (1).

(e) For the 2003 calendar year, the adjustment required by this section shall become effective June 1, 2003.

SEC. 32. Section 18226 of the Welfare and Institutions Code is amended to read:

18226. This chapter shall become inoperative on October 31, 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. 33. Section 18901.6 is added to the Welfare and Institutions Code, to read:

18901.6. To the maximum extent allowable by federal law, each county welfare department shall provide transitional food stamp benefits to households terminating their participation in the CalWORKs program for a period of five months. Benefits shall be provided from the date participation in the CalWORKs program is terminated and shall be in an amount equal to the allotment received in the month immediately preceding that date, adjusted for the change in household income as a

result of termination in the CalWORKs program. No adjustment shall be made within the five-month period based on information from another program in which the household participates. A household may reapply during the transition period to have benefit levels adjusted. If necessary, the county welfare department shall extend the annual food stamp recertification period until the end of the transition period.

SEC. 34. Section 19355.5 of the Welfare and Institutions Code is amended to read:

19355.5. (a) Notwithstanding any other provision of law, the hourly rate for supported employment services established pursuant to paragraph (2) of subdivision (b) of Section 19356.6 shall be reduced by the percentage necessary to ensure that projected total General Fund expenditures and reimbursements for habilitation services and vocational rehabilitation supported employment services, including services pursuant to paragraph (2) of, and clauses (i) to (iii), inclusive, of subparagraph (B) of paragraph (2) of, subdivision (b) of Section 19356.6, and, for the habilitation services program only, ancillary services, based on Budget Act caseload projections, do not exceed the General Fund and reimbursement appropriations for these services in the annual Budget Act, exclusive of increases in job coach hours due to unanticipated increases in caseload or the average client workday. This reduction shall not be implemented sooner than 30 days after notification in writing of the necessity for the reduction to the appropriate fiscal committees and policy committees of the Legislature and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine.

(b) The department shall annually make two projections of General Fund expenditures and reimbursements in a form and timeframe as determined by the Department of Finance.

SEC. 35. Section 19356 of the Welfare and Institutions Code is amended to read:

19356. (a) The department shall adopt regulations to establish rates for work-activity program services subject to the approval of the Department of Finance. The regulations shall provide for an equitable ratesetting procedure in which each specific allowable service, activity, and provider administrative cost comprising an overall habilitation service, as determined by the department, reflects the reasonable cost of service. Reasonable costs shall be determined biennially by the department, subject to audit at the discretion of the department.

(b) It is the intent of the Legislature that, commencing July 1, 1996, the department establish rates for both habilitation services and vocational rehabilitation work-activity programs pursuant to subdivision (a). Nothing in this subdivision shall preclude the

subsequent amendment or adoption of regulations pursuant to subdivision (a).

(c) For the 2003–04 fiscal year, notwithstanding any other provision of law, the department shall suspend for one year the biennial rate adjustment for work-activity programs.

(d) Commencing July 1, 2003, the rates paid to work-activity programs pursuant to this section shall be reduced by 5 percent.

SEC. 36. Section 19356.6 of the Welfare and Institutions Code is amended to read:

19356.6. (a) The definitions contained in this subdivision shall govern the construction of this section, with respect to services provided through the Habilitation Services Program, and unless the context requires otherwise, the following terms shall have the following meanings:

(1) ''Supported employment'' means paid work that is integrated in the community for individuals with developmental disabilities whose vocational disability is so severe that they would be unable to achieve this employment without specialized services and would not be able to retain this employment without an appropriate level of ongoing postemployment support services.

(2) ''Integrated work'' means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with nondisabled individuals other than those who are providing services to those individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

(3) ''Supported employment placement'' means the employment of an individual with a developmental disability by an employer in the community, directly or through contract with a supported employment program, and the provision of supported employment services including the provision of ongoing postemployment services necessary for the individual to retain employment. Services for those individuals receiving individualized services from a supported employment program shall decrease as the individual adjusts to his or her employment and the employer assumes many of those functions.

(4) ''Allowable supported employment services'' means the services approved in the individual habilitation component and provided, to the extent allowed by the Habilitation Services Program for the purpose of achieving supported employment as an outcome for individuals with developmental disabilities, which may include any of the following:

(A) Program staff time spent conducting job analysis of supported employment opportunities for a specific consumer.

(B) Program staff time spent in the direct supervision or training of a consumer or consumers while they engage in integrated work unless

other arrangements for consumer supervision, such as employer supervision reimbursed by the supported employment program, are approved by the Habilitation Services Program.

(C) Training occurring in the community, in adaptive functional and social skills necessary to ensure job adjustment and retention such as social skills, money management, and independent travel.

(D) Counseling with a consumer's significant others to ensure support of a consumer in job adjustment.

(E) Advocacy or intervention on behalf of a consumer to resolve problems affecting the consumer's work adjustment or retention.

(F) Job development to the extent authorized by the Habilitation Services Program.

(G) Ongoing postemployment support services needed to ensure the consumer's retention of the job.

(5) ''Group services'' means job coach-supported employment services in a group supported employment placement at a job coach-to-client ratio of not less than one-to-four nor more than one-to-eight where a minimum of four clients are department-funded. Group services may be provided on or after July 1, 2002, in a group at a job coach-to-client ratio of one-to-three, where all three individuals in the group are department-funded supported employment clients, only if the group was established and began working prior to July 1, 2002, but those group services shall not be funded beyond June 30, 2004. The department shall work with providers to add department-funded supported employment clients to those groups on or before July 1, 2004.

(6) ''Individualized services'' means job coach and other supported employment services for department-funded clients in a supported employment placement at a job coach-to-client ratio of one-to-one.

(b) (1) The Habilitation Services Program shall set rates for supported employment services provided in accordance with this section. The Habilitation Services Program shall apply rates in accordance with this section to those work-activity programs or program components of work-activity programs approved by the department to provide supported employment and to new programs or components approved by the Habilitation Services Program to provide supported employment services. Both of these categories of programs or components shall be required to comply with the criteria set forth in subdivision (b) of Section 19356.7 to receive approval from the Habilitation Services Program.

(2) (A) The hourly rate for supported employment services provided to clients receiving individualized services shall be twenty-seven dollars and sixty-two cents ($27.62).

(B) The hourly rate for group services shall be twenty-seven dollars and sixty-two cents ($27.62) regardless of the number of clients served

in the group. Clients in a group shall be scheduled to start and end work at the same time, unless an exception is approved in advance by the Habilitation Services Program. The department, in consultation with stakeholders, shall adopt regulations to define the appropriate grounds for granting these exceptions. Except as provided in paragraph (5) of subdivision (a), where the number of clients in a group supported employment placement drops to fewer than four department-funded supported employment clients, department funding for the group services in that group shall be terminated unless the program provider, within 90 days from the date of this occurrence and consistent with Section 19356.7, does one of the following:

(i) Adds one or more department-funded supported employment clients to the group.

(ii) Moves the remaining clients to another existing group.

(iii) Moves the remaining clients, if appropriate, to individualized placement.

(iv) Terminates services.

(C) For clients receiving group services the Habilitation Services Program may set a higher hourly rate for supported employment services, based upon the additional cost to provide ancillary services, when there is a documented and demonstrated need for a higher rate because of the nature and severity of the disabilities of the consumer, as determined by the Habilitation Services Program.

(D) In addition, fees shall be authorized for the following:

(i) A two hundred dollar ($200) fee shall be paid upon intake of a consumer into an agency's supported employment program, unless that individual has completed a supported employment intake process with that same agency within the past 12 months, in which case no fee shall be paid.

(ii) A four hundred dollar ($400) fee shall be paid upon placement of an individual in an integrated job, unless that individual is placed with another consumer or consumers assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(iii) A four hundred dollar ($400) fee shall be paid after a 90-day retention of a consumer in a job, unless that individual has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(3) These rates shall take effect July 1, 1998.

(4) It is the intent of the Legislature that, commencing July 1, 1996, the department establish rates for both habilitation services and vocational rehabilitation supported employment services pursuant to this section.

(5) For individuals receiving individualized services, services may be provided on or off the jobsite.

(6) For individuals receiving group services, ancillary services may be provided, except that all postemployment and ancillary services shall be provided at the worksite.

(c) If a consumer has been placed on a waiting list for vocational rehabilitation as a result of the department's order of selection regulations, the Habilitation Services Program may pay for those supported employment services leading to job development set forth in subparagraph (D) of paragraph (2) of subdivision (b).

(d) The Habilitation Services Program shall approve, in advance, any change in the number of clients served in a group.

(e) The department, in consultation with appropriate stakeholders, shall report to the Department of Finance and the Legislature, on or before January 1, 2001, and annually thereafter, on the implementation of supported employment rates and group size requirements pursuant to this section. The report shall include, but not be limited to, data on the sizes of client groups, the change in average group size, client outcomes, client earnings, to the extent available, and projected caseload and expenditures for the supported employment program. On or before February 1, 2003, the department shall submit to the Department of Finance and the Legislature a final report containing, at a minimum, cumulative data and outcome measures, and shall include recommendations on whether to extend the effective dates of this section and Sections 19355.5, 19355.6, and 19356.7, and recommendations for appropriate changes to those sections.

(f) If the final report required by subdivision (e) is submitted to the Department of Finance and the Legislature on or before February 1, 2003, this section shall become inoperative on September 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 19356.7 of the Welfare and Institutions Code is amended to read:

19356.7. (a) Proposals for funding of new, and modifications to existing, supported employment programs and components by the Habilitation Services Program shall be submitted to the Habilitation Services Program and shall contain sufficient information to enable the Habilitation Services Program to act on the proposal under this section.

(b) Provided that sufficient funding is available to finance services by supported employment programs and components, the Habilitation Services Program may approve or disapprove proposals based on all of the following criteria:

(1) The need for a supported employment program or component.

(2) The capacity of the program to deliver supported employment services effectively.

(3) The ability of the program to comply with accreditation requirements of the Habilitation Services Program. The accreditation standards adopted by the department shall be the standards developed by the Commission of Rehabilitation Facilities and published in the most current edition of the Standards Manual for Organizations Serving People with Disabilities, as well as any subsequent amendments to the manual.

(4) A profile of an average consumer in the program or component, showing the planned progress toward self-reliance as an employee, measured, as appropriate, in terms of decreasing support services.

(5) The ability of the program to achieve integrated paid work on the average for consumers served.

(c) The Habilitation Services Program may purchase supported employment services at the rates authorized in Section 19356.6 only from supported employment programs or components approved under this section.

(d) For purposes of evaluating the effectiveness of the entire program, and individual supported employment programs or components, the Habilitation Services Program may monitor supported employment programs or components to determine whether the performance agreed upon in the approved proposal is being achieved. When the performance of a supported employment program or component does not comply with the criteria according to which it was approved for funding pursuant to subdivision (b), the Habilitation Services Program may establish prospective performance criteria for the program or component, with which the program or component shall comply as a condition of continued funding.

(e) The department shall adopt regulations to implement the requirements of Sections 19352, 19356.6, and this section, in consultation with the California Rehabilitation Association, the United Cerebral Palsy Association, and the Association of Retarded Citizens of California.

SEC. 38. Funds appropriated in Item 5180-151-0001 of the Budget Act of 2003 to the State Department of Social Services to compensate licensed maternity homes shall be awarded to programs located in the most populous county and in an area in that county with one of the highest rates of teenage pregnancy in the state.

SEC. 39. (a) The Department of Child Support Services shall convene representatives from the Legislature, the Legislative Analyst's Office, the Department of Finance, local child support agencies, including small, medium, and large caseload sized, rural and urban, and regionalized programs, and statewide labor organizations to evaluate the child support program allocation methodology and report to the budget committees of the Legislature by March 31, 2004. The evaluation shall

take into consideration the impact of implementation of the California Child Support Automation System. The evaluation shall include, but not be limited to, all of the following:

(1) An analysis of past and current allocation methodologies and impacts.

(2) An analysis of the relationship between allocation methodologies, program performance, including collections, and cost-effectiveness.

(3) Consideration of allocation methodologies employed in other programs.

(4) Identification and analysis of factors to be considered in allocating child support program funding, including the impact of automation, business process decisions, and the relationship to required program performance measures.

(5) The advantages and disadvantages of alternative allocation methodologies.

(b) The Department of Child Support Services shall also work with representatives of the Legislature, the Department of Finance, and the Office of the Legislative Analyst to improve its existing budgeting display and enhance the amount and quality of information regarding the program performance and costs that it provides to the Legislature.

SEC. 40. Reductions to local child support agency allocations made in the 2003–04 fiscal year shall be implemented in a manner that does not negatively impact child support collections. Counties that plan to implement any reductions, at least in part through staff reductions, shall be required to develop a plan, subject to the requirements of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code, that minimizes any negative effect of these reductions on child support collections and other performance measurements.

SEC. 41. It is the intent of the Legislature that, for the 2004–05 fiscal year and each fiscal year thereafter, Item 7100-001-0869 in the budget proposed by the Governor and in the proposed Budget Bill include a separate schedule that itemizes the programs that are proposed to be funded by federal funds that are transmitted to the state pursuant to subsection (a) of Section 128 of the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2853). This itemized schedule may include provisions that authorize the Director of Finance to make certain fund transfers and modifications to this schedule within 30 days after the director notifies, in writing, the Joint Legislative Budget Committee of these transfers and modifications. These provisions shall be in addition to those specified in Sections 26 and 28 of the proposed budget acts.

SEC. 41.5. (a) The Department of Finance shall convene a working group comprised of representatives of the California Health and Human

Services Data Center, the Stephen P. Teale Data Center, the office of the Legislative Analyst, and client departments to develop a data center consolidation plan. The working group shall develop and submit to the Legislature on or before December 1, 2003, a plan to consolidate the California Health and Human Services Agency Data Center with the Stephen P. Teale Data Center commencing July 1, 2004. The plan shall include, but not be limited to, the consolidated data center's organizational structure, identification of consolidated activities that result in savings of no less than three million five hundred thousand dollars ($3,500,000) in General Fund moneys in the 2004–05 fiscal year, and identification of data center activities that will produce savings in future fiscal years.

(b) The working group shall consider consolidation of existing data servers within the consolidated data center. If feasible, the working group shall develop a plan to begin consolidation of data servers by July 1, 2004.

SEC. 42. 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. 43. 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 necessary statutory changes to implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 226

An act to repeal and add Chapter 13 (commencing with Section 4850) of Division 4.5 of, the Welfare and Institutions Code, relating to developmental services.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Chapter 13 (commencing with Section 4850) of Division 4.5 of the Welfare and Institutions Code is repealed.

SEC. 2. Chapter 13 (commencing with Section 4850) is added to Division 4.5 of the Welfare and Institutions Code, to read:

CHAPTER 13. HABILITATION SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

4850. (a) The Legislature reaffirms its intent that habilitation services for adults with developmental disabilities should be planned and provided as a part of a continuum and that habilitation services should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to nondisabled people of the same age.

(b) The Legislature further intends that habilitation services shall be provided to adults with developmental disabilities as specified in this chapter in order to guarantee the rights stated in Section 4502.

4850.1. Notwithstanding Section 19050.9 of the Government Code, beginning July 1, 2004, the State Department of Developmental Services shall succeed to all functions and responsibilities of the Department of Rehabilitation with respect to the administration of the Habilitation Services Program established pursuant to former Chapter 4.5 (commencing with Section 19350) of Part 2 of Division 10.

4850.2. (a) Except as otherwise specifically provided, this chapter shall only apply to those habilitation services purchased by the regional centers.

(b) Nothing in this section shall be construed to abridge the rights stated in Section 4502.

4851. The definitions contained in this chapter shall govern the construction of this chapter, with respect to habilitation services provided through the regional center, and unless the context requires otherwise, the following terms shall have the following meanings:

(a) ''Habilitation services'' means community-based services purchased or provided for adults with developmental disabilities, including services provided under the Work Activity Program and the Supported Employment Program, to prepare and maintain them at their highest level of vocational functioning, or to prepare them for referral to vocational rehabilitation services.

(b) ''Individual program plan'' means the overall plan developed by a regional center pursuant to Section 4646.

(c) ''Individual habilitation service plan'' means the service plan developed by the habilitation service vendor to meet employment goals in the individual program plan.

(d) ''Department'' means the State Department of Developmental Services.

(e) ''Work activity program'' includes, but is not limited to, sheltered workshops or work activity centers, or community-based work activity programs certified pursuant to subdivision (f) or accredited by CARF, the Rehabilitation Accreditation Commission.

(f) ''Certification'' means certification procedures developed by the Department of Rehabilitation.

(g) ''Work activity program day'' means the period of time during which a Work Activity Program provides services to consumers.

(h) ''Full day of service'' means, for purposes of billing, a day in which the consumer attends a minimum of the declared and approved work activity program day, less 30 minutes, excluding the lunch period.

(i) ''Half day of service'' means, for purposes of billing, any day in which the consumer's attendance does not meet the criteria for billing for a full day of service as defined in subdivision (g), and the consumer attends the work activity program not less than two hours, excluding the lunch period.

(j) ''Supported employment program'' means a program that meets the requirements of subdivisions (n) to (s), inclusive.

(k) ''Consumer'' means any adult who receives services purchased under this chapter.

(*l*) ''Accreditation'' means a determination of compliance with the set of standards appropriate to the delivery of services by a work activity program or supported employment program, developed by CARF, the Rehabilitation Accreditation Commission, and applied by the commission or the department.

(m) ''CARF'' means CARF the Rehabilitation Accreditation Commission.

(n) ''Supported employment'' means paid work that is integrated in the community for individuals with developmental disabilities.

(o) ''Integrated work'' means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons.

(p) ''Supported employment placement'' means the employment of an individual with a developmental disability by an employer in the community, directly or through contract with a supported employment

program. This includes provision of ongoing support services necessary for the individual to retain employment.

(q) ''Allowable supported employment services'' means the services approved in the individual program plan and specified in the individual habilitation service plan for the purpose of achieving supported employment as an outcome, and may include any of the following:

(1) Job development, to the extent authorized by the regional center.

(2) Program staff time for conducting job analysis of supported employment opportunities for a specific consumer.

(3) Program staff time for the direct supervision or training of a consumer or consumers while they engage in integrated work unless other arrangements for consumer supervision, including, but not limited to, employer supervision reimbursed by the supported employment program, are approved by the regional center.

(4) Community-based training in adaptive functional and social skills necessary to ensure job adjustment and retention.

(5) Counseling with a consumer's significant other to ensure support of a consumer in job adjustment.

(6) Advocacy or intervention on behalf of a consumer to resolve problems affecting the consumer's work adjustment or retention.

(7) Ongoing support services needed to ensure the consumer's retention of the job.

(r) ''Group services'' means job coaching in a group supported employment placement at a job coach-to-consumer ratio of not less than one-to-four nor more than one-to-eight where services to a minimum of four consumers are funded by the regional center or the Department of Rehabilitation. For consumers receiving group services, ongoing support services shall be limited to job coaching and shall be provided at the worksite.

(s) ''Individualized services'' means job coaching and other supported employment services for regional center-funded consumers in a supported employment placement at a job coach-to-consumer ratio of one-to-one, and that decrease over time until stabilization is achieved. Individualized services may be provided on or off the jobsite.

4852. A consumer shall be referred to a provider of habilitation services under this chapter when all of the following apply:

(a) The individual is an adult who has been diagnosed as having a developmental disability.

(b) The individual is determined to be in need of and has chosen habilitation services through the individual program planning process pursuant to Section 4646.

4853. (a) When a referral for habilitation services pursuant to Section 4852 has been made and if the individual is placed in a work

activity program, he or she shall be deemed presumptively eligible for a period not to exceed 90 days.

(b) During the period of presumptive eligibility, the work activity program shall submit a work skills evaluation report to the regional center. The work skills evaluation report shall reflect the performance of the consumer in all of the following areas:

(1) Appropriate behavior to safely conduct himself or herself in a work setting.

(2) Adequate attention span to reach a productivity level in paid work.

(3) Ability to understand and act on simple instructions within a reasonable length of time.

(4) Ability to communicate basic needs and understand basic receptive language.

(5) Attendance level.

(c) During the period of presumptive eligibility, the individual program plan planning team shall, pursuant to Section 4646, utilize the work skills evaluation report to determine the appropriateness of the referral.

4854. In developing the individual habilitation service plan pursuant to Section 4853, the habilitation service provider shall develop specific and measurable objectives to determine whether the consumer demonstrates ability to reach or maintain individual employment goals in all of the following areas:

(a) Participation in paid work for a specified period of time.

(b) Obtaining or sustaining a specified productivity rate.

(c) Obtaining or sustaining a specified attendance level.

(d) Demonstration of appropriate behavior for a work setting.

4854.1. The individual program plan planning team, shall, pursuant to Section 4646, meet, when it is necessary to review any of the following:

(a) The appropriateness of job placement.

(b) The appropriateness of the services available at the Work Activity Program or Supported Employment Program.

(c) The individual habilitation service plan.

4855. When an individual who is eligible for habilitation services under this chapter is referred to the Department of Rehabilitation for vocational rehabilitation services, including supported employment services, and is placed on a Department of Rehabilitation waiting list for vocational rehabilitation as a result of the Department of Rehabilitation's order of selection regulations, the regional center shall authorize appropriate services for the individual pursuant to this chapter as needed until services can be provided by the vocational rehabilitation program.

4856. (a) The regional center shall monitor, evaluate, and audit habilitation services providers for program effectiveness, using performance criteria that include, but are not limited to, all of the following:

(1) Service quality.

(2) Protections for individuals receiving services.

(3) Compliance with applicable CARF standards.

(b) (1) The regional center may impose immediate sanctions on providers of work activity programs and supported employment programs for noncompliance with accreditation or services standards contained in regulations adopted by the department, and for safety violations which pose a threat to consumers of habilitation services.

(2) Sanctions include, but are not limited to, the following:

(A) A moratorium on new referrals.

(B) Imposition of a corrective plan as specified in regulations.

(C) Removal of consumers from a service area where dangerous conditions or abusive conditions exist.

(D) Termination of vendorization.

(c) A moratorium on new referrals may be the first formal sanction to be taken except in instances where consumers are at imminent risk of abuse or other harm. When the regional center determines a moratorium on new referrals to be the first formal sanction, a corrective action plan shall be developed. The moratorium shall be lifted only when the conditions cited are corrected per a corrective action plan.

(d) A corrective action plan is a formal sanction, that may be imposed either simultaneously with a moratorium on new referrals, or as a single sanction in circumstances that do not require a moratorium, as determined by the regional center. Noncompliance with the conditions and timelines of the corrective action plan shall result in termination of vendorization.

(e) Removal of consumers from a program shall only take place where dangerous or abusive conditions are present, or upon termination of vendorization. In instances of removal for health and safety reasons, when the corrections are made by the program, as determined by the regional center, consumers may return, at their option.

(f) Any provider sanctioned under subparagraph (B) or (C) of paragraph (2) of subdivision (b) may request an administrative review as specified in Section 4648.1.

(g) Any provider sanctioned under subparagraph (D) of paragraph (2) of subdivision (b) shall have a right to a formal review by the Office of Administrative Hearings under Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) Effective July 1, 2004, if a habilitation services provider is under sanction under former Section 19354.5, the provider shall complete the

requirements of the corrective action plan or any other terms or conditions imposed upon it as part of the sanctions. At the end of the term of the corrective action plan or other compliance requirements, the services provider shall be evaluated by the regional center based upon the requirements in this section.

4857. The regional center shall purchase habilitation services pursuant to the individual program plan. Habilitation services shall continue as long as satisfactory progress is being made toward achieving the objectives of the individual habilitation service plan or as long as these services are determined by the regional center to be necessary to maintain the individual at their highest level of vocational functioning, or to prepare the individual for referral to vocational rehabilitation services.

4857.1. Regional centers may purchase habilitation services only from providers who are accredited community nonprofit agencies that provide work activity services or supported employment services, or both, and that have been vendored as described in Section 4861 and regulations promulgated pursuant thereto. Habilitation services providers who, on July 1, 2004, are providing services to consumers shall be deemed to be an approved vendor.

4858. (a) Each work activity program vendor shall, at a minimum, annually review the status of consumers participating in their program to determine whether these individuals would benefit from vocational rehabilitation services, including supported employment.

(b) If it is determined that the consumer would benefit from vocational rehabilitation services, the work activity program vendor shall, in conjunction with the regional center and in accordance with the individual program plan process, refer the consumer to the Department of Rehabilitation.

4859. (a) The department shall adopt regulations to establish rates for work activity program services subject to the approval of the Department of Finance. The regulations shall provide for an equitable and cost-effective ratesetting procedure in which each specific allowable service, activity, and provider administrative cost comprising an overall habilitation service, as determined by the department, reflects the reasonable cost of service. Reasonable costs shall be determined biennially by the department, subject to audit at the discretion of the department.

(b) The department shall adopt the existing work activity program rates as of July 1, 2004, that shall remain in effect until the next ratesetting year.

(c) Notwithstanding paragraph (4) of subdivision (a) of Section 4648, the regional center shall pay the work activity program rates established by the department.

4860. (a) (1) The hourly rate for supported employment services provided to consumers receiving individualized services shall be twenty-seven dollars and sixty-two cents ($27.62).

(2) Job coach hours spent in travel to consumer worksites may be reimbursable for individualized services only when the job coach travels from the vendor's headquarters to the consumer's worksite or from one consumer's worksite to another, and only when the travel is one way.

(b) The hourly rate for group services shall be twenty-seven dollars and sixty-two cents ($27.62), regardless of the number of consumers served in the group. Consumers in a group shall be scheduled to start and end work at the same time, unless an exception that takes into consideration the consumer's compensated work schedule is approved in advance by the regional center. The department, in consultation with stakeholders, shall adopt regulations to define the appropriate grounds for granting these exceptions. When the number of consumers in a supported employment placement group drops to fewer than the minimum required in subdivision (r) of Section 4851 the regional center may terminate funding for the group services in that group, unless, within 90 days, the program provider adds one or more regional center, or Department of Rehabilitation funded supported employment consumers to the group.

(c) Job coaching hours for group services shall be allocated on a prorated basis between a regional center and the Department of Rehabilitation when regional center and Department of Rehabilitation consumers are served in the same group.

(d) When Section 4855 applies, fees shall be authorized for the following:

(1) A two hundred dollar ($200) fee shall be paid to the program provider upon intake of a consumer into a supported employment program. No fee shall be paid if that consumer completed a supported employment intake process with that same supported employment program within the previous 12 months.

(2) A four hundred dollar ($400) fee shall be paid upon placement of a consumer in an integrated job, except that no fee shall be paid if that consumer is placed with another consumer or consumers assigned to the same job coach during the same hours of employment.

(3) A four hundred dollar ($400) fee shall be paid after a 90-day retention of a consumer in a job, except that no fee shall be paid if that consumer has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment.

(e) Notwithstanding paragraph (4) of subdivision (a) of Section 4648 the regional center shall pay the supported employment program rates established by this section.

4861. The regional center may vendor new work activity or supported employment programs, after determining the capacity of the program to deliver effective services, and assessing the ability of the program to comply with CARF requirements.

(a) Programs that receive the regional center's approval to provide supported employment services shall receive rates in accordance with Section 4860.

(b) A new work activity program shall receive the statewide average rate, as determined by the department. As soon as the new work activity program has a historical period of not less than three months that is representative of the cost per consumer, as determined by the department, the department shall set the rate in accordance with Section 4859.

(c) The regional center may purchase services from new work activity programs and supported employment programs, even though the program in not yet accredited by CARF, if all of the following apply:

(1) The vendor can demonstrate that the program is in compliance with certification standards established by the Department of Rehabilitation, to allow a period for becoming CARF accredited.

(2) (A) The program commits, in writing, to apply for accreditation by CARF within three years of the approval to purchase services by the regional center.

(B) CARF shall accredit a program within four years after the program has been vendored.

(d) The regional center may approve or disapprove proposals submitted by new or existing vendors based on all of the following criteria to the extent that it is federally permissible:

(1) The need for a work activity or supported employment program.

(2) The capacity of the vendor to deliver work activity or supported employment services effectively.

(3) The ability of the vendor to comply with the requirements of this section.

(4) The ability of the vendor to achieve integrated paid work for consumers served in supported employment.

4862. (a) The length of a work activity program day shall not be less than five hours, excluding the lunch period.

(b) (1) Except as provided in paragraph (2), the length of a work activity program day shall not be reduced from the length of the work activity program day in the historical period that was the basis for the approved habilitation services rate.

(2) (A) A work activity program may, upon consultation with, and prior written approval from, the regional center, change the length of a work activity program day.

(B) If the regional center approves a reduction in the work activity program day pursuant to subparagraph (A), the department may change the work activity program.

(c) (1) A work activity program may change the length of a work activity program day for a specific consumer in order to meet the needs of that consumer, if the regional center, upon the recommendation of the individual program planning team, approves the change.

(2) The work activity program shall specify in writing to the regional center the reasons for any proposed change in a work activity program day on an individual basis.

4863. (a) In accordance with regulations adopted by the department, and if agreed upon by the work activity program and the regional center, hourly billing shall be permitted, provided that it does not increase the regional center's costs when used in lieu of full-day or half-day billing. A work activity program shall be required to submit a request for the hourly billing option to the regional center not less than 60 days prior to the program's proposed implementation of this billing option.

(b) If a work activity program and the regional center elect to utilize hourly billing, the hourly billing process shall be required to be used for a minimum of one year.

(c) When the hourly billing process is being used, the definitions contained in subdivisions (h) and (i) of Section 4851 shall not apply.

4864. The department shall authorize payment for absences in work activity programs and supported employment programs that are directly consequent to a declaration of a State of Emergency by the Governor. If the department authorizes payment for absences due to a state of emergency, the vendor shall bill only for absences in excess of the average number of absences experienced by the vendor during the 12-month period prior to the month in which the disaster occurred.

4865. At the request of the Department of Rehabilitation, a work activity or supported employment program or both shall release accreditation and state licensing reports and consumer special incident reports as required by law or regulations in instances of suspected abuse.

4866. The department may promulgate emergency regulations to carry out the provisions of this chapter. If the Department of Developmental Services promulgates emergency regulations, the adoption of the regulations shall be deemed necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of subdivision (b) of Section 11346.1 of the Government Code.

4867. Nothing in this chapter shall be interpreted to mean that work activity programs or supported employment programs cannot serve consumers who are funded by agencies other than regional centers, including, but not limited to, the Department of Rehabilitation.

SEC. 3. Sections 1 and 2 of this act shall become operative on July 1, 2004.

CHAPTER 227

An act to amend Sections 2557.5, 2558, 8222.5, 10554, 13030, 14002.1, 37253, 41203.1, 41975, 42238.12, 42239.1, 42239.15, 42241.7, 42243.7, 44395, 48005.10, 48005.13, 48005.15, 48005.25, 48005.30, 48005.35, 48005.45, 48005.55, 69618.9, 76300, 99234, and 99235 of, and to add Sections 2558.46, 17070.76, 33128.3, 42238.146, 84321, and 84322 to, the Education Code, to add Section 7576.5 to the Government Code, and to amend Section 39 of, and to repeal Section 51 of, Chapter 1167 of the Statutes of 2002, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 2557.5 of the Education Code is amended to read:

2557.5. (a) For the 1987–88 fiscal year, and each fiscal year thereafter, the revenue limit of any county superintendent of schools authorized pursuant to Section 2551, as that section read on January 1, 1999, may be increased by an amount sufficient to provide additional revenue equal to the expenditure estimated to be incurred by the county superintendent of schools in the budget year in complying with the following provisions of the Unemployment Insurance Code: Sections 605 and 803, Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1, or Article 3 (commencing with Section 976) of Chapter 4 of Part 1 of Division 1, less the actual expenditures incurred by the county superintendent of schools in the 1975–76 fiscal year in complying with the following provisions of the Unemployment Insurance Code: Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1 and former Section 605.2.

(b) The increase in revenue limit provided in subdivision (a) shall be adjusted annually, including plus or minus adjustments for under- or over-estimating expenditures used in determining the increase in revenue limit provided by subdivision (a) in the previous fiscal year.

(c) (1) For the 1994–95 to 2002–03 fiscal years, inclusive, the amount of the increase computed pursuant to this section may not be

adjusted by the deficit factor applied to the revenue limit of each county superintendent of schools pursuant to Section 2558.45.

(2) For the 2003–04 fiscal year and each fiscal year thereafter, the revenue limit reduction specified in Section 2558.46 may not be applied to the adjustment computed pursuant to this section.

(d) Expenditures for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 are excluded from the calculations set forth in this section.

SEC. 2. Section 2558 of the Education Code is amended to read:

2558. Notwithstanding any other law, for the 1979–80 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall apportion state aid to county superintendents of schools pursuant to this section.

(a) The Superintendent of Public Instruction shall total the amounts computed for the fiscal year pursuant to Sections 2550, 2551.3, 2554, 2555, and 2557 and Section 2551, as that section read on January 1, 1999. For the 1979–80 fiscal year and for purposes of calculating the 1979–80 fiscal year base amounts in succeeding fiscal years, the amounts in Sections 2550, 2551, 2552, 2554, 2555, and 2557, as they read in the 1979–80 fiscal year, shall be multiplied by a factor of 0.994. For the 1981–82 fiscal year and for purposes of calculating the 1981–82 fiscal year base amounts in succeeding fiscal years, the amount in this subdivision shall be multiplied by a factor of 0.97.

(b) For the 1995–96 fiscal year and each fiscal year thereafter, the county superintendent of schools shall adjust the total revenue limit computed pursuant to this section by the amount of increased or decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of Chapter 330 of the Statutes of 1982, adjusted for any changes in those contributions resulting from subsequent changes in employer contribution rates, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System through the current fiscal year. The adjustment shall be calculated for each county superintendent of schools as follows:

(1) Determine the amount of employer contributions that would have been made in the current fiscal year if the applicable Public Employees' Retirement System employee contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the current fiscal year.

(2) Determine the actual amount of employer contributions made to the Public Employees' Retirement System in the current fiscal year.

(3) If the amount determined in paragraph (1) is greater than the amount determined in paragraph (2), the total revenue limit computed pursuant to this part for that county superintendent of schools shall be

decreased by the amount of the difference between those paragraphs; or if the amount determined in paragraph (1) is less than the amount determined in paragraph (2), the total revenue limit for that county superintendent of schools shall be increased by the amount of the difference between those paragraphs.

(4) For the purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following positions shall be excluded from the calculation specified above:

(A) Positions or portions of positions supported by federal funds that are subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to paragraph (1) of subdivision (a) of Section 54203.

(C) Positions supported, to the extent of employers' contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a non-General Fund revenue source determined to be properly excludable from this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance. Commencing in the 2002–03 fiscal year, only positions supported from a non-General Fund revenue source determined to be properly excludable as identified for a particular local education agency or pursuant to a blanket waiver by the Superintendent of Public Instruction and the Director of Finance, prior to the 2002–03 fiscal year, may be excluded pursuant to this paragraph.

(5) For accounting purposes, any reduction to county office of education revenue limits made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(6) The amount of the increase or decrease to the revenue limits of county superintendents of schools made by this subdivision for the 1995–96 to 2001–02 fiscal years, inclusive, may not be adjusted by the deficit factor applied to the revenue limit of each county superintendent of schools pursuant to Section 2558.45.

(7) For the 2003–04 fiscal year and any fiscal year thereafter, the revenue limit reduction specified in Section 2558.46 may not be applied to the amount of the increase or decrease to the revenue limits of each county superintendent of schools computed pursuant to paragraph (3).

(c) The Superintendent of Public Instruction shall also subtract from the amount determined in subdivision (a) the sum of: (1) local property tax revenues received pursuant to Section 2573 in the then current fiscal year, and tax revenues received pursuant to Section 2556 in the then current fiscal year, (2) state and federal categorical aid for the fiscal year, (3) district contributions pursuant to Section 52321 for the fiscal year, and other applicable local contributions and revenues, (4) any amounts that the county superintendent of schools was required to maintain as

restricted and not available for expenditure in the 1978–79 fiscal year as specified in the second paragraph of subdivision (c) of Section 6 of Chapter 292 of the Statutes of 1978, as amended by Chapter 51 of the Statutes of 1979, and (5) the amount received pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 33607.5 of the Health and Safety Code that is considered property taxes pursuant to that section.

(d) The remainder computed in subdivision (c) shall be distributed in the same manner as state aid to school districts from funds appropriated to Section A of the State School Fund.

(e) If the remainder determined pursuant to subdivision (c) is a negative amount, no state aid shall be distributed to that county superintendent of schools pursuant to subdivision (d), and an amount of funds of that county superintendent equal to that negative amount shall be deemed restricted and not available for expenditure during the current fiscal year. In the next fiscal year, that amount shall be considered local property tax revenue for purposes of the operation of paragraph (1) of subdivision (c).

(f) The calculations set forth in paragraphs (1) to (3), inclusive, of subdivision (b) exclude employer contributions for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

SEC. 3. Section 2558.46 is added to the Education Code, to read:

2558.46. (a) (1) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 1.195 percent deficit factor.

(2) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(b) In computing the revenue limit for each county superintendent of schools for the 2005–06 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2003–04 and 2004–05 fiscal years without being reduced by the deficit factors specified in this section.

SEC. 4. Section 8222.5 of the Education Code is amended to read:

8222.5. (a) Alternative payment programs may provide payment to child care facilities with at least 75 percent subsidized children in any of the following circumstances:

(1) There is a lack of licensed child care facilities in the area.

(2) The facility is able to meet the special needs of a particular child.

(3) Any other reason provided for by the department's regulations.

(b) It is the intent of the Legislature that the Superintendent of Public Instruction adopt regulations to implement a process whereby a child

care facility may apply to the department for funding pursuant to subdivision (a).

(c) For the 2003–04 fiscal year, the Superintendent of Public Instruction may not adopt or implement regulations that differentiate provider reimbursement rates based upon the percentage of subsidized children receiving care in a facility.

SEC. 5. Section 10554 of the Education Code is amended to read:

10554. (a) In order for the governing board to carry out its responsibilities pursuant to this chapter, there is hereby established the Educational Telecommunication Fund. The amount of moneys to be deposited in the fund shall be the amount of any offset made to the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30, based on a finding that these apportionments were not in accordance with law. The maximum amount that may be annually deposited in the fund from the offset is fifteen million dollars ($15,000,000). The Controller shall establish an account to receive and expend moneys in the fund. The placement of the moneys in the fund shall occur only upon a finding by the Superintendent of Public Instruction and the Director of Finance that the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, and Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30 were not in accordance with existing law and were so identified pursuant to Sections 1624, 14506, 41020, 41020.2, 41320, 42127.2, and 42127.3, or an independent audit that was approved by the department.

(b) Moneys in the fund established pursuant to subdivision (a) shall only be available for expenditure upon appropriation by the Legislature in the Budget Act.

(c) The moneys in the fund established pursuant to subdivision (a) may be expended by the governing board to carry out the purposes of this chapter, including for the following purposes:

(1) To support the activities of the team established pursuant to subdivision (c) of Section 10551.

(2) To assist the school districts and county superintendents of schools in purchasing both hardware and software to allow school districts, county superintendents of schools, and the department to be linked for school business and administrative purposes. The governing board shall establish a matching share requirement that applicant school districts and county superintendents of schools must fulfill to receive those funds. It is the intent of the Legislature to encourage the distribution of grants to school districts and county superintendents of schools to the widest extent possible.

(3) To provide technical assistance through county offices of education to school districts in implementing the standards established pursuant to subdivision (a) of Section 10552.

SEC. 6. Section 13030 of the Education Code is amended to read:

13030. (a) Funding for this program is subject to an appropriation for this purpose in the annual Budget Act or other act.

(b) Subject to an appropriation for this purpose in the annual Budget Act or other measure, the State Librarian shall review and identify programs with similar goals that may be combined with this project in the future.

(c) Subject to an appropriation in the annual Budget Act or other measure for this purpose, the State Librarian shall report to the Legislature by November 1, 2004, on the progress of the program and on the results of the review required by subdivision (b).

SEC. 7. Section 14002.1 of the Education Code is amended to read:

14002.1. Notwithstanding any other law, for purposes of determining (a) the amounts to be certified pursuant to Sections 14002 and 14004, (b) allocations made pursuant to Section 41301, (c) the apportionments required to be made pursuant to Sections 41330, 41332, and 41335, (d) revenue limits for school districts pursuant to Section 42238, as adjusted pursuant to Sections 42238.14, 42238.145, and 42238.146, and (e) revenue limits for county offices of education pursuant to Section 2558, as adjusted pursuant to Sections 2558.4, 2558.45, and 2558.46, the Superintendent of Public Instruction shall use the property tax estimates received from county auditors pursuant to Section 75.70 of the Revenue and Taxation Code.

SEC. 8. Section 17070.76 is added to the Education Code, to read:

17070.76. Notwithstanding Section 17070.75, for the 2003–04 fiscal year, the board shall only require a school district to deposit into the account established pursuant to paragraph (1) of subdivision (b) of Section 17070.75 an amount equal to 2 percent of the total expenditures by a district from its general fund in the 2003–04 fiscal year.

SEC. 9. Section 33128.3 is added to the Education Code, to read:

33128.3. (a) Notwithstanding the standards and criteria adopted pursuant to paragraph (3) of subdivision (a) of Section 33128, for the 2003–04 and 2004–05 fiscal years, the minimum state requirement for a reserve for economic uncertainties is one-half of the percentage for a reserve adopted by the State Board of Education pursuant to Section 33128 as of May 1, 2003.

(b) For the 2005–06 fiscal year, the minimum state requirement for a reserve for economic uncertainties shall be restored to the percentage adopted by the State Board of Education pursuant to Section 33128 as of May 1, 2003.

SEC. 10. Section 37253 of the Education Code is amended to read:

37253. (a) The governing board of any school district and a charter school may offer supplemental instructional programs in mathematics, science, or other core academic areas designated by the Superintendent of Public Instruction.

(b) The Superintendent of Public Instruction shall adopt rules and regulations necessary to implement this section, including, but not limited to, the designation of academic areas other than mathematics and science as core academic areas.

(c) The maximum entitlement of a school district or charter school for reimbursement for pupil hours of attendance in supplemental instructional programs offered pursuant to this section shall be an amount equal to 5 percent of the total enrollment of the school district or charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to subdivision (c) of Section 42239.

(d) To the extent appropriated funding allows, a school district or charter school may enroll more than 5 percent of its pupils, or may enroll pupils for more than 120 hours per year, in supplemental instructional programs offered pursuant to this section, if the total state apportionment to the district or charter school for these programs does not exceed an amount computed equal to 10 percent of the total enrollment of the school district or charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to subdivision (c) of Section 42239.

(e) Instructional programs may be offered pursuant to this section during the summer, before school, after school, on Saturday, or during intersession, or in any combination of summer, before school, after school, Saturday, or intersession instruction, but shall be in addition to the regular schoolday. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday, over a pupil who is not unable to attend a Saturday school program for religious reasons.

(f) Notwithstanding any other law, neither the State Board of Education nor the Superintendent of Public Instruction may waive compliance with any provision of this section.

SEC. 11. Section 41203.1 of the Education Code is amended to read:

41203.1. (a) For the 1990–91 fiscal year and each fiscal year thereafter, allocations calculated pursuant to Section 41203 shall be distributed in accordance with calculations provided in this section.

Notwithstanding Section 41203, and for the purposes of this section, school districts, community college districts, and direct elementary and secondary level instructional services provided by the State of California shall be regarded as separate segments of public education, and each of these three segments of public education shall be entitled to receive respective shares of the amount calculated pursuant to Section 41203 as though the calculation made pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution were to be applied separately to each segment and the base year for the purposes of this calculation under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution were based on the 1989–90 fiscal year. Calculations made pursuant to this subdivision shall be made so that each segment of public education is entitled to the greater of the amounts calculated for that segment pursuant to paragraph (1) or (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(b) If the single calculation made pursuant to Section 41203 yields a guaranteed amount of funding that is less than the sum of the amounts calculated pursuant to subdivision (a), then the amount calculated pursuant to Section 41203 shall be prorated for the three segments of public education.

(c) Notwithstanding any other law, this section does not apply to the 1992–93 to 2003–04 fiscal years, inclusive.

SEC. 12. Section 41975 of the Education Code is amended to read:

41975. (a) Apportionments and allowances to a school district from Section A of the State School Fund in a fiscal year may not be less than the product of one hundred twenty dollars ($120) multiplied by the average daily attendance of the district in the preceding fiscal year, or two thousand four hundred dollars ($2,400), whichever amount is the greater.

(b) State funds apportioned to each school district for categorical education programs, or other state funds apportioned to each school district from the State School Fund, shall be applied to meet the requirement of Section 6 of Article IX of the California Constitution to provide a minimum of one hundred twenty dollars ($120) of state aid per pupil or two thousand four hundred dollars ($2,400) per school district.

(c) Notwithstanding any other law, the Superintendent of Public Instruction may not increase the revenue limit apportionment of any school district to provide basic state aid pursuant to Section 6 of Article IX of the California Constitution or any other law, unless that school district has not received the greater amount of one hundred twenty dollars ($120) per pupil or two thousand four hundred dollars ($2,400) from all state funds, including funds for categorical education programs. If a school district receives less than the amount specified in this

subdivision, the Superintendent of Public Instruction shall allocate the difference between the amount of state funds received and the constitutional minimum of the greater amount of one hundred twenty dollars ($120) per pupil or two thousand four hundred dollars ($2,400) per school district.

SEC. 13. Section 42238.12 of the Education Code is amended to read:

42238.12. (a) For the 1995–96 fiscal year and each fiscal year thereafter, the county superintendent of schools shall adjust the total revenue limit for each school district in the jurisdiction of the county superintendent of schools by the amount of increased or decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of Chapter 330 of the Statutes of 1982, adjusted for any changes in those contributions resulting from subsequent changes in employer contribution rates, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System, through the current fiscal year. The adjustment shall be calculated for each school district, as follows:

(1) (A) Determine the amount of employer contributions that would have been made in the current fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the current fiscal year.

(B) For the purposes of this calculation, no school district shall have a contribution rate higher than 13.020 percent.

(2) Determine the actual amount of employer contributions made to the Public Employees' Retirement System in the current fiscal year.

(3) If the amount determined in paragraph (1) for a school district is greater than the amount determined in paragraph (2), the total revenue limit computed for that school district shall be decreased by the amount of the difference between those paragraphs; or, if the amount determined in paragraph (1) for a school district is less than the amount determined in paragraph (2), the total revenue limit for that school district shall be increased by the amount of the difference between those paragraphs.

(4) For the purpose of this section, employer contributions to the Public Employees' Retirement System for any of the following positions shall be excluded from the calculation specified above:

(A) Positions or portions of positions supported by federal funds that are subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to paragraph (1) of subdivision (a) of Section 54203.

(C) Positions supported, to the extent of employers' contributions not exceeding twenty-five thousand dollars ($25,000) by any single

educational agency, from a non-General Fund revenue source determined to be properly excludable from this section by the Superintendent of Public Instruction with the approval of the Director of Finance. Commencing in the 2002–03 fiscal year, only positions supported from a non-General Fund revenue source determined to be properly excludable as identified for a particular local educational agency or pursuant to a blanket waiver by the Superintendent of Public Instruction and the Director of Finance, prior to the 2002–03 fiscal year, may be excluded pursuant to this paragraph.

(5) For accounting purposes, any reduction to district revenue limits made by this provision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(6) The amount of the increase or decrease to the revenue limits of school districts computed pursuant to paragraph (3) for the 1995–96 to 2002–03 fiscal years, inclusive, may not be adjusted by the deficit factor applied to the revenue limit of each school district pursuant to Section 42238.145.

(7) For the 2003–04 fiscal year and any fiscal year thereafter, the revenue limit reduction specified in Section 42238.146 may not be applied to the amount of the increase or decrease to the revenue limits of school districts computed pursuant to paragraph (3).

(b) The calculations set forth in paragraphs (1) to (3), inclusive, of subdivision (a) exclude employer contributions for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(c) Funding appropriated through the Budget Act of 2001 or legislation amending the Budget Act of 2001 for the purpose of limiting the reductions to revenue limits calculated pursuant to this section and to Section 2558 for the 2001–02 fiscal year shall be allocated on a one-time basis in the following manner:

(1) Each school district and county office of education subject to a reduced apportionment pursuant to this section or to Section 2558 shall receive a share of the amount described in paragraph (3) that is proportionate to the reduction in their apportionment pursuant to this section or to Section 2558 for the 2001–02 fiscal year as compared to the statewide total reduction that would occur absent this paragraph.

(2) For the 2001–02 fiscal year, instead of the alternative calculation authorized by paragraph (1), San Francisco Unified School District shall receive an amount equal to five dollars and 57 cents ($5.57) multiplied by its second principal apportionment average daily attendance for the 2001–02 fiscal year.

(3) Notwithstanding any other law, total allocations pursuant to this subdivision may not exceed thirty-five million dollars ($35,000,000).

(d) Thirty-five million dollars ($35,000,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund for local assistance for the purpose of limiting the reductions to revenue limits calculated pursuant to this section and to Section 2558 for the 2003–04 fiscal year. Funding from this appropriation shall be allocated in the following manner:

(1) Each school district and county office of education subject to a reduced apportionment pursuant to this section or to Section 2558 shall receive a share of the amount appropriated in this subdivision that is proportionate to the reduction in their apportionment pursuant to this section or to Section 2558 for the 2003–04 fiscal year as compared to the statewide total reduction that would occur absent this paragraph.

(2) For the 2003–04 fiscal year, instead of the alternative calculation authorized by paragraph (1), the San Francisco Unified School District shall receive an amount equal to five dollars and 57 cents ($5.57) multiplied by its second principal apportionment average daily attendance for the 2003–04 fiscal year.

(3) Notwithstanding any other law, total allocations pursuant to this subdivision may not exceed thirty-five million dollars ($35,000,000) for the 2003–04 fiscal year.

(4) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202, for the 2003–04 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202, for the 2003–04 fiscal year.

(e) For the 2004–05 fiscal year, and each fiscal year thereafter, apportionment reductions pursuant to this section and to Section 2558 shall be limited as follows:

(1) Each school district and county office of education subject to a reduced apportionment pursuant to this section or to Section 2558 shall receive a share of the amount described in paragraph (3) that is proportionate to the reduction in their apportionment pursuant to this section or to Section 2558 for the 2004–05 fiscal year as compared to the statewide total reduction as would occur absent this paragraph.

(2) Instead of the alternative calculation authorized by paragraph (1), the San Francisco Unified School District shall receive funding equal to the amount of funding per unit of average daily attendance specified in paragraph (2) of subdivision (c) as increased annually by cost-of-living adjustments specified in Section 42238.1, multiplied by its second principal apportionment average daily attendance for that fiscal year.

(3) Notwithstanding any other law, total limitations pursuant to this subdivision may not annually exceed the amount described in paragraph (3) of subdivision (c) as annually increased by the cost-of-living adjustments specified in Section 42238.1, multiplied by the annual statewide percentage growth in total average daily attendance, measured at the second principal apportionment.

SEC. 14. Section 42238.146 is added to the Education Code, to read:

42238.146. (a) (1) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each school district determined pursuant to this article shall be reduced by a 1.198 percent deficit factor.

(2) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each school district determined pursuant to the article shall be further reduced by a 1.826 percent deficit factor.

(b) In computing the revenue limit for each school district for the 2005–06 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2003–04 and 2004–05 fiscal years without being reduced by the deficit factors specified in this section.

SEC. 15. Section 42239.1 of the Education Code is amended to read:

42239.1. (a) For the 1999–2000 fiscal year and each fiscal year thereafter, each school district is eligible for reimbursement for hours of pupil attendance claimed for intensive reading programs offered pursuant to Article 1 (commencing with Section 53025) of Chapter 16 of Part 28 in an amount up to 10 percent of the district's total enrollment in kindergarten and grades 1 to 4, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239. This amount shall be provided in addition to amounts claimed pursuant to Sections 37252, 37252.2, 37252.5, 35252.6, 37252.8, and 37253.

(b) When expending funds received pursuant to this section, a school district shall give first priority for the purpose specified in paragraph (1) of subdivision (c) of Section 53027.

(c) Reimbursement pursuant to this section is contingent on an appropriation being made for that purpose in the annual Budget Act.

SEC. 16. Section 42239.15 of the Education Code is amended to read:

42239.15. (a) For the 2000–01 fiscal year and each fiscal year thereafter, each school district and charter school is eligible for reimbursement for hours of pupil attendance claimed for intensive algebra instruction academies offered pursuant to Chapter 18 (commencing with Section 53091) of Part 28 in an amount up to 6 percent of the total enrollment in grades 7 and 8 of the school district or

charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239. This amount shall be provided in addition to the amount provided pursuant to Section 42239.

(b) When expending funds received pursuant to this section, a school district shall give first priority for the purpose specified in paragraph (1) of subdivision (d) of Section 53092.

(c) Reimbursement pursuant to this section is contingent on an appropriation being made for that purpose in the annual Budget Act.

SEC. 17. Section 42241.7 of the Education Code is amended to read:

42241.7. (a) For the 1978–79 fiscal year, and each fiscal year thereafter, the revenue limit of any elementary, high, or unified school district authorized pursuant to Sections 42237 and 42238 may be increased by an amount sufficient to provide additional revenue equal to the expenditures estimated to be incurred by the district in the budget year in complying with the following provisions of the Unemployment Insurance Code: Sections 605 and 803, Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1, or Article 3 (commencing with Section 976) of Chapter 4 of Part 1 of Division 1, less the actual expenditures incurred by the district in the 1975–76 fiscal year in complying with the following provisions of the Unemployment Insurance Code: Section 605.2 and Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1.

(b) If, at the end of any fiscal year, the actual expenditures of the district specified in subdivision (a) are less than the revenue derived from the increase in revenue limit provided in subdivision (a) for that fiscal year, the difference shall be used in the following fiscal year exclusively for expenditures required pursuant to the Unemployment Insurance Code provisions specified in subdivision (a).

(c) If, at the end of any fiscal year, the actual expenditures of the district specified in subdivision (a) exceed the revenue derived from the increase in revenue limit provided in subdivision (a) for that fiscal year, the difference may be added to the increase in revenue limit, authorized pursuant to this section, in the following fiscal year.

(d) (1) For the 1994–95 to 2002–03 fiscal years, inclusive, the adjustment computed pursuant to this section shall not be adjusted by the deficit factor applied to the revenue limit of each school district pursuant to Section 42238.145.

(2) For the 2003–04 fiscal year and each fiscal year thereafter, the revenue limit reduction specified in Section 42238.146 may not be applied to the adjustment computed pursuant to this section.

(e) Expenditures for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 are excluded from the calculations set forth in this section.

SEC. 18. Section 42243.7 of the Education Code is amended to read:

42243.7. (a) For any school district that commenced operations on or after June 30, 1978, or for any school district that receives approval from the department for a new continuation education high school for the 1979–80 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall compute an adjustment to the district revenue limit pursuant to this section.

(b) Determine the amount of foundation program that the district would have been entitled to pursuant to subdivision (a) of Section 41711, as that Section read on July 1, 1977, if the district had operated during the 1977–78 fiscal year, utilizing the number of units of average daily attendance attending high school in the district in the fiscal year for which the revenue limit is being computed.

(c) Determine the amount of foundation program that the district would have been entitled to pursuant to paragraph (1) of subdivision (b) of Section 41711, as that section read on July 1, 1977, if the district had operated during the 1977–78 fiscal year, utilizing the same number of units of average daily attendance used in subdivision (b) of this section.

(d) Subtract the amount determined pursuant to subdivision (c) from the amount computed pursuant to subdivision (b).

(e) The amount computed pursuant to subdivision (d), if greater than zero, shall be added to the revenue limit computed pursuant to subdivision (c) of Section 42237 or pursuant to Section 42238. If the amount in subdivision (d) is less than zero there is no adjustment.

(f) The Superintendent of Public Instruction shall reduce by the amount computed pursuant to subdivision (e) the revenue limit computed pursuant to Section 42238 of any district discontinuing the operation of a continuation education school approved pursuant to subdivision (a).

(g) (1) For the 1994–95 to 2002–03 fiscal years, inclusive, the adjustment computed pursuant to this section may not be adjusted by the deficit factor applied to the revenue limit of each school district pursuant to Section 42238.145.

(2) For the 2003–04 fiscal year and each fiscal year thereafter, the revenue limit reduction specified in Section 42238.146 may not be applied to the adjustment computed pursuant to this section.

(h) The adjustment computed pursuant to this section for a new continuation education high school may be applicable for any unified school district that was not fully operational during the first year of operation of the continuation education high school. The number of

units of average daily attendance to be used in computing the adjustment shall be the number of units of average daily attendance generated by the continuation education high school in the district for the first year that the district is fully operational in all grades.

(i) In the 1998–99 fiscal year and each fiscal year thereafter, the ranges of average daily attendance resulting from the calculation set forth in this section pursuant to Section 41711, as that section read on July 1, 1977, shall be reduced by the statewide average percentage that absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996, were of total second principal apportionment regular average daily attendance for high schools in 1996–97, with the reduced ranges then rounded to the nearest integer.

SEC. 19. Section 44395 of the Education Code is amended to read:

44395. (a) The National Board for Professional Teaching Standards Certification Incentive Program is hereby established to award grants to school districts for the purpose of providing awards to teachers who are employed by school districts or charter schools, are assigned to teach in California public schools, and have attained certification from the National Board for Professional Teaching Standards. Awards shall be granted to the extent that funds have been appropriated for this purpose in the annual Budget Act.

(1) Commencing July 1, 2000, any teacher who has attained certification from the National Board for Professional Teaching Standards is eligible to receive an award of up to twenty thousand dollars ($20,000) if he or she agrees to teach at a high-priority school for at least four years. Teaching service before July 1, 2000, may not be counted towards satisfaction of this four-year commitment.

(2) Awards granted pursuant to this subdivision shall be disbursed in annual payments of five thousand dollars ($5,000) over a four-year period. The annual payment shall be made upon completion of the school year, and upon approval of a district-certified application pursuant to the guidelines of subdivision (c) of Section 44396.

(b) The department shall administer the awards authorized by subdivision (a), and shall develop, in consultation with the Commission on Teacher Credentialing, certification and award information, criteria, procedures, and applications, all of which shall be submitted to the State Board of Education for approval. Amendments requested by the State Board of Education to that information, criteria, procedures, and applications shall be made before the dissemination of the material and the granting of any award under this article.

(c) The department shall distribute the materials described in subdivision (b) to school districts. Each school district is strongly encouraged to ensure that teachers employed by the district or by charter

schools affiliated with the district are informed about the program and can acquire the necessary application and information materials.

(d) School districts are encouraged to provide for adequate release time and support for a teacher to complete the certification process. As a condition to providing that release time and support, a school district may require that a teacher serve in a mentor teacher capacity.

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

(1) ''School district'' means school district, county board of education, county superintendent of schools, a state operated program, including a special school, or an education program providing instruction in kindergarten or any of grades 1 to 12, inclusive, that is offered by a state agency, including the California Youth Authority and the State Department of Developmental Services.

(2) ''High-priority school'' means a school in the bottom half of all schools based on the Academic Performance Index rankings established pursuant to subdivision (a) of Section 52056. This designation shall be determined as of the date of the agreement by the teacher described in paragraph (1) of subdivision (a).

SEC. 20. Section 48005.10 of the Education Code is amended to read:

48005.10. (a) This article shall be known, and may be cited, as the Kindergarten Readiness Pilot Program.

(b) The Legislature hereby finds and declares the following:

(1) The available data indicate all of the following:

(A) By changing the age at which children generally enter kindergarten, California's children will be better prepared to enter into the academic environment that is required by the California content standards for kindergarten.

(B) Success in school is often related to socioeconomic status, English language fluency at school entry, and access to preschool. By providing a kindergarten readiness program for the children most at risk for low performance and delaying entry to allow all children time to become more developmentally ready to learn, pupils are more likely to succeed in school.

(C) Comparisons between California pupils and pupils in other states on national achievement tests in the later grades are likely to be more equitable if the entry age of California pupils is more closely aligned to that of most other states.

(D) Children who have attended an educationally based kindergarten readiness program, including, but not limited to, a quality state preschool, Head Start, or kindergarten readiness program, are better prepared academically and socially for the existing kindergarten curriculum, as reflected by the state adopted standards.

(2) The purpose of the pilot project established pursuant to this article is intended to test these data.

(3) For participating school districts, the change in enrollment required pursuant to this article will result in a decrease in the number of pupils enrolled in kindergarten classes for the class entering kindergarten in the 2006–07 school year. Thus, it is estimated that in participating school districts there will be a 25 percent decrease in the enrollment of the kindergarten class in the initial year of implementation.

(4) The school district revenue related provision of this article in Section 48005.30 is intended to fully fund participation in the program and provide an incentive to participate.

SEC. 21. Section 48005.13 of the Education Code is amended to read:

48005.13. (a) The Superintendent of Public Instruction shall establish and administer the Kindergarten Readiness Pilot Program to permit school districts to provide opportunities for children to enhance their readiness for kindergarten, thereby increasing their likelihood for future academic success.

(b) The Superintendent of Public Instruction shall convene an advisory panel to assist the department in developing its request for proposals, and in evaluating and selecting the proposals submitted to the department. The advisory panel shall include, but need not be limited to, a representative of each of the following:

(1) The Department of Finance.

(2) The Legislature.

(3) The California Research Bureau.

(4) The Legislative Analyst.

(5) The State Board of Education.

(6) The Secretary for Education.

(c) By February 1, 2006, the superintendent shall notify elementary and unified school districts maintaining kindergarten about the existence of this program, shall notify them about the procedures for participation, and shall request proposals for participation.

(d) Participation in the program by a school district shall be voluntary.

(e) A school district that elects to participate in the program shall apply to the Superintendent of Public Instruction by May 1, 2006, upon forms adopted by the superintendent for this purpose.

(f) The Superintendent of Public Instruction, with the advice of the advisory panel, and in consultation with the Secretary for Education, shall select participants from the group of applicants. The Superintendent of Public Instruction shall give priority to applicant school districts that are representative of the diversity of pupils and of

the various types of school districts within the state. The Superintendent of Public Instruction shall also give priority to unified school districts.

(g) This article does not prohibit a school district from implementing the program in selected schools within the district if adequate records are kept to substantiate the accuracy of the declining enrollment incentive and limits on prekindergarten instruction funding provided pursuant to Section 48005.30.

SEC. 22. Section 48005.15 of the Education Code is amended to read:

48005.15. By July 1, 2006, each participant school district shall enter into an agreement with the Superintendent of Public Instruction setting forth the requirements under the program, including, but not limited to, all of the following:

(a) The participating school district shall make a reasonable effort to identify parents and guardians of children from three to five years of age who reside within the school district and to provide the parents and guardians with information regarding, and access to, services, programs, or methods, to assist them in assessing the level of readiness of a child to enter school.

(b) The effort set forth in subdivision (a) shall include, but need not be limited to, information regarding available care services, preschool programs, and educationally based kindergarten readiness programs. The school district may coordinate this effort with local parent-teacher organizations.

(c) ''Reasonable effort'' as used in this subdivision does not require that the school district individually contact every potential parent who resides within the school district.

(d) The school district shall provide assistance to parents or guardians who request assistance regarding activities that parents may initiate in preparing children for school.

(e) At a minimum, participating school districts shall supply parents or guardians with written readiness guidelines developed by the department.

(f) Assistance provided pursuant to this section shall be based on generally accepted child development theory and may include information related to social and development readiness and professional consultations with teachers and school administrators.

(g) The participating school district shall make a reasonable effort to collect data and make it available to the independent evaluator, as specified in Section 48005.45.

SEC. 23. Section 48005.25 of the Education Code is amended to read:

48005.25. (a) Notwithstanding any law, including, but not limited to, Section 48000, for the 2006–07 school year, and each school year

thereafter in which a school district continues to participate in the program, the school district shall offer admission to kindergarten at the beginning of the school year, or at a later time in the same school year, only to children who will have their fifth birthday on or before September 1 of that school year. For a school district that is not implementing the pilot project authorized by this article on a districtwide basis, this subdivision applies only to children whose residence is in the regular attendance boundary of a participating school or who would otherwise attend that school under school assignment policies established in the school year prior to implementation of this pilot program.

(b) Notwithstanding any law, including, but not limited to, Section 48010, for the 2007–08 school year, and each school year thereafter in which a school district continues to participate in the program, a school district shall offer admission to first grade at the beginning of the school year, or at a later time in the same school year, only to children who will have their sixth birthday on or before September 1 of that school year. Kindergarten may not be a prerequisite for enrollment in first grade pursuant to this article. For a school district that is not implementing the pilot project authorized by this article on a districtwide basis, this subdivision applies only to children whose residence is in the regular attendance boundary of a participating school or who would otherwise attend that school under school assignment policies established in the school year prior to implementation of this pilot program.

(c) Notwithstanding subdivisions (a) and (b), the governing board of each school district participating in this program shall adopt a policy to allow, for good cause, admission of a child to kindergarten or to the first grade at the beginning of a school year in which the child's birthday will be after September 1, or at a later time in the same school year. It is the intent of the Legislature that this subdivision authorize rare exceptions for only the most gifted and socially mature children. Therefore, exceptions are limited to no more than the greater of either one child or the number of children determined by multiplying .01 times the prior school year second principal apportionment average daily attendance in kindergarten within the participating school district or the school implementing the program, as applicable. A school or school district may not exceed this limitation without specific written approval from the Superintendent of Public Instruction upon consideration of a statement by the school or school district of the circumstances that meet the legislative intent regarding this subdivision.

SEC. 24. Section 48005.30 of the Education Code is amended to read:

48005.30. (a) For the 2006–07 to 2012–13 school years, inclusive, the Superintendent of Public Instruction shall allocate a grant of funds

for a participating school district for each year of participation to cover the costs of developing and operating the school district kindergarten readiness program, including, but not limited to, the costs of administration and the costs associated with services provided to parents and children in the program. For any participating school district, annual funding is subject to the limitations and requirements of this subdivision and may not exceed the per-pupil amount nor the total amount computed as follows:

(1) Five dollars ($5) per hour for each hour of attendance for each child participating in the kindergarten readiness program up to a maximum of 150 hours of attendance for each child. The amount per hour shall be adjusted annually, commencing with the 2007–08 school year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1.

(2) For purposes of total funding to a participating school district, the amount claimed may not exceed an amount equivalent to multiplying the amount in paragraph (1) by a number equal to 50 percent of the entire kindergarten second principal apportionment average daily attendance for the 2005–06 school year of the school district or, in a school district that is not implementing the pilot project authorized by this article on a districtwide basis, by a number equal to 50 percent of the kindergarten second principal apportionment average daily attendance for the 2005–06 school year of the schools in the district that are implementing the program.

(b) For the 2006–07 school year, the Superintendent of Public Instruction shall allocate a one-time incentive grant to enhance transition of the school district for the reduced attendance that results from the program, to be determined by multiplying one-fourth of the kindergarten average daily attendance for the 2005–06 school year by the school district's base revenue limit per unit of average daily attendance. If a school district does not implement the program districtwide, this one-time incentive shall be determined by multiplying one-fourth of the specific portion of the district's kindergarten average daily attendance for the 2005–06 school year contributed by the implementing school or schools by the school district's base revenue limit per unit of average daily attendance.

(c) A participating school district that does not implement the program on a districtwide basis shall provide to the Superintendent of Public Instruction a statement certifying the following:

(1) The second principal apportionment average daily attendance in the implementing schools for the 2005–06 school year. The school district shall maintain these records for audit purposes. The Superintendent of Public Instruction may request documentation of the second principal apportionment average daily attendance in schools

implementing the program as deemed necessary to enforce the funding limits of this article.

(2) Attendance boundaries for the schools implementing the program will remain the same as they existed in the 2005–06 school year through the duration of the program, unless the district submits an application to and receives approval from the State Board of Education. The State Board of Education shall only consider applications for attendance boundary changes for participating schools in cases where significant population changes necessitate the opening of new schools or the closing of existing schools. In order to preserve the integrity of the evaluation required by this article, it is the intent of the Legislature that a school district applying to participate in the program on a less than districtwide basis avoid implementation of the program in schools that can reasonably be foreseen to be subject to boundary changes within the timeframe of the pilot program authorized in this article. The State Board of Education may not approve boundary changes that do not meet the requirements and intent of this paragraph.

(3) The district has established procedures that restrict attendance in nonparticipating schools of the district for children residing in the attendance boundaries of the schools implementing the program.

(d) Total incentive funding for reduced second principal apportionment average daily attendance provided pursuant to this article shall be subject to a statewide maximum funding level equal to the equivalent of 2,300 full annual units of average daily attendance multiplied by the statewide average school district revenue limit for the 2006–07 fiscal year as determined by the Department of Finance.

SEC. 25. Section 48005.35 of the Education Code is amended to read:

48005.35. (a) A school district kindergarten readiness program operated pursuant to this article is exempt from the requirements of the Class Size Reduction Program (Ch. 6.10 (commencing with Sec. 52150), Pt. 28) and the regulations adopted by the Superintendent of Public Instruction pursuant to Section 8261 if the program meets kindergarten staffing and safety requirements.

(b) Notwithstanding any other law, including, but not limited to, subdivision (a) of Section 17285, a commercial building that does not meet the requirements of Section 17280, that is leased to a school district may, until January 1, 2007, be used as a classroom in order to accommodate programs under this article if the governing board of the school district finds that conditions of subdivision (b) of Section 17285 have been met.

(c) Any teacher participating in the kindergarten readiness program shall hold a permit or credential issued by the Commission on Teacher

Credentialing that authorizes instruction in kindergarten or child care and development.

SEC. 26. Section 48005.45 of the Education Code is amended to read:

48005.45. (a) The Superintendent of Public Instruction shall, by June 1, 2007, contract for an independent longitudinal evaluation regarding the effects of the change in the entry age for kindergarten and first grade pursuant to this article. In selecting the independent evaluator, awarding the contract pursuant to this section, and in monitoring performance under the contract, the Superintendent of Public Instruction shall consult with the advisory panel convened pursuant to subdivision (b) of Section 48005.13.

(b) The evaluation shall be based upon samples of sufficient size and diversity to allow results to be reported separately for pupils of different ethnicity, socioeconomic status, and primary language, and results of the evaluation shall be so reported.

(c) The primary purpose of the evaluation is to determine whether this entry age change results in improved readiness for school and an improvement in academic achievement among participating children.

(d) The evaluation shall use representative sampling to identify the change's effects on all of the following:

(1) Academic achievement, as measured by standardized tests, as compared with pupils not participating in the program.

(2) Behavioral problems, as measured by objective data including, but not limited to, suspension and expulsion rates, as compared with pupils not participating in the program.

(3) Academic problems, as measured by referrals to special education and remedial programs, as compared with pupils not participating in the program.

(4) Age of kindergarten entry and previous educationally based preschool experience, including, but not limited to, access to child care and preschool by parents or guardians.

(5) Overall retention rates in kindergarten and in subsequent grades.

(6) Participation in remedial, supplemental, or summer school programs.

(7) Class size.

(8) Number of pupils participating in kindergarten.

(9) Number of pupils participating in the kindergarten readiness programs.

(10) Differences, if any, between programs with full preschool participation, and those with partial or no preschool.

(11) Child care difficulties caused by the admission age change.

(12) Demographic breakdown of participants and nonparticipants, including, but not limited to, socioeconomic and ethnic demographics.

(13) Facilities difficulties, if any, encountered by participating school districts.

(14) The ability of parents to gain access to the program, disaggregated by ethnic, primary language, and socioeconomic status.

(e) It is the intent of the Legislature that funding for this evaluation be included in the Budget Act or a bill related to the Budget Act. It is the intent of the Legislature to subsequently increase the number of hours funded for the kindergarten readiness program if the reports pursuant to this section indicate that the increase would be beneficial.

(f) (1) The independent evaluator shall report to the Legislature, the Governor, the Superintendent of Public Instruction, the State Board of Education, and the Secretary for Education.

(2) The initial report shall be filed by June 1, 2009. The interim report shall be filed by January 1, 2011. The final report shall be filed by January 1, 2012.

SEC. 27. Section 48005.55 of the Education Code is amended to read:

48005.55. This article shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 28. Section 69618.9 of the Education Code is amended to read:

69618.9. Commencing with the 1998–99 fiscal year, the commission shall issue warrants for the assumption of up to 500 student loans for program participants eligible under this article. The issuance of warrants shall be subject to funding to be provided in the annual Budget Act for each fiscal year. Notwithstanding any other provision of law, no warrants for the assumption of loans under this article shall be issued in the 2003–04 fiscal year.

SEC. 29. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be eighteen dollars ($18) per unit per semester, effective with the fall term of the 2003–04 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system, and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract,

from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. ''Active service of the state,'' for the purposes of this subdivision, refers

to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 for determining nonresident and resident tuition.

(*l*) (1) ''Dependent,'' for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant

to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive, for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

SEC. 30. Section 84321 is added to the Education Code, to read:

84321. (a) Notwithstanding any other provision of law, commencing with the 2003–04 fiscal year, warrants for the principal apportionments for the month of June, for general apportionments in the amount of one hundred fifty million dollars ($150,000,000) and for the Partnership for Excellence in the amount of fifty million dollars ($50,000,000), shall instead be drawn in July of the same calendar year pursuant to the certification made under Section 84320.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivision (a) shall be deemed to be ''General Fund revenues appropriated for community college districts,'' as defined in subdivision (d) of Section 41202, for the fiscal year in which the warrants are drawn, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

SEC. 31. Section 84322 is added to the Education Code, to read:

84322. Notwithstanding any other provision of law, a community college district may recognize, for budgetary and financial reporting purposes, any amount of state appropriations deferred from the current fiscal year and appropriated in the subsequent fiscal year for payment of current-year costs as a receivable in the current fiscal year.

SEC. 32. Section 99234 of the Education Code is amended to read:

99234. (a) The Superintendent of Public Instruction shall notify local educational agencies that they are eligible to receive an incentive award based on the percentage of eligible teachers calculated in accordance with provisions of an item of appropriation in the annual Budget Act. It is the intent of the Legislature that a local educational agency give highest priority to training teachers assigned to

high-priority schools. It is also the intent of the Legislature that funding appropriated in one fiscal year that is not expended by a local educational agency be redirected to local educational agencies that have trained more eligible teachers than the percentage funded. If a redirection of funding occurs, funding in subsequent fiscal years for the local educational agencies involved shall be adjusted to reflect the redirection of funding.

(b) A school district that cannot make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237 for all the grade levels it maintains in reading and mathematics may apply for and receive incentive funding for the grade levels and subjects for which it can make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237, in which case the certified assurance submitted pursuant to Section 99237 applies only to the professional development provided to teachers and instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading in the grade levels and subjects for which it can make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237.

(c) Of the incentive provided pursuant to subdivision (a), a local educational agency may use not more than one thousand dollars ($1,000) of the per teacher per subject amount to provide an individual teacher stipend.

(d) The Superintendent of Public Instruction shall notify local educational agencies that the maximum funding for the purpose of this article for which they are eligible each year is equal to the percentage calculated in accordance with provisions of an item of appropriation in the annual Budget Act, multiplied by the sum of the following two factors multiplied by two thousand five hundred dollars ($2,500):

(1) Twice the number of multiple subjects teachers teaching in a self-contained classroom and special education teachers, as specified in paragraphs (1) and (2) of Section 99233, that provide direct instruction in reading and mathematics as reported in the most recent available CBEDS data, who have not received training pursuant to either this article or Article 2 (commencing with Section 99220).

(2) The number of mathematics, English, science, and social science teachers as specified in paragraphs (3) to (6), inclusive, of Section 99233 that were reported in the most recent available CBEDS data, who have not received training pursuant to either this article or Article 2 (commencing with Section 99220).

(e) The Superintendent of Public Instruction shall allocate funding appropriated for the purposes of this article in the following order of priority:

(1) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to subdivision (a) in the prior year for whom the local educational agency did not receive funding due to insufficient availability of funds in the prior fiscal year.

(2) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to this article, subject to the limitations in subdivision (d).

(3) Five hundred dollars ($500) for each qualifying teacher for each qualifying program as specified in Article 2 (commencing with Section 99220) who successfully completes mathematics or reading standards training, or both, at a California Professional Development Institute authorized pursuant to Article 2 (commencing with Section 99220) in the 2001–02 fiscal year to the 2004–05 fiscal year, inclusive, using funds received pursuant to Article 2 (commencing with Section 99220), and has had specific approved training on the mathematics or reading instructional materials selected for use in the school.

(4) Five hundred dollars ($500) for each qualifying teacher in each qualifying program pursuant to Article 2 (commencing with Section 99220) who successfully completed mathematics or reading standards training, or both, at a California Professional Development Institute authorized pursuant to Article 2 (commencing with Section 99220) in the 1999–2000 or 2000–01 fiscal year, using funds received pursuant to Article 2 (commencing with Section 99220), and has had specific approved training on the mathematics or English-language arts instructional materials selected for use in the school.

(5) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to this article in excess of limitations in subdivision (d).

(f) For purposes of this article, qualifying teachers who, in the 2000–01 fiscal year, received training at a California Professional Development Institute authorized pursuant to Article 2 (commencing with Section 99220) that was paid for by a local educational agency using funds that were not received pursuant to Article 2 (commencing with Section 99220) shall be deemed to have received training in the 2001–02 fiscal year. A local educational agency shall receive funding for these qualifying teachers in accordance with paragraph (2) of subdivision (e).

(g) Except as provided in subdivision (f) of Section 99237, funding may not be provided to a local educational agency until the State Board of Education approves the agency's certified assurance submitted pursuant to Section 99237.

(h) Of the funding a local educational agency is eligible to receive pursuant to this section for each eligible teacher, 50 percent shall be awarded following the provision of 40 hours of professional

development as specified in subdivision (b) of Section 99237, with the remaining funding to be awarded following certification of the provision of the 80 hours of followup instruction as specified in subdivision (b) of Section 99237.

(i) Except as provided in paragraphs (3) and (4) of subdivision (e), a local educational agency may not receive funds pursuant to this article for teachers who receive training pursuant to Article 2 (commencing with Section 99220) using funding provided pursuant to Article 2 (commencing with Section 99220).

SEC. 33. Section 99235 of the Education Code is amended to read:

99235. (a) The Superintendent of Public Instruction shall notify local educational agencies that they are eligible to receive funding to provide instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading with professional development training in mathematics and reading, in an amount equal to one thousand dollars ($1,000) per qualifying instructional aide. Funding will be provided to local educational agencies on a first-come, first-serve basis. A local educational agency that chooses to participate in the program is eligible to receive funding for no greater than the percentage calculated in accordance with provisions of an item of appropriation in the annual Budget Act for its instructional aides and paraprofessionals. However, the statewide total number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading served under this program may not exceed 9,600 over the two fiscal years.

(b) Of the incentive provided pursuant to subdivision (a), a local educational agency may use not more than five hundred dollars ($500) of the per instructional aide and paraprofessionals who directly assist with classroom instruction in mathematics and reading amount to provide an individual instructional aid stipend.

SEC. 34. Section 7576.5 is added to the Government Code, to read:

7576.5. If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce the local costs of providing these services. These funds shall be used exclusively for programs operated under this chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

SEC. 35. Section 39 of Chapter 1167 of the Statutes of 2002 is amended to read:

Sec. 39. (a) Notwithstanding Section 42238.1 of the Education Code or any other law, the cost-of-living adjustment for Items 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-158-0001,

6110-161-0001, 6110-189-0001, 6110-190-0001, 6110-191-0001, 6110-196-0001, 6110-232-0001, 6110-234-0001, and 6110-235-0001 of Section 2.00 of the Budget Act of 2002, and those items identified in subdivision (b) of Section 12.40 of the Budget Act of 2002 shall be 2 percent. All funds appropriated in the items identified in this section are in lieu of the amounts that would otherwise be appropriated pursuant to any other law.

(b) Notwithstanding Section 42238.1 of the Education Code, for purposes of Sections 2550, 42238, and 48664 of the Education Code, for the 2002–03 fiscal year, the cost-of-living adjustment shall be 2 percent.

SEC. 36. Section 51 of Chapter 1167 of the Statutes of 2002 is repealed.

SEC. 37. (a) Notwithstanding Sections 42238.1 and 42238.15 of the Education Code or any other law, the growth and cost-of-living adjustments for the programs funded by Items 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-158-0001, 6110-161-0001, 6110-189-0001, 6110-190-0001, 6110-191-0001, 6110-196-0001, 6110-232-0001, 6110-234-0001, and 6110-235-0001, of Section 2.00 of the Budget Act of 2003, and those items identified in subdivision (b) of Section 12.40 of the Budget Act of 2002 shall be zero percent for the 2003–04 fiscal year.

(b) Notwithstanding Section 42238.15 of the Education Code, the workload adjustments specified in paragraphs (2) to (10), inclusive, of subdivision (b) of Section 42238.15 shall be zero for the 2003–04 fiscal year.

(c) Notwithstanding Section 42238.1 of the Education Code or any other provision of law to the contrary, for purposes of Section 48664 of the Education Code, for the 2003–04 fiscal year, the growth and cost-of-living adjustments shall be zero percent.

(d) Funds appropriated in the items identified in this section are instead of the amounts that would otherwise be appropriated pursuant to any other law.

SEC. 38. The Superintendent of Public Instruction shall reduce funding for basic aid districts from the categorical education funds appropriated in Section 2.00 of the Budget Act of 2003 by a total of nine million eight hundred eighty-six thousand dollars ($9,886,000). The reduction shall be allocated as follows:

(a) The Superintendent of Public Instruction shall calculate a reduction for each district that was a basic aid district in the 2002–03 fiscal year that is proportionate to its revenue limit as determined at the second principal apportionment of the 2002–03 fiscal year that will achieve the amount of savings specified in this section.

(b) (1) On or before October 26, 2003, the Superintendent of Public Instruction shall notify each district of the reduction amount calculated for that district pursuant to subdivision (a).

(2) On or before February 1, 2004, each district shall notify the Superintendent of Public Instruction of the specific categorical education programs in which the reductions for that district shall be applied and the amount of the reduction for each program, provided that no reduction may be made to a program identified as requiring a maintenance of effort. The Superintendent of Public Instruction shall withhold or recover the identified amount of funds as necessary.

(3) This section does not obligate the state to refund or repay reductions made pursuant to this section. A decision by a school district to reduce funding pursuant to this section for a state-mandated local program shall constitute a waiver of the subvention of funds that the school district is otherwise entitled to pursuant to Section 6 of Article XIII B of the California Constitution in the amount so reduced and that decision shall be made only after the school district first considers reductions to voluntary categorical education programs.

(c) If a district does not receive property tax revenue sufficient to fully fund its revenue limit during the 2003–04 fiscal year, any reductions to that district's categorical education funding by this section shall be restored.

(d) No later than June 1, 2004, the Superintendent of Public Instruction shall report to the Controller and the Director of Finance the amounts to be reduced from each categorical education program and identify the corresponding item of appropriation in the Budget Act of 2003 to be reduced. The reductions shall equal the total amount to be reduced pursuant to this section. On June 15, 2004, the amounts appropriated by the Budget Act of 2003 in the items identified by the superintendent are hereby reduced by the amounts reported by the superintendent. The amounts so reduced shall revert to the unexpended balance of the General Fund. The reductions pursuant to this subdivision shall be reductions in the amount appropriated for purposes of Section 8 of Article XVI of the California Constitution for the 2003–04 fiscal year.

(e) For purposes of this section, ''basic aid school district'' means a school district that does not receive from the state, for any fiscal year in which the section is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 39. (a) For the 2003–04 fiscal year only, in order to provide local budgeting flexibility as a result of budget reductions enacted by the Legislature for the 2003–04 fiscal year, the governing board of a school district or county office of education may use, for the purposes identified in subdivision (a) of Section 40 of this act, up to 100 percent of the

balances as of June 30, 2003, of restricted accounts in its General Fund or cafeteria fund, excluding restricted reserves committed for capital outlay, bond funds, sinking funds, and federal funds, and excluding balances in the following programs:

(1) Public Schools Accountability Act (Ch. 6.1 (commencing with Sec. 52050), Pt. 28, Ed. C.).

(2) Economic Impact Aid (Art. 2 (commencing with Sec. 54020) Ch. 1, Pt. 29, Ed. C.).

(3) Targeted Instructional Improvement Grant (Ch. 2.5 (commencing with Sec. 54200), Ch. 2, Pt. 29, Ed. C.).

(4) Instructional materials.

(5) Special education.

(b) For purposes of this section, balances of restricted accounts do not include the amounts deferred from the 2001–02 fiscal year to the 2002-03 fiscal year or the amounts deferred from the 2002–03 fiscal year to the 2003-04 fiscal year.

(c) A governing board may not use the ending balance in any restricted account if that use would violate a federal maintenance of effort requirement.

(d) This section does not obligate the state to refund or repay funds used pursuant to this section. If a school district uses an ending balance in a restricted account that consists, in whole or in part, of funds reimbursed to the district as a subvention of funds for a state-mandated local program, the school district may not submit a claim to the state for a subsequent reimbursement of the funds that were reimbursed pursuant to Section 6 of Article XIII B of the California Constitution and used pursuant to the authority granted to a school district pursuant to this section.

(e) It is the intent of the Legislature that the use of balances of restricted accounts permitted by this section is limited to the 2003–04 fiscal year and not for any subsequent fiscal year.

SEC. 40. (a) For the 2003–04 fiscal year, the governing board of a school district or county office of education may use any combination of funds made available pursuant to Sections 17070.76 and 33128.3 of the Education Code and Section 39 of this act for the purpose of mitigating the reduction in revenue limit funding in the 2003–04 fiscal year pursuant to paragraph (1) of subdivision (a) of Section 2558.46 of the Education Code and paragraph (1) of subdivision (a) of Section 42238.146 of the Education Code.

(b) A governing board that elects to use balances in restricted accounts pursuant to Section 39 of this act shall report to the Superintendent of Public Instruction, in a manner determined by the superintendent, regarding the programs and amounts of restricted balances used for purposes of subdivision (a). The Superintendent of

Public Instruction shall report this information to the Joint Legislative Budget Committee in a timely manner.

SEC. 41. It is the intent of the Legislature that the first priority for the use of funds available to school districts and county offices of education in the 2004–05 fiscal year pursuant to Section 8 of Article XVI of the California Constitution in excess of the amount of funds available in the 2003–04 fiscal year, shall be to restore the reduction in revenue limit funding pursuant to paragraph (1) of subdivision (a) of Section 2558.46 of the Education Code and paragraph (1) of subdivision (a) of Section 42238.146 of the Education Code.

SEC. 42. It is the intent of the Legislature, when the state's fiscal condition permits, to phase out the permanent deferral of second principal apportionment payments to school districts and county offices of education enacted in Chapter 4 of the Statutes of 2003 and to return local educational agencies to a traditional accounting and payment basis. It is further the intent of the Legislature that phasing out the permanent deferral not result in reductions in the level of services provided by school districts and county offices of education. It is further the intent of the Legislature that the permanent deferral be phased out in conjunction with the reduction of the maintenance factor pursuant to subdivision (e) of Section 8 of Article XVI of the California Constitution.

SEC. 43. Subdivisions (b), (c), and (d) of Section 17584.1 of the Education Code shall be inoperative for the 2003–04 fiscal year.

SEC. 44. (a) The sum of five hundred seventy million two hundred sixty-three thousand dollars ($570,263,000) is hereby appropriated from the General Fund for the 2004–05 fiscal year in accordance with the following schedule:

(1) The sum of five million seven hundred thirty-eight thousand dollars ($5,738,000) to the State Department of Education for apprentice programs to be expended consistent with the requirements specified in Item 6110-103-0001 of Section 2.00 of the Budget Act of 2003.

(2) The sum of eighty-three million fifty-six thousand dollars ($83,056,000) to the State Department of Education for supplemental instruction to be expended consistent with the requirements specified in Item 6110-104-0001 of Section 2.00 of the Budget Act of 2003. Of the amount appropriated in this paragraph, eighteen million eight hundred ninety-three thousand dollars ($18,893,000) shall be expended consistent with Schedule (1) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 2002 (Ch. 379, Stats. 2002), three million nine hundred twenty-three thousand dollars ($3,923,000) shall be expended consistent with Schedule (3) of that item, and sixty million two hundred forty thousand dollars ($60,240,000) shall be expended consistent with Schedule (4) of that item.

(3) The sum of fifty million one hundred three thousand dollars ($50,103,000) to the State Department of Education for home-to-school transportation to be expended consistent with the requirements specified in Schedule (1) of Item 6110-111-0001 of Section 2.00 of the Budget Act of 2003.

(4) The sum of three million nine hundred fifty-eight thousand dollars ($3,958,000) to the State Department of Education for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110-124-0001 of Section 2.00 of the Budget Act of 2003.

(5) The sum of ninety-five million three hundred ninety-seven thousand dollars ($95,397,000) to the State Department of Education for Targeted Improvement Block Grant to be expended consistent with the requirements specified in Item 6110-132-0001 of Section 2.00 of the Budget Act of 2003.

(6) The sum of forty million nine hundred twenty-five thousand dollars ($40,925,000) to the State Department of Education for adult education to be expended consistent with the requirements specified in Schedule (.5) of Item 6110-156-0001 of Section 2.00 of the Budget Act of 2003.

(7) The sum of four million four hundred fifty-one thousand dollars ($4,451,000) to the State Department of Education for community day schools to be expended consistent with the requirements specified in Item 6110-190-0001 of Section 2.00 of the Budget Act of 2003.

(8) The sum of four million six hundred thirty-five thousand dollars ($4,635,000) to the State Department of Education for categorical programs for charter schools to be expended consistent with the requirements specified in Item 6110-211-0001 of Section 2.00 of the Budget Act of 2003.

(9) The sum of eighty-two million dollars ($82,000,000) to the State Department of Education for the Carl Washington School Safety Block Grant to be expended consistent with the requirements specified in Item 6110-228-0001 of Section 2.00 of the Budget Act of 2003.

(10) One hundred fifty million dollars ($150,000,000) to the Board of Governors of the California Community Colleges for apportionments, to be expended in accordance with the requirements specified in Item 6870-101-0001 of Section 2.00 of the Budget Act of 2003.

(11) Fifty million dollars ($50,000,000) to the Board of Governors of the California Community Colleges for the Partnership for Excellence, to be expended in accordance with the requirements specified in Item 6870-101-0001 of Section 2.00 of the Budget Act of 2003.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by paragraphs (1) to (9), inclusive, of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 2004–05 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2004–05 fiscal year.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (10) and (11) of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for community college districts,'' as defined in subdivision (d) of Section 41202 of the Education Code, for the 2004–05 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code, for the 2004–05 fiscal year.

SEC. 45. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2003 at the earliest time possible, it is necessary that this act take effect immediately.

CHAPTER 228

An act to amend Sections 5081, 5082, 5082.2, and 5131 of, and to repeal and add Section 5082.1 of, the Business and Professions Code, to amend Sections 1532, 1540, 1541, and 1542 of the Code of Civil Procedure, to amend Sections 935.7, 15372.86, 17526, and 22825.01 of, to add Sections 12406, 13332.06, and 15312.5 to, to add Article 9.5 (commencing with Section 16428.1) to Chapter 2 of Part 2 of Division 4 of Title 2 of, and to repeal Sections 29145, and 43402 of, the Government Code, to amend Sections 25192, 25249.12, 50710.1, and 53533 of, and to add Section 53534 to, the Health and Safety Code, to amend Sections 62.5, 139.2, 3716, 3716.1, 3728, 4753.5, 4755, and 1777.5 of, to add Sections 4350 and 4355 to, to repeal Section 3729 of, to repeal the heading of Article 1 (commencing with Section 4351) of

Chapter 10 of Part 1 of Division 4 of, and to repeal Article 3 (commencing with Section 4381) of Chapter 10 of Part 1 of Division 4 of, the Labor Code, to add Section 1033.2 to the Military and Veterans Code, to add Section 6611 to the Public Contract Code, to amend Sections 40433, 42873, 42885.5, and 71040 of, and to add Section 40409 to, the Public Resources Code, to amend Section 280 of, and to add Section 321.1 to, the Public Utilities Code, to amend Section 18409 of, and to add Sections 18621.9 and 19170 to, the Revenue and Taxation Code, to add Section 104.19 to the Streets and Highways Code, and to amend Section 6 of Chapter 213 of the Statutes of 2000, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 5081 of the Business and Professions Code is amended to read:

5081. An applicant for an authorization to be admitted to the examination for a certified public accountant license shall:

(a) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) File the application prescribed by the board. This application shall not be considered filed unless all required supporting documents, fees, and the fully completed board-approved application form are received in the board office or filed by mail in accordance with Section 11003 of the Government Code on or before the specified final filing date.

(c) Meet one of the educational requirements specified in this article.

SEC. 2. Section 5082 of the Business and Professions Code is amended to read:

5082. An applicant for a certified public accountant license shall have successfully passed examinations in subjects the board deems appropriate, and in the form and manner the board deems appropriate. The board may, by regulation, prescribe the methods for applying for and conducting the examination, including methods for grading and determining a passing grade.

SEC. 3. Section 5082.1 of the Business and Professions Code is repealed.

SEC. 4. Section 5082.1 is added to the Business and Professions Code, to read:

5082.1. (a) The examination required by the board for the granting of a license as a certified public accountant may be conducted by the

board or by a public or private organization specified by the board. The examination may be conducted under a uniform examination system.

(b) The board may make arrangements with public or private organizations for the conduct of the examination, as deemed necessary by the board. The board may contract with a public or private organization for materials or services related to the examination.

SEC. 5. Section 5082.2 of the Business and Professions Code is amended to read:

5082.2. For candidates seeking to be reexamined pursuant to subdivision (b) of Section 5090, a candidate who fails an examination provided for in this article shall have the right to any number of reexaminations at subsequent examinations. A candidate who passes an examination in two or more subjects shall have the right to be reexamined in the remaining subject or subjects only, at subsequent examinations, and if he or she passes in the remaining subject or subjects within a period of time specified in the rules of the board, he or she shall be considered to have passed the examination.

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. 6. Section 5131 of the Business and Professions Code is amended to read:

5131. (a) The board may charge and collect an application fee and an examination fee from each applicant. The applicable fees shall accompany the application which shall be made on a form provided by the board.

(b) Notwithstanding any other provision of this chapter, the board may authorize an organization specified by the board pursuant to Section 5082.1 to receive directly from applicants payment of the examination fees charged by that organization as payment for examination materials and services.

SEC. 7. Section 1532 of the Code of Civil Procedure is amended to read:

1532. (a) Every person filing a report as provided by Section 1530 shall pay or deliver to the Controller all escheated property specified in the report at the same time the report is filed. On and after January 1, 1997, a payment of unclaimed cash in an amount of at least twenty thousand dollars ($20,000) shall be made by electronic funds transfer pursuant to regulations adopted by the Controller.

(b) The holder of any interest under subdivision (b) of Section 1516 shall deliver a duplicate certificate to the Controller. Upon delivery of a duplicate certificate to the Controller, the holder and any transfer agent, registrar or other person acting for or on behalf of the holder in executing or delivering the duplicate certificate shall be relieved from all liability

of every kind to any person including, but not limited to, any person acquiring the original certificate or the duplicate of the certificate issued to the Controller for any losses or damages resulting to that person by the issuance and delivery to the Controller of the duplicate certificate.

(c) Payment of any intangible property to the Controller shall be made at the office of the Controller in Sacramento or at another location as the Controller by regulation may designate. Except as otherwise agreed by the Controller and the holder, tangible personal property shall be delivered to the Controller at the place where it is held.

(d) Payment is deemed complete on the date the electronic funds transfer is initiated if the settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(e) Any person required to pay cash by electronic funds transfer who makes the payment by means other than an authorized electronic funds transfer shall be liable for a civil penalty of 2 percent of the amount of the payment that is due pursuant to this section, in addition to any other penalty provided by law. Penalties are due at the time of payment. If the Controller finds that a holder's failure to make payment by an appropriate electronic funds transfer in accordance with the Controller's procedures is due to reasonable cause and circumstances beyond the holder's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that holder shall be relieved of the penalties.

(f) An electronic funds transfer shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer. Banking costs incurred for the automated clearinghouse debit transaction by the holder shall be paid by the state. Banking costs incurred by the state for the automated clearinghouse credit transaction may be paid by the holder originating the credit. Banking costs incurred for the Fedwire transaction charged to the holder and the state shall be paid by the person originating the transaction. Banking costs charged to the holder and to the state for an international funds transfer may be charged to the holder.

(g) For purposes of this section:

(1) ''Electronic funds transfer'' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, modem, computer, or magnetic tape, so as to order, instruct, or authorize a financial institution to credit or debit an account.

(2) ''Automated clearinghouse'' means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the holder's bank account and crediting the state's bank account for the amount of payment.

(4) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the holder, through its own bank, originates an entry crediting the state's bank account and debiting the holder's bank account.

(5) ''Fedwire'' means any transaction originated by the holder and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the holder debits its own bank account and credits the state's bank account.

(6) ''International funds transfer'' means any transaction originated by the holder and utilizing the international electronic payment system to transfer funds, pursuant to which the holder debits its own bank account, and credits the funds to a United States bank that credits the Unclaimed Property Fund.

SEC. 8. Section 1540 of the Code of Civil Procedure is amended to read:

1540. (a) Any person, excluding another state, who claims an interest in property paid or delivered to the Controller under this chapter may file a claim to the property or to the net proceeds from its sale. The claim shall be on a form prescribed by the Controller and shall be verified by the claimant.

(b) The Controller shall consider each claim within 180 days after it is filed and may hold a hearing and receive evidence. The Controller shall give written notice to the claimant if he or she denies the claim in whole or in part. The notice may be given by mailing it to the address, if any, stated in the claim as the address to which notices are to be sent. If no address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either an address to which notices are to be sent or an address of the claimant.

(c) No interest shall be payable on any claim paid under this chapter.

(d) For the purposes of this section, ''owner'' means the person who had legal right to the property prior to its escheat, his or her heirs, or his or her legal representative.

(e) Following a public hearing, the Controller shall adopt guidelines and forms that shall provide specific instructions to assist owners in filing claims pursuant to this article.

SEC. 9. Section 1541 of the Code of Civil Procedure is amended to read:

1541. Any person aggrieved by a decision of the Controller or as to whose claim the Controller has failed to make a decision within 180 days after the filing of the claim, may commence an action, naming the Controller as a defendant, to establish his or her claim in the superior court in any county or city and county in which the Attorney General has an office. The action shall be brought within 90 days after the decision of the Controller or within 270 days from the filing of the claim if the Controller fails to make a decision. The summons and a copy of the complaint shall be served upon the Controller and the Attorney General and the Controller shall have 60 days within which to respond by answer. The action shall be tried without a jury.

SEC. 10. Section 1542 of the Code of Civil Procedure is amended to read:

1542. (a) At any time after property has been paid or delivered to the Controller under this chapter, another state is entitled to recover the property if:

(1) The property escheated to this state under subdivision (b) of Section 1510 because no address of the apparent owner of the property appeared on the records of the holder when the property was escheated under this chapter, the last known address of the apparent owner was in fact in that other state, and, under the laws of that state, the property escheated to that state.

(2) The last known address of the apparent owner of the property appearing on the records of the holder is in that other state and, under the laws of that state, the property has escheated to that state.

(3) The property is the sum payable on a travelers check, money order, or other similar instrument that escheated to this state under Section 1511, the travelers check, money order, or other similar instrument was in fact purchased in that other state, and, under the laws of that state, the property escheated to that state.

(4) The property is funds held or owing by a life insurance corporation that escheated to this state by application of the presumption provided by subdivision (b) of Section 1515, the last known address of the person entitled to the funds was in fact in that other state, and, under the laws of that state, the property escheated to that state.

(b) The claim of another state to recover escheated property under this section shall be presented in writing to the Controller, who shall consider the claim within 180 days after it is presented. The Controller may hold a hearing and receive evidence. The Controller shall allow the claim

upon determination that the other state is entitled to the escheated property.

(c) Paragraphs (1) and (2) of subdivision (a) do not apply to property described in paragraph (3) or (4) of that subdivision.

SEC. 11. Section 935.7 of the Government Code is amended to read:

935.7. (a) Notwithstanding Section 935.6, the Department of Transportation may deny or adjust and pay any claim arising out of the activities of the department without the prior approval of the California Victim Compensation and Government Claims Board if both of the following conditions exist:

(1) The amount claimed is five thousand dollars ($5,000) or less.

(2) The Director of Finance or the Director of Transportation certifies that a sufficient appropriation for the payment of the claim exists.

(b) If the department elects not to pay any claim, the department shall provide the notice required by Section 913.

(c) Any person who submits any claim arising out of any activity of the Department of Transportation shall comply with every other applicable provision of this part relating to claims against state agencies.

SEC. 11.5.

SEC. 12. Section 12406 is added to the Government Code, to read:

12406. In addition to the positions authorized by subdivision (c) of Section 4 of Article VII of the California Constitution for the Controller, the Governor, with the recommendation of the Controller, shall appoint three deputies of the Controller's office who shall be exempt from state civil service. Appointments to these exempt positions shall not result in any net increase in the expenditures of the Controller.

SEC. 14. Section 13332.06 is added to the Government Code, to read:

13332.06. The California Coastal Commission, without regard to fiscal year, shall not be subject to the Statewide Cost Allocation Plan for statewide indirect costs established pursuant to Sections 13332.01 and 13332.02.

SEC. 14. Section 15312.5 is added to the Government Code, to read:

15312.5. Notwithstanding any other provision of law, the functions and duties of the Technology, Trade, and Commerce Agency established pursuant to Part 6.7 (commencing with Section 15310) of Division 3 of Title 2, and any other provisions of law, may be performed only to the extent that funding is available or is specifically appropriated for purposes of the performance of those duties.

SEC. 15. Section 15372.86 of the Government Code is amended to read:

15372.86. (a) The following powers, and any other powers provided in this act, with the exception of the exercising of police powers and of that power enumerated in subdivision (b), shall be the

responsibility of the secretary and, when not exercised by the secretary, may be exercised by the commission:

(1) Call referenda in accordance with the procedures set forth in Article 6 (commencing with Section 15372.100) and certify the results.

(2) Collect and deposit assessments.

(3) Exercise police powers.

(4) Pursue actions and penalties connected with assessments.

(b) Except as otherwise specified in this chapter, the secretary shall have veto power over the actions of the commission, following consultation with the commission, only under the following circumstances:

(1) Travel and expense costs.

(2) Situations where the secretary determines a conflict of interest exists, as defined by the Fair Political Practices Commission.

(3) The use of any state funds.

(4) Any contracts entered into between the commission and a commissioner.

SEC. 16. Article 9.5 (commencing with Section 16428.1) is added to Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, to read:

Article 9.5. Ratepayer Relief Fund

16428.1. The Legislature finds and declares all of the following:

(a) Ratepayers and the state's economy have been harmed by improper and unfair energy market manipulation that has resulted in overcharging for electricity and natural gas.

(b) The purpose of the act adding this section is to ensure that any funds paid to the state as a result of energy litigation are used for the following purposes:

(1) To reimburse state funds for, or to finance, litigation and investigation expenses.

(2) To reduce ratepayer costs of those utility ratepayers harmed by the actions of the defendants.

(3) To reduce or pay debt service on the bonds issued pursuant to Division 27 (commencing with Section 80000) of the Water Code.

16428.15. The Ratepayer Relief Fund is hereby established in the State Treasury. The purpose of the fund is to benefit electricity and natural gas ratepayers and to fund investigation and litigation costs of the state in pursuing allegations of overcharges and unfair business practices against generators, suppliers, or marketers of electricity or natural gas.

16428.2. As used in this article, the following terms have the following meanings:

(a) ''Fund'' means the Ratepayer Relief Fund established in Section 16428.1.

(b) ''Energy settlement agreement'' means any agreement arising from the energy crisis of 2000–02, where the State of California or a division of the State of California, is a party in a complaint or any action relating to the operation and management of any generation facilities, any sale or purchase or transmission of natural gas, any sale or purchase or transmission of electricity or other utility or energy goods and services, or a violation of the Federal Power Act (16 U.S.C. Sec. 791a et seq.), state law, or Public Utilities Commission orders or regulations relating to electricity generation, transmission, or distribution, electrical corporations, gas generation, storage, transmission, or distribution, gas corporations, energy generation facilities, or publicly owned utilities.

16428.3. (a) Any energy settlement agreement entered into by the Attorney General, after reimbursing the Attorney General's litigation and investigation expenses, to the maximum extent possible, shall direct settlement funds to the following purposes in priority order:

(1) To reduce ratepayer costs of those utility ratepayers harmed by the actions of the settling parties. To the extent the ratepayers of the investor-owned utilities were harmed, the settlement funds shall be directed to reduce their costs, to the maximum extent possible, through reduction of rates or the reduction of ratepayer debt obligations incurred as a result of the energy crisis.

(2) For deposit in the fund.

(b) Nothing in this article shall preclude nonmonetary compensation to the state through an energy settlement agreement, provided that the allocation of benefits from any nonmonetary compensation is consistent with paragraph (1) of subdivision (a).

16428.4. All funds recovered on behalf of the Department of Water Resources, after deduction of litigation and investigation expenses, shall be deposited in the Department of Water Resources Electric Power Fund and applied pursuant to Division 27 (commencing with Section 80000) of the Water Code.

16428.5. Moneys in the fund shall be expended upon appropriation by the Legislature, for the benefit of ratepayers. Moneys in the fund may be appropriated for the following purposes:

(a) To finance energy litigation and investigation expenses of state entities.

(b) To reduce rates for customers in the affected service areas of electrical utilities and gas utilities.

(c) To reduce the debt service on bonds issued pursuant to Division 27 (commencing with Section 80000) of the Water Code.

16428.6. (a) The Attorney General shall promptly notify the Director of Finance, Senate President pro Tempore, and the Speaker of

the Assembly upon agreeing on behalf of the state to an energy settlement agreement. Notification shall include a description of how the terms of the settlement agreement, as they pertain to the state, are consistent with the purposes of this article.

(b) The Attorney General shall report semiannually to the appropriate policy and fiscal committees of the Legislature and the Director of Finance on energy settlement agreements, litigation and investigation expenses, and funds expended pursuant to this article.

16428.7. Nothing in this article affects the allocation of funds from settlements entered into before the effective date of this article.

SEC. 17. Section 17526 of the Government Code is amended to read:

17526. (a) All meetings of the commission shall be open to the public, except that the commission may meet in executive session to consider the appointment or dismissal of officers or employees of the commission or to hear complaints or charges brought against a member, officer, or employee of the commission.

(b) The commission shall meet at least once every two months.

(c) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairperson. The chairperson may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

(d) This section shall become operative on July 1, 1996.

SEC. 18. Section 22825.01 of the Government Code is amended to read:

22825.01. (a) As used in this section, the following definitions shall apply:

(1) A ''rural area'' means an area in which there is no board-approved health maintenance organization plan available for enrollment by state employees or annuitants who live in the area.

(2) ''Coinsurance'' means the provision of a medical plan design in which the plan or insurer and state employee or annuitant share the cost of hospital or medical expenses at a specified ratio.

(3) A ''deductible'' means the annual amount of out-of-pocket medical expenses that state employees or annuitants must pay before the insurer or self-funded plan begins paying for expenses.

(4) ''Department'' means the Department of Personnel Administration.

(5) ''Program'' means the Rural Health Care Equity Program.

(b) (1) The Rural Health Care Equity Program is hereby established for the purpose of funding the subsidization and reimbursement of premium costs, deductibles, coinsurance, and other out-of-pocket health care costs, which would otherwise be covered if the state employee or annuitant was enrolled in a board-approved health maintenance

organization plan, paid by employees and annuitants living in rural areas, as authorized by this section. The program shall be administered by the department or by a third-party administrator approved by the department in a manner consistent with all applicable state and federal laws. The board shall determine the rural area for each subsequent fiscal year at the same meeting when the board approves premiums for health maintenance organizations.

(2) Separate accounts shall be maintained within the program for (A) employees, as defined in subdivision (c) of Section 3513; (B) excluded employees, as defined in subdivision (b) of Section 3527; and (C) annuitants as defined in subdivision (e) of Section 22754.

(c) Moneys in the Rural Health Care Equity Program shall be allocated to the separate accounts as follows:

(1) As the employer's contribution with respect to each employee, as defined in subdivision (c) of Section 3513, who lives in a rural area and who is otherwise eligible, an amount to be determined through the collective bargaining process.

(2) As the employer's contribution with respect to each excluded employee, as defined in subdivision (b) of Section 3527, who lives in a rural area and who is otherwise eligible, an amount equal to, but not to exceed, the amount given to eligible state employees, as defined in subdivision (c) of Section 3513, who live in a rural area.

(3) As the employer's contribution with respect to each annuitant, as defined in subdivision (e) of Section 22754, who lives in a rural area, is not a Medicare participant, resides in California, and who is otherwise eligible, an amount not to exceed five hundred dollars ($500) per year. Annuitants who become residents of a state other than California on or after July 1, 2003, are ineligible for the program.

(4) As to the state's contribution with respect to each state annuitant, as defined in subdivision (e) of Section 22754 who lives in a rural area, resides in California, participates in a board-approved, Medicare-coordinated health plan, participates in a board-approved health plan, and is otherwise eligible, an amount equal to the Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month. The state shall not reimburse for penalty amounts. Annuitants who become residents of a state other than California on or after July 1, 2003, are ineligible for the program.

(5) As to an employee who enters state service or leaves state service during a fiscal year, contributions for the employee shall be made on a pro rata basis. A similar computation shall be used for anyone entering or leaving the bargaining unit, including a person who enters the bargaining unit by promotion in mid-fiscal year.

(d) Each fund of the State Treasury, other than the General Fund, shall reimburse the General Fund for any sums allocated pursuant to

subdivision (c) for employees whose compensation is paid from that fund. That reimbursement shall be accomplished using the following methodology:

(1) On or before December 1 of each year, the Department of Personnel Administration shall provide a listing of active state employees who participated in the Rural Health Care Equity Program in the immediately preceding fiscal year to each employing department.

(2) On or before January 15 of each year, every department that employed an active state employee identified by the Department of Personnel Administration as a participant in the Rural Health Care Equity Program shall provide the Department of Personnel Administration with a listing of the funds used to pay each employee's salary, along with the proportion of each active state employee's salary attributable to each fund.

(3) Using the information provided by the employing departments, the Department of Personnel Administration shall compile a listing of Rural Health Care Equity Program payments attributable to each fund. On or before February 15 of each year, the Department of Personnel Administration shall transmit this list to the Department of Finance.

(4) The Department of Finance shall certify to the Controller the amount to be transferred from the unencumbered balance of each fund to the General Fund.

(5) The Controller shall transfer to the General Fund from the unencumbered fund balance of each impacted fund the amount specified by the Department of Finance.

(6) To ensure the equitable allocation of costs, the Director of the Department of Personnel Administration or the Director of Finance may require an audit of departmental reports.

(e) For any sums allocated pursuant to subdivision (c) for annuitants, funds, other than the General Fund, shall be charged a fair share of the state's contribution in accordance with the provisions of Article 2 (commencing with Section 11270) of Chapter 3 of Part 1 of Division 3 of Title 2. On or before July 31 of each year, the Department of Personnel Administration shall provide the Department of Finance with the total costs allocated pursuant to subdivision (c) for annuitants in the immediately preceding fiscal year. The reported costs shall not include expenses that have been incurred but not claimed as of July 31.

(f) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Program shall be disbursed for the benefit of an employee who lives in a rural area and who is otherwise eligible. The disbursements shall, where there is no board-approved health maintenance organization plan available in an area that is open for enrollment for the employee, (1) subsidize the preferred provider plan premiums for the employee, by an

amount equal to the difference between the weighted average of board-approved health maintenance organization premiums and the lowest board-approved preferred provider plan premium available under this part and (2) reimburse the employee for a portion or all of his or her incurred deductibles, coinsurances, and other out-of-pocket health-related expenses, that would otherwise be covered if the employee were enrolled in a board-approved health maintenance organization plan.

These subsidies and reimbursements shall be provided according to a plan determined by the department, which may include, but is not limited to, a supplemental insurance plan, a medical reimbursement account, or a medical spending account plan.

(g) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Program shall be disbursed for the benefit of eligible annuitants, as defined in subdivision (e) of Section 22754, who live in rural areas, reside in California, and who are otherwise eligible. The disbursements shall, where there is no board-approved health maintenance organization plan available and open to enrollment by the annuitant, either (1) reimburse the annuitant if he or she is not a Medicare participant, for some or all of his or her deductibles, not to exceed five hundred dollars ($500) per fiscal year, or (2) reimburse Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month, exclusive of penalties. These reimbursements shall be provided by the department. Notwithstanding any other provision of law, any annuitant who cannot be located within a period of three months and whose disbursement is returned to the Controller as unclaimed is ineligible to participate in the program.

The state shall not reimburse for penalty amounts.

(h) Any moneys remaining in any account of the program at the end of any fiscal year shall remain in the account for use in subsequent fiscal years until the account is terminated. Moneys remaining in any account of the program upon termination, after payment of all outstanding expenses and claims incurred prior to the date of termination, shall be deposited in the General Fund.

(i) The Legislature finds and declares that the Rural Health Care Equity Program is established for the exclusive benefit of employees, annuitants, and family members.

(j) This section shall become operative on January 1, 2004. This section shall cease to be operative on January 1, 2005, or on an earlier date as the board makes a formal determination that HMOs are no longer the most cost-effective health care plans offered by the board.

SEC. 19. Section 29145 of the Government Code is repealed.

SEC. 20. Section 43402 of the Government Code is repealed.

SEC. 21. Section 25192 of the Health and Safety Code is amended to read:

25192. (a) All civil and criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be deposited in the Hazardous Substances Account in the General Fund.

(2) Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action.

(3) Twenty-five percent shall be paid to the department and used to fund the activity of the CUPA, the local health officer, or other local public officer or agency authorized to enforce the provisions of this chapter pursuant to Section 25180, whichever entity investigated the matter that led to the bringing of the action. If investigation by the local police department or sheriff's office or California Highway Patrol led to the bringing of the action, the CUPA, the local health officer, or the authorized officer or agency, shall pay a total of 40 percent of its portion under this subdivision to that investigating agency or agencies to be used for the same purpose. If more than one agency is eligible for payment under this paragraph, division of payment among the eligible agencies shall be in the discretion of the CUPA, the local health officer, or the authorized officer or agency.

(b) If a reward is paid to a person pursuant to Section 25191.7, the amount of the reward shall be deducted from the amount of the civil penalty before the amount is apportioned pursuant to subdivision (a).

SEC. 22. Section 25249.12 of the Health and Safety Code is amended to read:

25249.12. (a) The Governor shall designate a lead agency and other agencies that may be required to implement this chapter, including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement this chapter and to further its purposes.

(b) The Safe Drinking Water and Toxic Enforcement Fund is hereby established in the State Treasury. The director of the lead agency designated by the Governor to implement this chapter may expend the funds in the Safe Drinking Water and Toxic Enforcement Fund, upon appropriation by the Legislature, to implement and administer this chapter.

(c) In addition to any other money that may be deposited in the Safe Drinking Water and Toxic Enforcement Fund, all of the following amounts shall be deposited in the fund:

(1) Seventy-five percent of all civil and criminal penalties collected pursuant to this chapter.

(2) Any interest earned upon the money deposited into the Safe Drinking Water and Toxic Enforcement Fund.

(d) Twenty-five percent of all civil and criminal penalties collected pursuant to this chapter shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 25249.7, to that person.

SEC. 23. Section 50710.1 of the Health and Safety Code is amended to read:

50710.1. (a) If all the development costs of any migrant farm labor center assisted pursuant to this chapter are provided by federal, state, or local grants, and if inadequate funds are available from any federal, state, or local service to write-down operating costs, the department may approve rents for that center which are in excess of rents charged in other centers assisted by the Office of Migrant Services. However, prior to approving these rents, the department shall consider the adequacy of evidence presented by the entity operating the center that the rents reimburse actual, reasonable, and necessary costs of operation. The department may not increase any rent charged at a migrant farm labor center during the 2003–04 fiscal year.

(b) At the end of each fiscal year, any entity operating a migrant farm labor center pursuant to this chapter may establish a reserve account comprised of the excess funds provided through the annual operating contract received from the department, if the department certifies there is no need to address reasonable general maintenance requirements or repairs, rehabilitation, and replacement needs of the requesting migrant farm labor center which affect the immediate health and safety of residents. The cumulative balance of the reserve account shall not exceed 10 percent of the annual operating funds annually committed to the entity by the department. Funds in the reserve account shall be used only for capital improvements such as replacing or repairing structural elements, furniture, fixtures, or equipment of the migrant farm labor center, the replacement or repair of which are reasonably required to preserve the migrant farm labor center. Withdrawals from the reserve account shall be made only upon the written approval of the department of the amount and nature of expenditures.

(c) A migrant farm labor center governed by this chapter may be operated for an extended period beyond 180 days after approval by the department, provided that all of the following conditions are satisfied:

(1) No additional subsidies provided by the department are used for the operation or administration of the migrant farm center during the extended occupancy period except to the extent that state funds are appropriated or authorized for the purpose of funding all or part of the

cost of subsidizing extended occupancy periods during the first 14 days only.

(2) Rents are not to be increased above the rents charged during the period immediately prior to the extended occupancy period unless the department finds that an increase is necessary to cover the difference between reasonable operating costs necessary to keep the center open during the extended occupancy period and the amount of state funds available pursuant to paragraph (1) and any contributions from agricultural employers or other federal, local, or private sources. These contributions shall not be used to reduce the amount of state funds that otherwise would be made available to the center to subsidize rents during an extended occupancy period.

(3) In no event shall the rent during the extended occupancy period exceed the average daily operating cost of the center, less any subsidy funds available pursuant to paragraph (1) or (2). Households representing at least 25 percent of the units in the center shall have indicated their desire and intention to remain in residency during an extended occupancy period by signing a petition to the local entity to keep the center open for an extended period at rents that are the same or higher than rents during the regular period of occupancy. Each household shall receive a clear bilingual notice describing the extended occupancy options attached to the lease.

The Legislature finds and declares that because the number of residents may be substantially reduced during the extended occupancy period, a rent increase may be necessary to cover operating costs. It is the intent of the Legislature that the public sector, private sector, and farmworkers should each play an important role in ensuring the financial viability of this important source of needed housing.

(4) An extended occupancy period is requested by an entity operating the migrant farm labor center and received by the department no earlier than 30 days and no later than 15 days prior to the center's scheduled closing date. The department shall notify the entity and petitioning residents of the final decision no later than seven days prior to the center's scheduled closing date. During the extended occupancy period, occupancy shall be limited to migrant farmworkers and their families who resided at a migrant center during the regular period of occupancy.

(5) Before approving or denying an extension and establishing the rents for the extended occupancy period, both of which shall be within the sole discretion of the department, the department shall take into consideration all of the following factors:

(A) The structural and physical condition of the center, including water and sewer pond capacity and the capacity and willingness of the local entity to operate the center during the extended occupancy period.

(B) Whether local approvals are required, and whether there are competing demands for the use of the center's facilities.

(C) Whether there is adequate documentation that there is a need for residents of the migrant center to continue work in the area, as confirmed by the local entity.

(D) The climate during the extended occupancy period.

(E) The amount of subsidy funds available that can be allocated to each center to subsidize rents below the operating costs and the cost of operating each center during the extended occupancy period.

(F) The extended occupancy period is deemed necessary for the health and safety of the migrant farmworkers and their families.

(G) Other relevant factors affecting the migrant farmworkers and their families and the operation of the centers.

(6) The rents collected during the extended occupancy period shall be remitted to the department. However, based on financial records to the satisfaction of the department, the department may reduce the amount to be remitted by an amount it determines the local entity has expended during the extended occupancy period that is not being reimbursed by department funds.

(7) The occupancy during the extended occupancy period represents a new tenancy and is not subject to existing and statutory and regulatory limitations governing rents. Prior to the beginning of the extended occupancy period, residents shall be provided at least two days' advance written notice of any rent increase and of the expected length of the extended occupancy period, including the scheduled date of closure of the center, and prior to being eligible for residency during the extended occupancy period, residents shall sign rental documents deemed necessary by the department.

(d) The Legislature finds and declares that variable annual climates and changing agricultural techniques create an inability to accurately predict the end of a harvest season for the purposes of housing migrant farmworkers and their families. Because of these factors, in any part of this state, and in any specific year, one or more migrant farmworker housing centers governed by this chapter need to remain open for up to two additional weeks to allow the residents to provide critical assistance to growers in harvesting crops while also fulfilling work expectations that encouraged them to migrate to the areas of the centers. In addition, if the centers close prematurely, the migrant farmworkers often must remain in the areas to work for up to two weeks. During this time they will not be able to obtain decent, safe, and affordable housing and the health and safety of their families and the surrounding community will be threatened.

The Legislature therefore finds and declares that, for the purposes of any public or private right, obligation, or authorization related to the use

of property and improvements thereon as a 180-day migrant center, an extended use of any housing center governed by this chapter pursuant to this section is deemed to be the same as the 180-day use generally authorized by this chapter.

SEC. 24. Section 53533 of the Health and Safety Code is amended to read:

53533. (a) Money deposited in the fund from the sale of bonds pursuant to this part shall be allocated for expenditure in accordance with the following schedule:

(1) Nine hundred ten million dollars ($910,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, except for the following:

(A) Fifty million dollars ($50,000,000) shall be transferred to the Preservation Opportunity Fund and, notwithstanding Section 13340 of the Government Code, is continuously appropriated without regard to fiscal years for the preservation of at-risk housing pursuant to enabling legislation.

(B) Twenty million dollars ($20,000,000) shall be used for nonresidential space for supportive services, including, but not limited to, job training, health services, and child care within, or immediately proximate to, projects to be funded under the Multifamily Housing Program. This funding shall be in addition to any applicable per-unit or project loan limits and may be in the form of a grant. Service providers shall ensure that services are available to project residents on a priority basis over the general public.

(C) Twenty-five million dollars ($25,000,000) shall be used for matching grants to local housing trust funds pursuant to enabling legislation.

(D) Fifteen million dollars ($15,000,000) shall be used for student housing through the Multifamily Housing Program, subject to the following provisions:

(i) The department shall give first priority for projects on land owned by a University of California or California State University campus. Second priority shall be given to projects located within one mile of a University of California or California State University campus that is suffering from a severe shortage of housing and limited availability of developable land as determined by the department. Those determinations shall be set forth in the Notice of Funding Availability and shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(ii) All funds shall be matched on a one-to-one basis from private sources or by the University of California or California State University.

For the purposes of this subparagraph, ''University of California'' includes the Hastings College of the Law.

(iii) Occupancy for the units shall be restricted to students enrolled on a full-time basis in the University of California or California State University.

(iv) Income eligibility pursuant to the Multifamily Housing Program shall be established by verification of the combined income of the student and his or her family.

(v) Any funds not used for this purpose within 24 months of the date that the funds are made available shall be awarded pursuant to subdivision (a) for the Downtown Rebound Program as set forth in paragraph (1) of subdivision (c) of Section 50898.2.

(E) Any funds not encumbered for the purposes set forth in this paragraph, except subparagraph (D), within 30 months of availability shall revert to the Housing Rehabilitation Loan Fund created by Section 50661 for general use in the Multifamily Housing Program.

(F) If the enabling legislation for any program specified in this paragraph fails to be enacted into law in the 2001–02 Regular Session of the Legislature, the specified allocation for that program shall be void and the funds shall revert for general use in the Multifamily Housing Program.

(2) One hundred ninety-five million dollars ($195,000,000) shall be transferred to the Emergency Housing and Assistance Fund to be expended for the Emergency Housing and Assistance Program authorized by Chapter 11.5 (commencing with Section 50800 of Part 2).

(3) One hundred ninety-five million dollars ($195,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, to be used for supportive housing projects for individuals and households moving from emergency shelters or transitional housing or those at risk of homelessness. The criteria for selecting projects should give priority to supportive housing for people with disabilities who would otherwise be at high risk of homelessness where the applications represent collaboration with programs that meet the needs of the person's disabilities. The department may provide for higher per-unit loan limits as reasonably necessary to provide and maintain rents affordable to those individuals and households. For purposes of this paragraph, ''supportive housing'' means housing with no limit on length of stay, that is occupied by the target population, as defined in subdivision (d) of Section 53260, and that is linked to onsite or offsite services that assist the tenant to retain the housing, improve his or her health status, maximize his or her ability to live, and, when possible, work in the community.

(4) Two hundred million dollars ($200,000,000) shall be transferred to the Joe Serna, Jr. Farmworker Housing Grant Fund to be expended for farmworker housing programs authorized by Chapter 3.2 (commencing with Section 50517.5) of Part 2, except for the following:

(A) Twenty-five million dollars ($25,000,000) shall be used for projects that serve migratory agricultural workers as defined in subdivision (i) of Section 7602 of Title 25 of the California Code of Regulations. If, after July 1, 2003, funds remain after the approval of all feasible applications, the department shall be deemed an eligible recipient for the purposes of reconstructing migrant centers operated through the Office of Migrant Services pursuant to Chapter 8.5 (commencing with Section 50710) that would otherwise be scheduled for closure due to health or safety considerations or are in need of significant repairs to ensure the health and safety of the residents. Of the dollars allocated by this section, the department shall receive four million one hundred thousand dollars ($4,100,000) for these purposes.

(B) Twenty million dollars ($20,000,000) shall be used for developments that also provide health services to the residents. Recipients of these funds shall be required to provide ongoing monitoring of funded developments to ensure compliance with the requirements of the Joe Serna, Jr. Farmworker Housing Grant Program. Projects receiving funds through this allocation shall be ineligible for funding through the Joe Serna, Jr. Farmworker Housing Grant Program.

(C) Any funds not encumbered for the purposes set forth in this paragraph within 30 months of availability shall revert for general use in the Joe Serna, Jr. Farmworker Housing Grant Program.

(5) Two hundred five million dollars ($205,000,000) shall be transferred to the Self-Help Housing Fund. Notwithstanding Section 13340 of the Government Code and Section 50697.1, these funds are hereby continuously appropriated without regard to fiscal years to the department to be expended for the purposes of the CalHome Program authorized by Chapter 6 (commencing with Section 50650) of Part 2, except for the following:

(A) Seventy-five million dollars ($75,000,000) shall be transferred to the Building Equity and Growth in Neighborhoods Fund to be used for the Building Equity and Growth in Neighborhoods (BEGIN) Program pursuant to enabling legislation.

(B) Five million dollars ($5,000,000) shall be used to provide grants to cities, counties, cities and counties, and nonprofit organizations to provide grants for lower income tenants with disabilities for the purpose of making exterior modifications to rental housing in order to make that housing accessible to persons with disabilities. For the purposes of this subparagraph, ''exterior modifications'' includes modifications that are made to entryways or to common areas of the structure or property. The

program provided for under this subparagraph shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(C) Ten million dollars ($10,000,000) shall be expended for construction management under the California Self-Help Housing Program pursuant to subdivision (b) of Section 50696.

(D) Any funds not encumbered for the purposes set forth in this paragraph within 30 months of availability shall revert for general use in the CalHome Program.

(E) If the enabling legislation for any program specified in this paragraph fails to be enacted into law in the 2001–02 Regular Session of the Legislature, the specified allocation for that program shall be void and the funds shall revert for general use in the CalHome Program.

(6) Five million dollars ($5,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for capital expenditures in support of local code enforcement and compliance programs. This allocation shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code. If the moneys allocated pursuant to this paragraph are not expended within three years after being transferred, the department may, in its discretion, transfer the moneys to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program.

(7) Two hundred ninety million dollars ($290,000,000) shall be transferred to the Self-Help Housing Fund. Notwithstanding Section 50697.1, these funds are hereby continuously appropriated to the agency to be expended for the purposes of the California Homebuyer's Downpayment Assistance Program authorized by Chapter 11 (commencing with Section 51500) of Part 3, except for the following:

(A) Fifty million dollars ($50,000,000) shall be transferred to the School Facilities Fee Assistance Fund as provided by subdivision (a) of Section 51453 to be used for the Homebuyer Down Payment Assistance Program of 2002 established by Section 51451.5.

(B) Eighty-five million dollars ($85,000,000) shall be transferred to the California Housing Loan Insurance Fund to be used for purposes of Part 4 (commencing with Section 51600).

(C) Twelve million five hundred thousand dollars ($12,500,000) shall be reserved for downpayment assistance to low-income first-time homebuyers who, as documented to the agency by a nonprofit organization certified and funded to provide homeownership counseling by a federally funded national nonprofit corporation, is purchasing a residence in a community revitalization area targeted by the nonprofit organization and who has received homeownership counseling from the nonprofit organization.

(D) Twenty-five million dollars ($25,000,000) shall be used for downpayment assistance pursuant to Section 51505. After 18 months of availability, if the agency determines that the funds set aside pursuant to this section will not be utilized for purposes of Section 51505, these funds shall be available for the general use of the agency for the purposes of the California Homebuyer's Downpayment Assistance Program, but may also continue to be available for the purposes of Section 51505.

(E) Funds not utilized for the purposes set forth in subparagraphs (B) and (C) within 30 months shall revert for general use in the California Homebuyer's Downpayment Assistance Program.

(8) One hundred million dollars ($100,000,000) shall be transferred to the Jobs Housing Improvement Account to be expended as capital grants to local governments for increasing housing pursuant to enabling legislation. If the enabling legislation fails to become law in the 2001–02 Regular Session of the Legislature, the specified allocation for this program shall be void and the funds shall revert for general use in the Multifamily Housing Program as specified in paragraph (1) of subdivision (a).

(b) No portion of the money allocated pursuant to this section may be expended for project operating costs, except that this section does not preclude expenditures for operating costs from reserves required to be maintained by or on behalf of the project sponsor.

(c) The Legislature may, from time to time, amend the provisions of law related to programs to which funds are, or have been, allocated pursuant to this section for the purpose of improving the efficiency and effectiveness of the program, or for the purpose of furthering the goals of the program.

(d) The Bureau of State Audits shall conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this part, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this part.

SEC. 25. Section 53534 is added to the Health and Safety Code, to read:

53534. (a) The Legislature finds and declares all of the following:

(1) The projected budget deficit for the 2003–04 fiscal year represents the largest fiscal imbalance in California history. This imbalance necessitates drastic actions not ordinarily contemplated in usual budget years.

(2) In order to address the budgetary imbalance it is necessary to find and cancel General Fund commitments where possible so as to reduce General Fund obligations.

(3) The creation of affordable housing is extraordinarily difficult, necessitating, among other things, the acquisition of suitable sites, the

design and engineering of the facility and securing multiple sources of private and public financing. In addition, affordable housing development also frequently encounters difficulties in obtaining local governmental approvals. Because of these difficulties there are typically long lead-times between the commitment of funds through the state's housing programs and the actual final approval of the project, completion of construction, and disbursement of state funds. Because of the gap in time between the award of state funds and final fund disbursement, there is an opportunity to disencumber fund commitments to ease the state's present fiscal emergency.

(4) While these housing projects present an opportunity to recoup General Fund moneys, the Legislature recognizes that the withdrawal of state funds may mean the cancellation of projects, the loss of affordable housing, and the creation of potential liabilities to the state where costs have been incurred in reliance on the state funding commitment. The need to find revenue sources does not supersede the need for public assistance to facilitate the creation of new housing opportunities particularly for persons and households of low to moderate income.

(5) By definition, housing projects that have already received a commitment of state funds are further advanced towards completion than projects that have yet to start the process of seeking or receiving state housing funds. The enactment of this part, therefore, provides an opportunity to meet the multiple goals of relieving existing financial obligations of the General Fund, continuing the state support of worthy projects, and avoiding the potential liabilities where costs have been incurred in reliance on the state's commitment of funds. The Legislature finds and declares that it is appropriate, where possible, to disencumber General Fund obligations in those areas where the state's need to recoup General Fund revenues can be balanced by the substitution of other funds through legal mechanism.

(6) The Legislature's ability to modify a general obligation bond program approved by the voters is restricted by the California Constitution and interpretative case law to those situations where the modification is consistent with the underlying purpose of the program and not inconsistent with the express language of the measure placed before the voters. For the purposes of this part and the programs administered by the department thereunder, the Legislature finds and declares that the project selection criteria for many of the existing programs have been modified by the bond measure contained in this part, as approved by the voters. However, the project selection criteria for the Joe Serna, Jr. Farmworker Housing Grant Program (Chapter 3.2 (commencing with Section 50517.5) of Part 2) and the CalHome Program (Chapter 6 (commencing with Section 50650) of Part 2) have been unmodified by this part. Therefore, projects funded through these

programs that have previously been determined eligible and have met the selection criteria would similarly be eligible and meet the selection criteria for these programs as funded under this part.

(7) If the funding for projects previously funded under the Joe Serna, Jr. Farmworker Housing Grant Program and the CalHome Program were disencumbered, these projects would be eligible to compete for funds under the same programs as funded through this part. However, the time delays and costs associated by the resubmittal of applications would render a hardship to the project sponsors and cause unnecessary delays in project implementation.

(8) The use of funds approved by the voters through the enactment of this part to ensure successful completion of projects eligible and fundable through the Joe Serna, Jr. Farmworker Housing Grant Program and the CalHome Program that would otherwise be delayed or lost if the general funding was disencumbered is both necessary and appropriate, and will facilitate the efficient and effective implementation of the projects funded through this part and will further the goals of the respective programs.

(b) In order to return moneys appropriated in the Budget Acts of 2000 and 2001 to the General Fund to assist in easing the current fiscal emergency, and to ensure the expeditious completion of projects that have successfully applied for, and were selected for, funding during the 2000–01 and 2001–02 fiscal years through the Joe Serna, Jr. Farmworker Housing Grant Program and CalHome Program, the department shall do both of the following:

(1) Disencumber funding commitments for all projects funded through appropriations in the Budget Acts of 2000 and 2001 for which funds have not been disbursed as of the effective date of this section.

(2) Provide replacement funding to these projects, subject to the terms and conditions of the prior commitment, through paragraph (4) and paragraph (5), respectively, of subdivision (a) of Section 53533. No additional application shall be required to the affected project sponsors.

(c) Because it is the Legislature's intent to avoid the disruption of existing projects, only those portions of a project's budget that is eligible for replacement as the construction or acquisition of a capital asset pursuant to the General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) shall be disencumbered.

SEC. 26. Section 62.5 of the Labor Code is amended to read:

62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation program set forth in this division and Division 4 (commencing with

Section 3200), other than the activities financed pursuant to Section 3702.5, and may not be used for any other purpose.

(b) The fund shall consist of assessments made pursuant to subdivision (e). Costs to the program shall be shared on a proportional basis between the General Fund and employer assessments. The General Fund appropriation shall account for 80 percent and employer assessments shall account for 20 percent of the total costs of the program.

(c) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subdivision (e). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The assessment amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, commencing January 1, 2004, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(d) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subdivision (e). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4750) of Chapter 2 of Part 2 of Division 4, and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent

disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The assessment amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, commencing with January 1, 2004, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(e) (1) Separate assessments shall be levied by the director upon all employers as defined in Section 3300 for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, and the Subsequent Injuries Benefits Trust Fund. The total amount of the assessments shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the assessments. The regulations shall require the assessments to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessments to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessments paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(2) The regulations adopted pursuant to paragraph (1) shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 27. Section 139.2 of the Labor Code is amended to read:

139.2. (a) The Industrial Medical Council shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues. The appointments shall be for two-year terms.

(b) The council shall appoint or reappoint as a qualified medical evaluator a physician, as defined in Section 3209.3, who is licensed to practice in this state and who demonstrates that he or she meets the requirements in paragraphs (1), (2), (6), and (7), and, if the physician is a medical doctor, doctor of osteopathy, doctor of chiropractic, or a

psychologist, that he or she also meets the applicable requirements in paragraph (3), (4), or (5).

(1) Prior to his or her appointment as a qualified medical evaluator, passes an examination written and administered by the Industrial Medical Council for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. Physicians shall not be required to pass an additional examination as a condition of reappointment. A physician seeking appointment as a qualified medical evaluator on or after January 1, 2001, shall also complete prior to appointment, a course on disability evaluation report writing approved by the Industrial Medical Council. The Industrial Medical Council shall specify the curriculum to be covered by disability evaluation report writing courses, which shall include, but is not limited to, 12 or more hours of instruction.

(2) Devotes at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be appointed as a qualified medical evaluator.

(3) Is a medical doctor or doctor of osteopathy and meets one of the following requirements:

(A) Is board certified in a specialty by a board recognized by the council and either the Medical Board of California or the Osteopathic Medical Board of California.

(B) Has successfully completed a residency training program accredited by the American College of Graduate Medical Education or the osteopathic equivalent.

(C) Was an active qualified medical evaluator on June 30, 2000.

(D) Has qualifications that the council and either the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, both deem to be equivalent to board certification in a specialty.

(4) Is a doctor of chiropractic and meets either of the following requirements:

(A) Has completed a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the council, the Board of Chiropractic Examiners and the Council on Chiropractic Education.

(B) Has been certified in California workers' compensation evaluation by a provider recognized by the council. The certification program shall include instruction on disability evaluation report writing that meets the standards set forth in paragraph (1).

(5) Is a psychologist and meets one of the following requirements:

(A) Is board certified in clinical psychology by a board recognized by the council.

(B) Holds a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, from a university or professional school recognized by the council and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(C) Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders, and has served as an agreed medical evaluator on eight or more occasions prior to January 1, 1990.

(6) Does not have a conflict of interest as determined under the regulations adopted by the administrative director pursuant to subdivision (o).

(7) Meets any additional medical or professional standards adopted pursuant to paragraph (6) of subdivision (j).

(c) The council shall adopt standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (2) of subdivision (b). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this subdivision.

(d) The qualified medical evaluator, upon request, shall be reappointed if he or she meets the qualifications of subdivision (b) and meets all of the following criteria:

(1) Is in compliance with all applicable regulations and evaluation guidelines adopted by the council.

(2) Has not had more than five of his or her evaluations that were considered by a workers' compensation judge at a contested hearing rejected by the judge or the appeals board pursuant to this section during the most recent two-year period during which the physician served as a qualified medical evaluator. If the judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board, the judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the Industrial Medical Council. Any rejection shall not be counted as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

(3) Has completed within the previous 24 months at least 12 hours of continuing education in impairment evaluation or workers' compensation-related medical dispute evaluation approved by the Industrial Medical Council.

(4) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the council during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any one of these criteria, the Industrial Medical Council may in its discretion reappoint or deny reappointment according to regulations adopted by the council. In no event may a physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) because his or her license has been revoked or terminated by the licensing authority be reappointed.

(e) The council may, in its discretion, suspend or terminate a qualified medical evaluator during his or her term of appointment without a hearing as provided under subdivision (k) or (*l*) whenever either of the following conditions occurs:

(1) The evaluator's license to practice in California has been suspended by the relevant licensing authority so as to preclude practice, or has been revoked or terminated by the licensing authority.

(2) The evaluator has failed to timely pay the fee required by the council pursuant to subdivision (n).

(f) The Industrial Medical Council shall furnish a physician, upon request, with a written statement of its reasons for termination of, or for denying appointment or reappointment as, a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the Industrial Medical Council shall review its decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The council shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for comprehensive medical evaluations.

(h) (1) When the injured worker is not represented by an attorney, the medical director appointed pursuant to Section 122, shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request.

(2) The Industrial Medical Council shall promulgate a form that shall notify the employee of the physicians selected for his or her panel. The

form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: ''You have the right to consult with an information and assistance officer at no cost to you prior to selecting the doctor to prepare your evaluation, or you may consult with an attorney. If your claim eventually goes to court, the judge will consider the evaluation prepared by the doctor you select to decide your claim.''

(3) When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who meet all of the following criteria:

(A) He or she does not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o).

(B) He or she is certified by the council to evaluate in an appropriate specialty and at locations within the general geographic area of the employee's residence.

(C) He or she has not been suspended or terminated as a qualified medical evaluator for failure to pay the fee required by the council pursuant to subdivision (n) or for any other reason.

(4) When the medical director determines that an employee has requested an evaluation by a type of specialist that is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(i) The medical director appointed pursuant to Section 122, shall continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of medical evaluations and determinations.

(j) After public hearing pursuant to Section 5307.4, the council shall adopt regulations concerning the following medical issues:

(1) Standards governing the timeframes within which medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. Except as provided in this subdivision, the timeframe for initial medical evaluations to be prepared and submitted shall be no more than 30 days after the evaluator has seen the employee or otherwise commenced the medical evaluation procedure. The council shall develop regulations governing the provision of extensions of the 30-day period in cases: (A) where the evaluator has not received test results or consulting physician's evaluations in time to meet the 30-day deadline; and, (B) to extend the 30-day period by not more than 15 days when the failure to meet the 30-day deadline was for good cause. For purposes of this subdivision, ''good cause'' means: (i) medical emergencies of the evaluator or evaluator's family; (ii) death in the evaluator's family; or, (iii) natural disasters or other community catastrophes that interrupt the operation of the evaluator's business. The council shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Sections 4061 and 4062. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury. In order to produce complete, accurate, uniform, and replicable evaluations, the procedures shall require that an evaluation of anatomical loss, functional loss, and the presence of physical complaints be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

(3) Procedures governing the determination of any disputed medical issues.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(5) Guidelines for the range of time normally required to perform the following:

(A) A medical-legal evaluation that has not been defined and valued pursuant to Section 5307.6. However, the council may recommend guidelines for evaluations that have been defined and valued pursuant to Section 5307.6 for the purpose of governing the appointment, reappointment, and discipline of qualified medical evaluators. The guidelines shall establish minimum times for patient contact in the conduct of the evaluations, and shall be consistent with regulations adopted pursuant to Section 5307.6.

(B) Any treatment procedures that have not been defined and valued pursuant to Section 5307.1.

(C) Any other evaluation procedure requested by the administrative director, the Insurance Commissioner, or the council itself.

If, without good cause, the council fails to adopt the guidelines required by subparagraph (A) or (B) by March 31, 1994, or fails, without good cause, to adopt a guideline pursuant to subparagraph (C) within six months after a request by the administrative director or the Insurance Commissioner, then the administrative director shall have the authority to adopt the guideline.

(6) Any additional medical or professional standards that a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator.

(k) Except as provided in this subdivision, the Industrial Medical Council may, in its discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the council, after hearing pursuant to subdivision (*l*), determines, based on substantial evidence, that a qualified medical evaluator:

(1) Has violated any material statutory or administrative duty.

(2) Has failed to follow the medical procedures or qualifications established by the council pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established by the council pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board.

(6) Has made material misrepresentations or false statements in an application for appointment or reappointment as a qualified medical evaluator.

No hearing shall be required prior to the suspension or termination of a physician's privilege to serve as a qualified medical evaluator when the physician has done either of the following:

(A) Failed to timely pay the fee required by the council pursuant to subdivision (n).

(B) Had his or her license to practice in California suspended by the relevant licensing authority so as to preclude practice, or had the license revoked or terminated by the licensing authority.

(*l*) The council shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the council may, in its discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The council shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The council shall terminate from the list of medical evaluators any physician where licensure has been terminated by the relevant licensing board, or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice, or of a crime of moral turpitude. The council shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board. If a physician is suspended or terminated as a qualified medical evaluator under this subdivision, a report prepared by the physician that is not complete, signed, and furnished to one or more of the parties prior to the date of conviction or action of the licensing board, whichever is earlier, shall not be admissible in any proceeding before the appeals board nor shall there be any liability for payment for the report and any expense incurred by the physician in connection with the report.

(n) Each qualified medical evaluator shall pay a fee, as determined by the Industrial Medical Council, for appointment or reappointment. Any qualified medical evaluator appointed prior to January 1, 1993, shall also pay the same fee as specified in accordance with this subdivision. These fees shall be based on a sliding scale as established by the council. All revenues from fees paid under this subdivision shall be deposited into the Industrial Medicine Fund, which is hereby created for the administration of the Industrial Medical Council. Moneys paid into the Industrial Medicine Fund for the activities of the Industrial Medical Council are available for expenditure upon appropriation by the Legislature and shall not be used by any other department or agency or for any purpose other than administration of the council. Any future annual appropriation to the council from the Workers' Compensation Administration Revolving Fund shall not be less than the amount appropriated or provided during the 1991–92 fiscal year.

(o) An evaluator may not request or accept any compensation or other thing of value from any source that does or could create a conflict with

his or her duties as an evaluator under this code. The administrative director, after consultation with the council and the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision on or before July 1, 1994.

SEC. 28. Section 3716 of the Labor Code is amended to read:

3716. (a) If the employer fails to pay the compensation required by Section 3715 to the person entitled thereto, or fails to furnish the bond required by Section 3715 within a period of 10 days after notification of the award, the award, upon application by the person entitled thereto, shall be paid by the director from the Uninsured Employers Benefits Trust Fund. The expenses of the director in administering these provisions, directly or by contract pursuant to Section 3716.1, shall be paid from the Workers' Compensation Administration Revolving Fund. Refunds may be paid from the Uninsured Employers Benefits Trust Fund for amounts remitted erroneously to the fund, or the director may authorize offsetting subsequent remittances to the fund.

(b) It is the intent of the Legislature that the Uninsured Employers Benefits Trust Fund is created to ensure that workers who happen to be employed by illegally uninsured employers are not deprived of workers' compensation benefits, and is not created as a source of contribution to insurance carriers, or self-insured, or legally insured employers. The Uninsured Employers Benefits Trust Fund has no liability for claims of occupational disease or cumulative injury unless no employer during the period of the occupational disease or cumulative injury during which liability is imposed under Section 5500.5 was insured for workers' compensation, was permissibly self-insured, or was legally uninsured. No employer has a right of contribution against the Uninsured Employers Benefits Trust Fund for the liability of an illegally uninsured employer under an award of benefits for occupational disease or cumulative injury, nor may an employee in a claim of occupational disease or cumulative injury elect to proceed against an illegally uninsured employer.

(c) The Uninsured Employers Benefits Trust Fund has no liability to pay for medical, surgical, chiropractic, hospital, or other treatment, the liability for which treatment is imposed upon the employer pursuant to Section 4600, and which treatment has been provided or paid for by the State Department of Health Services pursuant to the California Medical Assistance Program.

(d) The Uninsured Employers Benefits Trust Fund shall have no liability to pay compensation, nor shall it be joined in any appeals board proceeding, unless the employer alleged to be illegally uninsured shall first either have made a general appearance or have been served with the application specified in Section 3715 and with a special notice of lawsuit issued by the appeals board. The special notice of lawsuit shall be in a

form to be prescribed by the appeals board, and it shall contain at least the information and warnings required by the Code of Civil Procedure to be contained in the summons issued in a civil action. The special notice of lawsuit shall also contain a notice that if the appeals board makes an award against the defendant that his or her house or other dwelling and other property may be taken to satisfy the award in a nonjudicial sale, with no exemptions from execution. The special notice of lawsuit shall, in addition, contain a notice that a lien may be imposed upon the defendant's property without further hearing and before the issuance of an award. The applicant shall identify a legal person or entity as the employer named in the special notice of lawsuit. The reasonable expense of serving the application and special notice of lawsuit, when incurred by the employee, shall be awarded as a cost. Proof of service of the special notice of lawsuit and application shall be filed with the appeals board.

(1) The application and special notice of lawsuit may be served, within or without this state, in the manner provided for service of summons in the Code of Civil Procedure. Thereafter, an employer, alleged to be illegally uninsured, shall notify the appeals board of the address at which it may be served with official notices and papers, and shall notify the appeals board of any changes in the address. No findings, order, decision, award, or other notice or paper need be served in this manner on an employer, alleged to be illegally uninsured, who has been served as provided in this section, and who has not filed an answer, otherwise made a general appearance, or furnished the appeals board with its address. The findings, orders, decisions, awards, or other notice or paper may be mailed to the employer as the board, by regulation, may provide.

(2) Notwithstanding paragraph (1), if the employer alleged to be illegally uninsured has not filed an answer, otherwise made a general appearance, or furnished the appeals board with its address, the appeals board shall serve any findings, order, decision, award, or other notice or paper on the employer by mail at the address the appeals board has for the employer. The failure of delivery at that address or the lack of personal service on an employer who has been served as provided in this section, of these findings, order, decision, award, or other notice or paper, shall not constitute grounds for reopening or invalidating any appeals board action pursuant to Section 5506, or for contesting the validity of any judgment obtained under Section 3716 or 5806, a lien under Section 3720, or a settlement under subdivision (e) of Section 3715.

(3) The board, by regulation, may provide for service procedures in cases where a request for new and further benefits is made after the

issuance of any findings and award and a substantial period of time has passed since the first service or attempted service.

(4) The director, on behalf of the Uninsured Employers Benefits Trust Fund, shall furnish information as to the identities, legal capacities, and addresses of uninsured employers known to the director upon request of the board or upon a showing of good cause by the employee or the employee's representative. Good cause shall include a declaration by the employee's representative, filed under penalty of perjury, that the information is necessary to represent the employee in proceedings under this division.

SEC. 29. Section 3716.1 of the Labor Code is amended to read:

3716.1. (a) In any hearing, investigation, or proceeding, the Attorney General, or attorneys of the Department of Industrial Relations, shall represent the director and the state. Expenses incident to representation of the director and the state, before the appeals board and in civil court, by the Attorney General or Department of Industrial Relations attorneys, shall be reimbursed from the Workers' Compensation Administration Revolving Fund. Expenses incident to representation by the Attorney General or attorneys of the Department of Industrial Relations incurred in attempts to recover moneys pursuant to Section 3717 of the Labor Code shall not exceed the total amounts recovered by the director on behalf of the Uninsured Employers Benefits Trust Fund pursuant to this chapter.

(b) The director shall assign investigative and claims' adjustment services respecting matters concerning uninsured employers injury cases. The director or his or her representative may make these service assignments within the department, or he or she may contract for these services with the State Compensation Insurance Fund, except insofar as these matters might conflict with the interests of the State Compensation Insurance Fund. The administrative costs associated with these services shall be reimbursed from the Workers' Compensation Administration Revolving Fund and the nonadministrative costs from the Uninsured Employers Benefits Trust Fund, except when a budget impasse requires advances as described in subdivision (c) of Section 62.5. To the extent permitted by state law, the director may contract for audits or reports of services under this section.

(c) Commencing November 1, 2004, the State Compensation Insurance Fund and the director shall report annually to the fiscal committees of both houses of the Legislature and the Director of Finance, regarding any of the following:

(1) The number of uninsured employers claims paid in the previous fiscal year, the total cost of those claims, and levels of reserves for incurred claims.

(2) The administrative costs associated with claims payment activities.

(3) Annual revenues to the Uninsured Employers Benefits Trust Fund from all of the following:

(A) Assessments collected pursuant to subdivision (c) of Section 62.5.

(B) Fines and penalties collected by the department.

(C) Revenues collected pursuant to Section 3717.

(4) Projected annual program and claims costs for the current and upcoming fiscal years.

SEC. 30. Section 3728 of the Labor Code is amended to read:

3728. (a) The director may draw from the State Treasury out of the Uninsured Employers Benefits Trust Fund for the purposes of Sections 3716 and 3716.1, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate the level provided for pursuant to Section 16400 of the Government Code, to be used as a cash revolving fund. The revolving fund shall be deposited in any banks and under any conditions as the Department of General Services determines. The Controller shall draw his or her warrants in favor of the Director of Industrial Relations for the amounts so withdrawn and the Treasurer shall pay these warrants.

(b) Expenditures made from the revolving fund in payment of claims for compensation due from the Uninsured Employers Benefits Trust Fund and from the Workers' Compensation Administration Revolving Fund for administrative and adjusting services rendered are exempted from the operation of Section 925.6 of the Government Code. Reimbursement of the revolving fund from the Uninsured Employers Benefits Trust Fund or the Workers' Compensation Administration Revolving Fund for expenditures shall be made upon presentation to the Controller of an abstract or statement of the expenditures. The abstract or statement shall be in any form as the Controller requires.

SEC. 31. Section 3729 of the Labor Code is repealed.

SEC. 32. Section 4350 is added to the Labor Code, to read:

4350. The Office of Emergency Services shall administer this chapter as it relates to volunteer disaster service workers.

SEC. 33. The heading of Article 1 (commencing with Section 4351) of Chapter 10 of Part 1 of Division 4 of the Labor Code is repealed:

SEC. 34. Section 4355 is added to the Labor Code, to read:

4355. (a) Should the United States Government or any agent thereof, in accordance with any federal statute, rule, or regulation, furnish monetary assistance, benefits, or other temporary or permanent relief to disaster service workers or to disaster service workers and their dependents for injuries arising out of and occurring in the course of their activities as disaster service workers, the amount of compensation that

any disaster service worker or his or her dependents are otherwise entitled to receive from the State of California under this division for any injury shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the disaster service worker or his or her dependents have received and will receive from the United States or any agent thereof as a result of the injury.

(b) If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States Government or any agent thereof furnishes medical, surgical, or hospital treatment, or any combination thereof, to an injured disaster service worker, the disaster service worker has no right to receive similar medical, surgical, or hospital treatment under this division.

(c) If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States Government or any agent thereof will reimburse a disaster service worker or his or her dependents for medical, surgical, or hospital treatment, or any combination thereof, furnished to the injured disaster service worker, the disaster service worker has no right to receive similar medical, surgical, or hospital treatment under this division.

(d) If the furnishing of compensation under this division to a disaster service worker or his or her dependents prevents the disaster service worker or his or her dependents from receiving assistance, benefits, or other temporary or permanent relief under a federal statute, rule, regulation, the disaster service worker and his or her dependents shall have no right to, and may not receive, any compensation from the State of California under this division for any injury for which the United States Government or any agent thereof will furnish assistance, benefits, or other temporary or permanent relief in the absence of the furnishing of compensation by the State of California.

SEC. 35. Article 3 (commencing with Section 4381) of Chapter 10 of Part 1 of Division 4 of the Labor Code is repealed.

SEC. 36. Section 4753.5 of the Labor Code is amended to read:

4753.5. In any hearing, investigation, or proceeding, the state shall be represented by the Attorney General, or the attorneys of the Department of Industrial Relations, as appointed by the director. Expenses incident to representation, including costs for investigation, medical examinations, and other expert reports, fees for witnesses, and other necessary and proper expenses, but excluding the salary of any of the Attorney General's deputies, shall be reimbursed from the Workers' Compensation Administration Revolving Fund. No witness fees or fees for medical services shall exceed those fees prescribed by the appeals board for the same services in those cases where the appeals board, by rule, has prescribed fees. Reimbursement pursuant to this section shall

be in addition to, and in augmentation of, any other appropriations made or funds available for the use or support of the the legal representation.

SEC. 37. Section 4755 of the Labor Code is amended to read:

4755. (a) The State Compensation Insurance Fund may draw from the State Treasury out of the Subsequent Injuries Benefits Trust Fund for the purposes specified in Section 4751, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate fifty thousand dollars ($50,000), to be used as a cash revolving fund. The revolving fund shall be deposited in any banks and under any conditions as the Department of Finance determines. The Controller shall draw his or her warrants in favor of the State Compensation Insurance Fund for the amounts so withdrawn and the Treasurer shall pay these warrants.

(b) Expenditures made from the revolving fund in payments on claims for any additional compensation and for adjusting services are exempted from the operation of Section 16003 of the Government Code. Reimbursement of the revolving fund for these expenditures shall be made upon presentation to the Controller of an abstract or statement of the expenditures. The abstract or statement shall be in any form as the Controller requires.

(c) The director shall assign claims adjustment services and legal representation services respecting matters concerning subsequent injuries. The director or his or her representative may make these service assignments within the department, or he or she may contract for these services with the State Compensation Insurance Fund, for a fee in addition to that authorized by Section 4754, except insofar as these matters might conflict with the interests of the State Compensation Insurance Fund. The administrative costs associated with these services shall be reimbursed from the Workers' Compensation Administration Revolving Fund, except when a budget impasse requires advances as provided in subdivision (d) of Section 62.5. To the extent permitted by state law, the director may contract for audits or reports of services under this section.

(d) Commencing November 1, 2004, the State Compensation Insurance Fund and the director shall report annually to the fiscal committees of both houses of the Legislature and the Director of Finance, regarding all of the following:

(1) The number of subsequent injuries claims paid in the previous fiscal year, the total costs of those claims, and the levels of reserves on incurred claims.

(2) The administrative costs associated with claims payment activities.

(3) Annual revenues to the Subsequent Injuries Benefits Trust Fund from both of the following:

(A) Assessments collected pursuant to subdivision (d) of Section 62.5.

(B) Other revenues collected by the department.

(4) Projected annual program and claims costs for the current and upcoming fiscal years.

SEC. 38. Section 1777.5 of the Labor Code is amended to read:

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

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

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

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. ''Apprenticeable craft or trade,'' as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, ''contractor'' includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

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

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

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

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of

apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

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

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

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

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

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

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

(*l*) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

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

(2) At the conclusion of the 2002–03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

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

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

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

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

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

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

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

SEC. 39. Section 1033.2 is added to the Military and Veterans Code, to read:

1033.2. If the total amount collected for reimbursements for Medi-Cal and Medicare services provided in any fiscal year by a veterans' home exceeds the budgeted reimbursements for that home, the additional funds collected shall be used to repay any unpaid General

Fund loans provided to the veterans' home in prior fiscal years for the operation of that home.

SEC. 40. Section 6611 is added to the Public Contract Code, to read:

6611. (a) Notwithstanding any other provision of law, when procuring goods, services, construction services, or information technology for itself or on behalf of another state agency, the Department of General Services may, consistent with the requirements of this division, use a negotiation process if the department finds that one or more of the following conditions exist:

(1) The business need or purpose that will be fulfilled by the procurement can be further defined as a result of a negotiation process.

(2) The business need or purpose that will be fulfilled by the procurement is known by the department, but a negotiation process may identify different types of procurement to fulfill this business need or purpose.

(3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop the response are extremely high.

(4) The business need or purpose that will be fulfilled by the procurement is known by the department, but postbid negotiation regarding the price of the procurement is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, construction services, or information technology.

(b) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a), which procedures and guidelines shall include, but not be limited to, a clear description of the methodology that will be used by the department to evaluate a bid for the procurement goods, services, construction services, and information technology.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

SEC. 41. Section 40409 is added to the Public Resources Code, to read:

40409. Notwithstanding any other provision of law, no board member or advisor may collect per diem or travel expenses for attending a meeting at the board headquarters or for traveling to or from the board headquarters.

SEC. 42. Section 40433 of the Public Resources Code is amended to read:

40433. (a) The Governor shall appoint one adviser for each member of the board upon the recommendation of the board member.

Each adviser shall receive a salary as shall be fixed by the board with the approval of the Department of Personnel Administration. The adviser serving the chairperson of the board shall be known as the principal adviser.

(b) An adviser appointed pursuant to subdivision (a) may not select an additional deputy or employee. The board may not expend any funds to pay for the salary of a deputy or employee of an adviser.

SEC. 43. Section 42873 of the Public Resources Code is amended to read:

42873. (a) Activities eligible for funding under this article, that reduce, or that are designed to reduce or promote the reduction of, landfill disposal of used whole tires, may include the following:

(1) Polymer treatment.

(2) Rubber reclaiming and crumb rubber production.

(3) Retreading.

(4) Shredding.

(5) The manufacture of products made from used tires, including, but not limited to, all of the following:

(A) Artificial reefs.

(B) Rubber asphalt.

(C) Playground equipment.

(D) Crash barriers.

(E) Erosion control materials.

(F) Nonslip floor and track surfacing.

(G) Oilspill recovery equipment.

(H) Roofing adhesives.

(6) Other environmentally safe applications or treatments determined to be appropriate by the board.

(b) (1) The board may not expend funds for an activity that provides support or research for the incineration of tires. For the purposes of this article, incineration of tires, includes, but is not limited to, fuel feed system development, fuel sizing analysis, and capacity and production optimization.

(2) Paragraph (1) does not affect the permitting or regulation of facilities that engage in the incineration of tires.

SEC. 44. Section 42885.5 of the Public Resources Code is amended to read:

42885.5. (a) The board shall adopt a five-year plan, which shall be updated every two years, to establish goals and priorities for the waste tire program and each program element.

(b) On or before July 1, 2001, and every two years thereafter, the board shall submit the adopted five-year plan to the appropriate policy and fiscal committees of the Legislature. The board shall include, in the plan, programmatic and fiscal issues including, but not limited to, the

hierarchy used by the board to maximize productive uses of waste and used tires and the performance objectives and measurement criteria used by the board to evaluate the success of its waste and used tire recycling program. Additionally, the plan shall describe each program element's effectiveness, based upon performance measures developed by the board, including, but not limited to, the following:

(1) Enforcement and regulations relating to the storage of waste and used tires.

(2) Cleanup, abatement, or other remedial action related to waste tire stockpiles throughout the state.

(3) Research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(4) Market development and new technology activities for used tires and waste tires.

(5) The waste and used tire hauler program and manifest system.

(6) Until June 30, 2006, the grant program authorized under Section 42872.5 to encourage the use of rubberized asphalt concrete technology in public works projects.

(c) The board shall base the budget for the California Tire Recycling Act and program funding on the plan.

(d) The plan may not propose financial or other support that promotes, or provides for research for the incineration of tires.

SEC. 45. Section 71040 of the Public Resources Code is amended to read:

71040. The Secretary for Environmental Protection shall establish an electronic online permit assistance center through the Internet. The electronic online permit assistance center shall be available for use by any business or other entity subject to a law or regulation implemented by a board, department, or office within the California Environmental Protection Agency, and shall provide a business or other entity with assistance in complying with those laws and regulations. The center, which shall be called the ''California Government-On Line to Desktops'' or ''CALGOLD'' program, shall provide special software, ''hotlinks'' and other online resources and tools that may be used by a business or other entity to streamline and expedite compliance with laws and regulations implemented by a board, department, or office within the California Environmental Protection Agency. The CALGOLD program shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

SEC. 46. Section 280 of the Public Utilities Code is amended to read:

280. (a) There is hereby created the California Teleconnect Fund Administrative Committee, which is an advisory board to advise the

commission regarding the development, implementation, and administration of a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations, consistent with Chapter 278 of the Statutes of 1994, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. Commencing on October 1, 2001, and continuing thereafter, the commission shall transfer the moneys received, and all unexpended revenues collected prior to October 1, 2001, to the Controller for deposit in the California Teleconnect Fund Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund.

(c) Moneys appropriated from the California Teleconnect Fund Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) Moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003 are subject to Section 16320 of the Government Code. If the commission determines a need for moneys in the California Teleconnect Fund Administrative Committee Fund, the commission shall notify the Director of Finance of the need, as specified in Section 16320 of the Government Code. The commission may not increase the rates authorized by the commission to fund the program specified in subdivision (a) while moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003 are outstanding unless both of the following conditions are satisfied:

(1) The Director of Finance, after making a determination pursuant to subdivision (b) of Section 16320 of the Government Code, does not order repayment of all or a portion of any loan from the California Teleconnect Fund Administrative Committee Fund within 30 days of notification by the commission of the need for the moneys.

(2) The commission notifies the Director of Finance and the Chairperson of the Joint Legislative Budget Committee in writing that it intends to increase the rates authorized by the commission to fund the program specified in subdivision (a). The notification required pursuant to this paragraph shall be made 30 days in advance of the intended rate increase.

(e) Subdivision (d) shall become inoperative upon full repayment or discharge of all moneys loaned from the California Teleconnect Fund Administrative Committee Fund in the Budget Act of 2003.

SEC. 47. Section 321.1 is added to the Public Utilities Code, to read:

321.1. It is the intent of the Legislature that the commission assess the economic effects or consequences of its decisions as part of each ratemaking, rulemaking, or other proceeding, and that this be accomplished using existing resources and within existing commission structures. The commission shall not establish a separate office or department for the purpose of evaluating economic development consequences of commission activities.

SEC. 48. Section 18409 of the Revenue and Taxation Code is amended to read:

18409. (a) The Franchise Tax Board shall prescribe regulations providing standards for determining which returns shall be filed on magnetic media or in other machine-readable form. The Franchise Tax Board may not require returns of any tax imposed by Part 10 (commencing with Section 17001) on estates and trusts to be other than on paper forms supplied by the Franchise Tax Board. In prescribing those regulations, the Franchise Tax Board shall take into account, among other relevant factors, the ability of the taxpayer to comply at a reasonable cost with that filing requirement.

(b) (1) Subdivision (a) is applicable only to taxpayers required to file returns on magnetic media or in other machine-readable form pursuant to Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, and the regulations adopted thereto.

(2) For purposes of paragraph (1), the last sentence of Section 6011(e)(2) of the Internal Revenue Code, does not apply.

(3) In addition, the regulations under subdivision (a) shall not require that returns filed on magnetic media or in other machine-readable form contain more information than is required to be included in similar returns filed with the Internal Revenue Service under Section 6011(e) of the Internal Revenue Code and the regulations adopted thereto.

(c) In lieu of the magnetic media or other machine-readable form returns required by this section, a copy of the similar magnetic media or other machine-readable form returns filed with the Internal Revenue Service pursuant to Section 6011(e) of the Internal Revenue Code, and the regulations adopted thereto, may be filed with the Franchise Tax Board.

SEC. 49. Section 18621.9 is added to the Revenue and Taxation Code, to read:

18621.9. (a) If an income tax return preparer prepared more than 100 timely original individual income tax returns that were filed during

any calendar year that began on and after January 1, 2003, and if in the current calendar year that income tax preparer prepares one or more acceptable individual income tax returns using tax preparation software, then, for that calendar year and for each subsequent calendar year thereafter, all acceptable individual income tax returns prepared by that income tax preparer shall be filed using electronic technology, as defined in Section 18621.5.

(b) For purposes of this section:

(1) ''Income tax preparer'' means a person that meets both of the following:

(A) Any person that prepares, in exchange for compensation, or who employs another person to prepare, in exchange for compensation, any return for the tax imposed by Part 10 (commencing with Section 17001) (hereafter Part 10). A person that only performs those acts described in clauses (i) through (iv) of Section 7701(a)(36)(B) of the Internal Revenue Code, with respect to the preparation of a return for the tax imposed by Part 10, is not an income tax preparer for purposes of this section or for purposes of Section 19170.

(B) Any person that prepares returns for the tax imposed by Part 10 that is also required, by this article, to include an identification number on any return prepared by that tax preparer for the tax imposed by Part 10.

(2) ''Original individual income tax return'' means any return that is required, by Section 18501, to be made with respect to the tax imposed by Part 10. For purposes of subdivision (a), a ''timely'' original individual tax return means any original individual tax return that is filed, without regard to extensions, during the calendar year for which that tax return is required to be filed.

(3) ''Acceptable individual income tax return'' means any original individual tax return that is authorized by the Franchise Tax Board to be filed using electronic technology, as defined in Section 18621.5. For purposes of this section, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any rule, notice, or guideline issued by the Franchise Tax Board that identifies a tax return as an acceptable individual income tax return.

(4) ''Tax preparation software'' means any computer software program intended for accounting, tax return preparation, or tax compliance.

(c) Subdivision (a) shall cease to apply to an income tax preparer if, during the previous calendar year, that income tax preparer prepared no more than 25 original individual income tax returns.

(d) (1) This section applies to acceptable individual income tax returns required to be filed for taxable years beginning on and after January 1, 2004.

(2) This section may not be interpreted to require electronic filing of acceptable individual income tax returns that are required to be filed on or before January 1, 2004.

SEC. 50. Section 19170 is added to the Revenue and Taxation Code, to read:

19170. (a) An income tax preparer that is subject to Section 18621.9 is liable for a penalty in the amount of fifty dollars ($50) for each acceptable individual income tax return prepared by that income tax preparer that is not electronically filed, unless it is shown that the failure to electronically file that acceptable individual income tax return is due to reasonable cause and not due to willful neglect.

(b) For purposes of this section, reasonable cause includes, but is not limited to, a taxpayer's election not to electronically file an acceptable individual income tax return in compliance with Section 18621.9.

SEC. 51. Section 104.19 is added to the Streets and Highways Code, to read:

104.19. (a) The excess property owned by the department described in subdivision (b) that is leased until June 30, 2005, to the Century Housing Corporation, a nonprofit corporation, and used for job training and placement purposes, shall continue to be leased to that party until June 30, 2028, at the existing rent.

(b) The excess property consists of approximately 1.3 acres, is referred to as excess parcels 6160, 6166, 6167, and 6168, and is located adjacent to Lennox Boulevard and State Highway (Interstate) Route 405 in an unincorporated area of Los Angeles County.

SEC. 52. Section 6 of Chapter 213 of the Statutes of 2000 is amended to read:

Sec. 6. The following sums are hereby appropriated from the General Fund to be allocated according to the following schedule:

(a) (1) Five million dollars ($5,000,000) to the Governor's Office on Service and Volunteerism, on an annual basis, for the purpose of funding grants to local and state operated Americorps and Conservation Corps programs, up to 5 percent of which may be used for state level administration costs.

(2) This subdivision shall be inoperative from July 1, 2003, to June 30, 2006, inclusive.

(b) One million dollars ($1,000,000) to the Superintendent of Public Instruction for the purpose of developing or revising, as needed, a model curriculum on the life and work of Cesar Chavez and distributing that curriculum to each school.

SEC. 53. Notwithstanding any other provision of law, the balance of the appropriation in Item 8260-103-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) for ''The Wall--Las Memorias'' Projects is reappropriated for the purposes

provided for in that appropriation and shall be available for encumbrance and expenditure until June 30, 2004. Moreover, the contract with the California Arts Council referenced in that item (Contract Number CIP-00-024) shall be extended until June 30, 2004.

SEC. 54. Notwithstanding any other provision of law, the state's July 1, 2003, payment to the California Public Employees' Retirement System shall be considered an expenditure for the 2002–03 fiscal year.

SEC. 55. The Legislature finds and declares that the State of California faces an unprecedented fiscal crisis that requires legislative budget actions to control spending growth. It therefore is the Legislature's intent that, in assisting the Governor in preparing the State Budget for the 2004–05 fiscal year, the Department of Finance not include any proposed funding for any of the following:

(a) State, University of California, or California State University employee salary increases that have not already been approved prior to the enactment of this act.

(b) Discretionary price adjustments to state, University of California, or California State University operations.

(c) Local mandate reimbursements, including payments for prior-year reimbursements, except that the continuing funding for mandates funded in the 2003–04 fiscal year may be included in the budget for 2004–05.

(d) For General Fund capital outlay, beyond a minimal amount of fifty million dollars ($50,000,000) for emergencies and contingencies.

(e) The All American Canal.

(f) Proposition 98 spending in excess of the minimum guarantee for the 2003–04 and 2004–05 fiscal years.

(g) Enrollment growth at the University of California or the California State University.

SEC. 55. To ensure the integrity of the 2003–04 budget and to ensure that the necessary critical programs in each department are adequately funded, it is necessary that the Director of Finance be authorized to reduce appropriations and to reallocate funds among appropriations available to each department.

SEC. 56. (a) Notwithstanding any other provision of law, if exigent circumstances require adjustments to appropriations within a department to adequately fund a program based on total appropriations for the department, or a reduction to an appropriation to a department, the Director of Finance is authorized to (1) reduce appropriations from, and reallocate funds within, appropriations for the same department, where necessary to ensure that each department's expenditures will be consistent with appropriations authorized by the Budget Act of 2003 and any other appropriation available to that department, and (2) impose other savings strategies as determined appropriate by the Director of

Finance to ensure that each department's planned expenditures are consistent with the appropriations authorized by the Budget Act of 2003 and any other appropriation available to that department.

(b) The Department of Finance shall, 30 days prior to taking an action pursuant to subdivision (a), notify in writing all of the following:

(1) The chairperson of the committee in each house of the Legislature that considers appropriations.

(2) The chairperson of the committee in each house of the Legislature that considers the state budget.

(3) The chairperson of the Joint Legislative Budget Committee.

(c) The written notification required by subdivision (b) shall include a statement that details the exigent circumstances which justify the action to be taken pursuant to subdivision (a).

SEC. 57. The changes made by this act to Sections 1540, 1541, and 1542 of the Code of Civil Procedure shall apply to any claims for which the Controller has not made a decision by the earlier of July 1, 2003, or the effective date of this act.

SEC. 58. Section 19 and 21 of this act, which repeal Sections 29145 and 43402 of the Government Code, respectively, shall become operative on July 1, 2003.

SEC. 59. The Legislature finds and declares that the changes made by this act to Sections 25192 and 25249.12 of the Health and Safety Code further the purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986.

SEC. 60. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary changes to implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 229

An act to amend Sections 14030.2, 14037.6, and 14060.6 of the Corporations Code, to amend Sections 12800, 14669.21, 63021, and 63024 of, to add Part 4.7 (commencing with Section 13995) of Division 3 of Title 2 to, to add Part 10.2 (commencing with Section 15710) to Division 3 of Title 2 of, to repeal Section 13997.1 of, and to repeal Part 6.7 (commencing with Section 15310) of Division 3 of Title 2 of, the Government Code, to add Part 14 (commencing with Section 37980) to Division 24 of the Health and Safety Code, and to amend Sections

273.82, 999c, 999j, 999k, 999n, 999p, 999r, 999s, 999v, 999x, 999y, 1174.2, 1191.21, 6241, 11160, 11161.2, 11166.9, 11171, 11501, 11502, 11504, 13100.1, 13800, 13812, 13823, 13823.12, 13823.13, 13823.15, 13823.16, 13823.2, 13823.4, 13823.5, 13823.9, 13823.93, 13825, 13826.1, 13826.15, 13826.62, 13826.7, 13830, 13832, 13833, 13835.2, 13835.6, 13835.7, 13836, 13836.1, 13837, 13843, 13844, 13846, 13847, 13847.2, 13848.2, 13848.4, 13848.6, 13851, 13854, 13861, 13864, 13876, 13879, 13879.5, 13881, 13897.2, 13897.3, 13901, 14111, 14112, 14117, 14118, 14119, 14120, 14121, 14140, and 14172 of, to amend and renumber Section 13825.10 of, to repeal Sections 13821 and 13822 of, and to repeal and add Section 13820 of, the Penal Code, relating to state agencies.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 14030.2 of the Corporations Code is amended to read:

14030.2. (a) The director may establish accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation. The director shall recommend whether the expansion fund and corporate fund accounts are to be leveraged, and if so, by how much. Upon the request of the corporation, the director's decision may be repealed or modified by a board resolution.

(b) Annually, not later than January 1 of each year commencing January 1, 1996, the director shall prepare a report regarding the loss experience for the expansion fund for loan guarantees and surety bond guarantees for the preceding fiscal year. At a minimum, the report shall also include data regarding numbers of surety bond and loan guarantees awarded through the expansion fund, including ethnicity and gender data of participating contractors and other entities, and experience of surety insurer participants in the bond guarantee program. The director shall submit that report to the Secretary of Business, Transportation and Housing for transmission to the Governor and the Legislature.

SEC. 1.1. Section 14037.6 of the Corporations Code is amended to read:

14037.6. (a) (1) The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the California Small Business Expansion Fund for use by the Office of Small Business in the Business, Transportation and

Housing Agency, in an amount necessary to make loan guarantees pursuant to this chapter. However, no more than five million dollars ($5,000,000) may be transferred pursuant to this section in connection with any single declared disaster.

(2) The Director of Finance, or his or her designee, within 30 days of any transfer made pursuant to this section, shall provide notice of the amount of the transfer to the Chair of the Joint Legislative Budget Committee and the chair of the committee in each house that considers appropriations.

(b) The Governor should utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency within the state and declared a disaster by the President of the United States or by the Administrator of the United States Small Business Administration, or by the United States Secretary of Agriculture or declared to be in a state of emergency by the Governor of California.

(c) This section shall remain in effect until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 1.2. Section 14060.6 of the Corporations Code is amended to read:

14060.6. (a) The Legislature finds and declares that the Small Business Loan Guarantee Program has enabled participating small businesses that do not qualify for conventional business loans or Small Business Administration loans to secure funds to expand their businesses. These small businesses would not have been able to expand their businesses in the absence of the program. The program has also provided valuable technical assistance to small businesses to ensure growth and stability. The study commissioned by Section 14069.6, as added by Chapter 919 of the Statutes of 1997, documented the return on investment of the program and the need for its services. The value of the program has also been recognized by the Governor through proposals contained in the May Revision to the Budget Act of 2000 for the 2000–01 fiscal year.

(b) Notwithstanding Section 14060.5, the Business, Transportation and Housing Agency shall establish new small business financial development corporations pursuant to the procedures otherwise established by this chapter in the following areas:

(1) San Jose.

(2) Santa Ana.

(3) San Fernando Valley.

(4) Ontario.

(c) Upon an appropriation in the annual Budget Act for this purpose, the Secretary of Business, Transportation and Housing shall establish a

small business financial development corporation in southeast Los Angeles.

(d) Each of the small business financial development corporations, upon the recommendation of the board and at least once each year, shall make a presentation and overview of the corporation's business operations to the board.

SEC. 1.3. 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; 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. 1.5. Part 4.7 (commencing with Section 13995) is added to Division 3 of Title 2 of the Government Code, to read:

PART 4.7. BUSINESS AND TOURISM

CHAPTER 1. CALIFORNIA TOURISM MARKETING ACT

Article 1. Legislative Intent

13995. This chapter shall be known and may be cited as the California Tourism Marketing Act.

13995.1. The Legislature hereby finds and declares all of the following:

(a) Tourism is among California's biggest industries, contributing over fifty-two billion dollars ($52,000,000,000) to the state economy and employing nearly 700,000 Californians in 1995.

(b) In order to retain and expand the tourism industry in California, it is necessary to market travel to and within California.

(c) State funding, while an important component of marketing, has been unable to generate sufficient funds to meet the threshold levels of funding necessary to reverse recent losses of California's tourism market share.

(d) In regard to the need for a cooperative partnership between business and industry:

(1) It is in the state's public interest and vital to the welfare of the state's economy to expand the market for, and develop, California tourism through a cooperative partnership funded in part by the state that will allow generic promotion and communication programs.

(2) The mechanism established by this chapter is intended to play a unique role in advancing the opportunity to expand tourism in California, and it is intended to increase the opportunity for tourism to the benefit of the tourism industry and the consumers of the State of California.

(3) Programs implemented pursuant to this chapter are intended to complement the marketing activities of individual competitors within the tourism industry.

(4) While it is recognized that smaller businesses participating in the tourism market often lack the resources or market power to conduct these activities on their own, the programs are intended to be of benefit to businesses of all sizes.

(5) These programs are not intended to, and they do not, impede the right or ability of individual businesses to conduct activities designed to increase the tourism market generally or their own respective shares of the California tourism market, and nothing in the mechanism established by this chapter shall prevent an individual business or participant in the industry from seeking to expand its market through alternative or complementary means, or both.

(6) (A) An individual business's own advertising initiatives are typically designed to increase its share of the California tourism market rather than to increase or expand the overall size of that market.

(B) In contrast, generic promotion of California as a tourism destination is intended and designed to maintain or increase the overall demand for California tourism and to maintain or increase the size of that market, often by utilizing promotional methods and techniques that individual businesses typically are unable, or have no incentive, to employ.

(7) This chapter creates a mechanism to fund generic promotions that, pursuant to the required supervision and oversight of the secretary as specified in this chapter, further specific state governmental goals, as established by the Legislature, and result in a promotion program that

produces nonideological and commercial communication that bears the characteristics of, and is entitled to all the privileges and protections of, government speech.

(8) The programs implemented pursuant to this chapter shall be carried out in an effective and coordinated manner that is designed to strengthen the tourism industry and the state's economy as a whole.

(9) Independent evaluation of the effectiveness of the programs will assist the Legislature in ensuring that the objectives of the programs as set out in this section are met.

(e) An industry-approved assessment provides a private-sector financing mechanism that, in partnership with state funding, will provide the amount of marketing necessary to increase tourism marketing expenditures by California.

(f) The goal of the assessments is to assess the least amount per business, in the least intrusive manner, spread across the greatest practical number of tourism industry segments.

(g) The California Travel and Tourism Commission shall target an amount determined to be sufficient to market effectively travel and tourism to and within the state.

(h) In the course of developing its written marketing plan pursuant to Section 13995.45, the California Travel and Tourism Commission shall, to the maximum extent feasible, do both of the following:

(1) Seek advice and recommendations from all segments of California's travel and tourism industry and from all geographic regions of the state.

(2) Harmonize, as appropriate, its marketing plan with the travel and tourism marketing activities and objectives of the various industry segments and geographic regions.

(i) The California Travel and Tourism Commission's marketing budget shall be spent principally to bring travelers and tourists into the state. No more than 15 percent of the commission's assessed funds in any year shall be spent to promote travel within California, unless approved by at least two-thirds of the commissioners.

Article 2. Definitions

13995.20. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) ''Appointed Commissioner'' means a commissioner appointed by the Governor.

(b) ''Assessed business'' means a person required to pay an assessment pursuant to this chapter, and until the first assessment is levied, any person authorized to vote for the initial referendum. An assessed business shall not include a public entity or a corporation when

a majority of the corporation's board of directors is appointed by a public official or public entity, or serves on the corporation's board of directors by virtue of being elected to public office, or both.

(c) ''Commission'' means the California Travel and Tourism Commission.

(d) ''Elected Commissioner'' means a commissioner elected pursuant to subdivision (d) of Section 13395.40.

(e) ''Industry category'' means the following classifications within the tourism industry:

(1) Accommodations.

(2) Restaurants and retail.

(3) Attractions and recreation.

(4) Transportation and travel services.

(f) ''Industry segment'' means a portion of an industry category. For example, rental cars are an industry segment of the transportation and travel services industry category.

(g) ''Office'' means the Office of Tourism, also popularly referred to as the Division of Tourism, within the Business, Transportation and Housing Agency.

(h) ''Person'' means an individual, public entity, firm, corporation, association, or any other business unit, whether operating on a for a profit or nonprofit basis.

(i) ''Referendum'' means any vote by mailed ballot of measures recommended by the commission and approved by the secretary pursuant to Section 13395.60, except for the initial referendum, which shall consist of measures contained in the selection committee report, discussed in Section 13395.21.

(j) ''Secretary'' means the Secretary of Business, Transportation and Housing.

(k) ''Selection Committee'' means the Tourism Selection Committee described in Article 3 (commencing with Section 13995.30).

Article 3. Tourism Selection Committee

13995.30. (a) The Governor shall appoint a Tourism Selection Committee based upon recommendations from established industry associations. The committee shall consist of 25 representatives, with no fewer than six from each industry category. In selecting the representatives, the Governor shall, to the extent possible, give recognition to the diversity within each industry category. The committee shall select a chairperson from among its members. The office shall provide staffing for the committee.

(b) The selection committee shall convene on or before March 1, 1996. Not later than 150 days following the initial convening of the committee, the committee shall issue a report listing the following:

(1) Industry segments that will be included in the initial referendum.

(2) The target assessment level for the initial referendum.

(3) Percentage of funds to be levied against each industry category and segment. To the extent possible, the percentages shall be based upon quantifiable industry data, and amounts to be levied against industry segments shall bear an appropriate relationship to the benefit derived from travel and tourism by those industry segments.

(4) Assessment methodology and rate of assessment within each industry segment, that may include, but is not limited to, a percentage of gross revenue or a per transaction charge.

(5) Businesses, if any, within a segment to be assessed at a reduced rate, which may be set at zero, whether temporarily or permanently.

(6) Initial slate of proposed elected commissioners. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(c) Nothing in this section shall preclude the selection committee from setting the assessment rate for a business within a segment at a lower rate, which may be set at zero, than a rate applicable to other businesses within that segment if the selection committee makes specific findings that the lower rate should apply due to unique geographical, financial, or other circumstances affecting the business. No business for which a zero assessment rate is set pursuant to this subdivision shall be sent a ballot or entitled to participate in the initial referendum, or in any subsequent referendum in which its rate of assessment is set at zero.

(d) The committee members for each industry category, also referred to as a subcommittee, shall prepare a recommendation for the entire committee on how the items specified in subdivision (b) should be determined for the industry segments within their industry category. The recommendations shall not include a discussion of industry category levies, which shall be determined solely by the committee. In the event that the subcommittee cannot agree on one or more of the items specified in subdivision (b), no recommendation shall be given in that category. The recommendations shall be presented to the full committee, which shall address each of the items contained in subdivision (b).

(e) In order to be assessed, an industry segment must be defined with sufficient clarity to allow for the cost-effective identification of assessed businesses within that segment.

(f) It shall be the responsibility of the office to advertise widely the selection committee process and to schedule public meetings for potential assessed businesses to provide input to the selection committee.

(g) The recommendations developed by the committee pursuant to subdivision (b) shall be reviewed and approved by the secretary.

(h) The selection committee process and report are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

Article 4. Commission

13995.40. (a) Upon approval of the initial referendum, the office shall establish a nonprofit mutual benefit corporation named the California Travel and Tourism Commission. The commission shall be under the direction of a board of commissioners, which shall function as the board of directors for purposes of the Nonprofit Corporation Law.

(b) The board of commissioners shall consist of 37 commissioners comprising the following:

(1) The secretary, who shall serve as chairperson.

(2) Twelve members, who are professionally active in the tourism industry, representing each of the 12 officially designated tourism regions and diverse elements of the industry, shall be appointed by the Governor. Appointed commissioners are not limited to assessed businesses.

(3) Twenty-four elected commissioners, including at least one representative of a travel agency or tour operator that is an assessed business.

(c) The commission established pursuant to Section 15364.52 shall be inoperative so long as the commission established pursuant to this section is in existence.

(d) Elected commissioners shall be elected by industry category in a referendum. Regardless of the number of ballots received for a referendum, the nominee for each commissioner slot with the most weighted votes from assessed businesses within that industry category shall be elected commissioner. In the event that an elected commissioner resigns, dies, or is removed from office during his or her term, the commission shall appoint a replacement from the same industry category that the commissioner in question represented, and that commissioner shall fill the remaining term of the commissioner in question. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(e) The secretary may remove any elected commissioner following a hearing at which the commissioner is found guilty of abuse of office or moral turpitude.

(f) With the exception of the secretary, no commissioner shall serve for more than two consecutive terms.

(g) Except for the original commissioners, all commissioners shall serve four-year terms. One-half of the commissioners originally appointed or elected shall serve a two-year term, while the remainder shall serve a four-year term. Every two years thereafter, one-half of the commissioners shall be appointed or elected by referendum.

(h) The selection committee shall determine the initial slate of candidates for elected commissioners. Thereafter the commissioners, by adopted resolution, shall nominate a slate of candidates, and shall include any additional candidates complying with the procedure described in Section 13395.62.

(i) The commissioners shall elect a vice chairperson from the elected commissioners.

(j) The commission may lease space from the office.

(k) The commission and the office shall be the official state representatives of California tourism.

(*l*) All commission meetings shall be held in California.

(m) No person shall receive compensation for serving as a commissioner, but each commissioner shall receive reimbursement for reasonable expenses incurred while on authorized commission business.

(n) Assessed businesses shall vote only for commissioners representing their industry category.

(o) Commissioners shall comply with the requirements of the Political Reform Act of 1974. The Legislature finds and declares that commissioners appointed or elected on the basis of membership in a particular tourism segment are appointed or elected to represent and serve the economic interests of those tourism segments and that the economic interests of these members are the same as those of the public generally.

(p) Commission meetings shall be subject to the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1).

(q) The executive director of the commission shall serve as secretary to the commission, a nonvoting position, and shall keep the minutes and records of all commission meetings.

13995.41. The purpose of the commission is to increase the number of persons traveling to and within California.

13995.42. (a) The commission is a separate, independent California nonprofit mutual benefit corporation. Except as provided in Section 13395.43, the staff of the commission shall be employees solely of the commission, and the procedures adopted by the commission shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

(b) Not later than six months following the initial referendum, the commission shall adopt procedures concerning the operation of the

commission in order to provide due process rights for assessed businesses.

(c) In the event that the commission fails to adopt the procedures described in subdivision (b) within the specified timeframe, the secretary shall adopt procedures for use by the commission until the commission adopts its own procedures. These procedures shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1), whether adopted by the commission or secretary.

13995.43. (a) The commission shall be administered by an executive director. That individual shall be a tourism industry marketing professional, recommended by a vote of the commissioners and approved by the Governor. The executive director shall serve at the pleasure of both the commissioners and the Governor.

(b) The executive director shall report to and receive overall guidance from the commission, and shall implement the commission's tourism marketing plan. The executive director shall report to the secretary for day-to-day managerial and financial responsibilities.

(c) The executive director shall serve simultaneously as the director of the office, with the title of Deputy Secretary of Tourism of the Business, Transportation and Housing Agency, and that individual shall be an exempt employee, employed by the state. So long as the commission is in existence, the only director of the office shall be the executive director of the commission. Notwithstanding any other provision of law, the executive director may supervise both employees of the commission and employees of the office, notwithstanding the fact that the commission employees are employees solely of the commission.

(d) The salary and benefits of the executive director shall be determined by the commission, and approved by the secretary, based upon industry standards for a director of a marketing budget of similar size. The entire salary and all benefits of the executive director shall be paid from assessments.

13995.44. (a) (1) The commission shall annually provide to all assessed businesses a report on the activities and budget of the commission including, but not limited to, income and expenses, the fund balance, a summary of the tourism marketing plan, and a report of progress in achieving the goals set forth in the plan. The portions of the report that pertain to the commission's income and expenses and the fund balance, as well as those other portions that the commission may from time to time deem appropriate, shall be audited by independent accountants retained by the commission for this purpose.

(2) The commission's annual budget shall be subject to the review and approval of the secretary. However, any decision of the secretary

related to the budget may be overridden by a vote of three-fifths or more of the commissioners then in office.

(b) The commission shall maintain a report on the percentage assessment allocation between industry categories and industry segments. The report shall also specify the reasons and methodology used for the allocations. This report shall be updated every time the assessment allocations are amended. The report shall be made available to any assessed business.

13995.45. (a) The commission shall annually prepare, or cause to be prepared, a written marketing plan. In developing the plan, the commission shall utilize, as appropriate, the advice and recommendations of the industry marketing advisory committee or committees established pursuant to subdivision (a) of Section 13995.47. The commission may amend the plan at any commission meeting. All expenditures by the commission shall be consistent with the marketing plan.

(b) The plan shall promote travel to and within California, and shall include, but not be limited to, the following:

(1) An evaluation of the previous year's budget and activities.

(2) Review of California tourism trends, conditions, and opportunities.

(3) Target audiences for tourism marketing expenditures.

(4) Marketing strategies, objectives, and targets.

(5) Budget for the current year.

(c) Before final adoption of the plan, the commission shall provide each known destination marketing organization in California notice of the availability of the proposed marketing plan and suitable opportunity, which may include public meetings, to review the plan and to comment upon it. The commission shall take into consideration any recommendations submitted by the destination marketing organizations, except that the final determination as to the nature, extent, and substance of the plan shall in all respects rest solely within the ultimate discretion of the commission, except as provided in subdivision (d).

(d) The final adoption of the plan shall be subject to the review and approval of the secretary. However, any decision of the secretary related to the plan may be overridden by a vote of three-fifths or more of the commissioners then in office.

13995.46. Commissioners and employees of the commission are not responsible individually in any way whatsoever to any person for liability for any good faith activity of the commission.

13995.47. (a) The commission shall establish one or more industry marketing advisory committees, which may include noncommissioners as members. The industry marketing advisory committees shall be

structured so that, in the aggregate, they include, to the maximum extent feasible and reasonable, representation from every geographic region of the state and every segment of the state's travel and tourism industry. The commission shall establish procedures for the operation of the industry marketing advisory committees that will provide appropriate opportunity for every geographic region of the state and every segment of the travel and tourism industry to offer advice and recommendations to the commission relative to the development of its written marketing plan pursuant to Section 13995.45.

(b) The commission may also establish from time to time any other committees it deems appropriate, and may appoint noncommissioners to the committees.

13995.48. If the commission believes that the administration of the marketing plan will be promoted thereby, the commission may borrow money, with or without interest, to carry out the provisions of the marketing plan, and may hypothecate anticipated assessment collections.

13995.49. The commission may by written contract accept a voluntary assessment from any person in a travel and tourism related business who is not an assessed business. The contract shall apply solely to the person in question and not to any other person in a travel and tourism related business who is not an assessed business. The contract shall provide that the voluntary assessment be equivalent to the assessment that would be levied if the person were an assessed business under this chapter, shall permit that business to vote on any referendum conducted under this chapter as if that person were an assessed business, and shall have a term concurrent with the effective period of any referendum on which the person votes. Individual voluntary assessments under this section shall be enforceable only under the terms of the respective contracts to which they pertain. This section shall not be construed to preclude donations to, or cooperative marketing activities of any kind with, the commission. Notwithstanding the foregoing, the commission shall not enter into any contract for a voluntary assessment with a person whose primary business is gaming, as defined in Chapter 10 (commencing with Section 330) of Title 9, Part 1 of the Penal Code.

Article 5. Secretary

13995.50. (a) The marketing of California tourism is hereby declared to be affected with the public interest. This chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(b) The police powers shall be used to collect assessments not paid by the deadlines established by the secretary.

13995.51. (a) The following powers, and any other powers provided in this act, with the exception of the exercising of police powers and of that power enumerated in subdivision (b), shall be the responsibility of the secretary and, when not exercised by the secretary, may be exercised by the commission:

(1) Call referenda in accordance with the procedures set forth in Article 6 (commencing with Section 13995.60) and certify the results.

(2) Collect and deposit assessments.

(3) Exercise police powers.

(4) Pursue actions and penalties connected with assessments.

(b) Except as otherwise specified in this chapter, the secretary shall have veto power over the actions of the commission, following consultation with the commission, only under the following circumstances:

(1) Travel and expense costs.

(2) Situations where the secretary determines a conflict of interest exists, as defined by the Fair Political Practices Commission.

(3) The use of any state funds.

(4) Any contracts entered into between the commission and a commissioner.

13995.52. (a) Except as otherwise specified in Section 13995.70, the commission may be terminated by referendum of the assessed businesses pursuant to Section 13995.60 or at any time by a referendum called by 10 percent of the assessed businesses, calculated by weighted percentages.

(b) Notice of the termination shall be mailed to all assessed businesses.

(c) Upon termination, the commission shall continue its existence as a nonprofit corporation for purposes of winding up its affairs and dissolution.

(d) Upon termination of the commission established pursuant to this chapter, the California Tourism Commission shall advise the office, and conduct all other tasks authorized by the California Tourism Policy Act.

13995.53. The secretary may require any and all assessed businesses to maintain books and records that reflect their income or sales as reflected in the assessment, and to furnish the secretary with any information that may, from time-to-time, be requested by the secretary, and to permit the inspection by the secretary of portions of books and records that relate to the amount of assessment.

13995.54. Information pertaining to assessed businesses obtained by the secretary pursuant to this chapter is confidential and shall not be disclosed except to a person with the right to obtain the information, any

attorney hired by the secretary who is employed to give legal advice upon it, or by court order. Information obtained by the secretary in order to determine the assessment level for an assessed business is exempt from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

13995.55. For the purpose of carrying out Section 13995.51, the secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents of any kind.

13995.56. A person shall not be excused from attending and testifying, or from producing documentary evidence, before the secretary in obedience to the subpoena of the secretary pursuant to the authority granted in Section 13995.55 on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, which is required of him or her may tend to incriminate the person or subject that person to a penalty. A natural person shall not, however, be prosecuted or subjected to any penalty on account of any transaction, matter, or thing concerning which he or she may be required to testify, or produce evidence, documentary or otherwise, before the secretary in obedience to a subpoena. A natural person testifying shall not, however, be exempt from prosecution and punishment for perjury committed in so testifying.

13995.57. Any funds appropriated to the office may be used to implement the tourism marketing plan specified in Section 13995.45. In addition to any other authority for the office to spend funds, state funds may be used for the following: research, conducting and advertising referenda, administration of state funds, policing, collection of assessments, and contracting for assistance in obtaining information on businesses to be assessed.

13995.58. The office may contract with the commission in order for the commission to undertake marketing activities utilizing state funds, and Section 10295, and Article 4 (commencing with Section 10335) and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code shall not apply to those agreements.

Article 6. Referendum

13995.60. (a) As used in this article and Article 7 (commencing with Section 13995.65) ''assessment level'' means the estimated gross dollar amount received by assessment from all assessed businesses on an annual basis, and ''assessment formula'' means the allocation method used within each industry segment (for example, percentage of gross revenue).

(b) Commencing on January 1, 2003, a referendum shall be called every two years, and the commission, by adopted resolution, shall determine the slate of individuals who will run for commissioner. The resolution shall also cover, but not be limited to, the proposed assessment level, based upon specified assessment formulae, together with necessary information to enable each assessed business to determine what its individual assessment would be. Commencing with the referendum held in 2007 and every six years thereafter, the resolution shall also cover the termination or continuation of the commission. The resolution may also include an amended industry segment allocation formula and the percentage allocation of assessments between industry categories and segments. The commission may specify in the resolution that a special, lower assessment rate that was set pursuant to subdivision (c) of Section 13995.30 for a particular business will no longer apply due to changes in the unique circumstance that originally justified the lower rate. The resolution may include up to three possible assessment levels, from which the assessed businesses will select one assessment level by plurality weighted vote.

(c) The commission shall deliver to the secretary the resolution described in subdivision (b). The secretary shall call a referendum containing the information required by subdivision (b) plus any additional matters complying with the procedures of subdivision (b) of Section 13995.62.

(d) When the secretary calls a referendum, all assessed businesses shall be sent a ballot for the referendum. Every ballot that the secretary receives by the ballot deadline shall be counted, utilizing the weighted formula adopted initially by the selection committee, and subsequently amended by referendum.

(e) If the referendum includes more than one possible assessment rate, the rate with the plurality of weighted votes shall be adopted.

13995.61. (a) The costs of marketing and promoting the initial referendum shall be provided by private payments. The costs of the initial referendum shall be paid by the office. The office shall coordinate the referendum to ensure that it is unbiased and factually correct. In the event that the initial referendum fails in the first attempt at passage, subsequent attempts at passage of the initial referendum shall be permitted, except that the costs of conducting the subsequent attempts at passage, along with the costs of marketing and promoting those attempts at passage, shall be provided by private payments. Subsequent attempts at passage shall be conducted in the manner specified in this subdivision. In the event that the initial referendum passes, whether on the first attempt at passage or a subsequent attempt at passage, the private payers and the office shall be reimbursed for all of their respective initial referendum costs from assessments first received.

(b) The ongoing referendum costs shall be paid by the commission.

13995.62. (a) Assessed businesses may place on a referendum pursuant to Section 13995.60 additional candidates for commissioner, a different assessment level, or both.

(b) A minimum of 20 percent of the assessed businesses (calculated by weighted percentages) must signify their agreement to add different assessment levels to the items included in the referendum.

(c) A minimum of 10 percent of the assessed businesses (calculated by weighted percentages) must signify their agreement to add candidates for commissioner to the items included in the referendum.

13995.63. (a) Upon receipt of the resolution required by Section 13995.60, including any assessed business referendum request pursuant to subdivision (a) of Section 13995.52 or Section 13995.62, the secretary shall establish a referendum period not to exceed 60 days. If the secretary determines that the referendum period so established does not provide sufficient time for the balloting, the secretary may extend the referendum period not more than 15 additional days. At the close of the referendum period, the secretary shall count and tabulate the ballots filed during the referendum period.

(b) The secretary shall establish a deadline for adoption of the resolution described in subdivision (a). If the commission fails to meet this deadline, or if the adopted resolution fails to meet the requirements of this chapter, then assessed businesses may present a slate of candidates to the secretary not later than 60 days following the deadline established for the commission resolution. A minimum of 10 percent of weighted voters shall sign the document presenting the slate.

(c) In the event that the secretary does not receive a resolution required by Section 13995.60 from the commission by the deadline established pursuant to subdivision (b) or the resolution does not comply with the requirements of this chapter and the assessed businesses fail to present a slate pursuant to subdivision (b), then the secretary shall select a slate of commissioners and this slate, added to any assessed business referendum requests pursuant to subdivision (a) of Section 13995.52 or Section 13995.62, shall constitute the items included in the referendum.

13995.64. (a) Each assessed business is entitled to a weighted vote in each referendum. In calculating weighted votes, each assessed business receives a vote equal to the relative assessment paid by that business. An assessed business paying nine hundred dollars ($900) in annual assessments has three times the weighted vote of a business paying three hundred dollars ($300). Weighted votes are used to determine all issues on the referendum. The initial referendum, and any referendum item to terminate the commission, must be approved by a majority of the weighted votes cast at the referendum. The amount of

assessment and selection of commissioners is determined by the most weighted votes, whether or not there is a majority.

(b) For purposes of voting in any referendum, each assessed business is part of one industry category and one industry segment, and for voting purposes only, a business with revenue in more than one industry category or industry segment shall only be included in the category and segment in which it earns the most gross revenue.

(c) Each assessed business is eligible to vote for each item on the referendum, except that an assessed business can only vote for commissioners representing its industry category, and industry segment formulae for its industry segment.

(d) A business is not eligible to vote unless it has paid all assessments and fines outstanding as of a date established by the secretary.

Article 7. Assessments

13995.65. (a) Each industry category shall establish a committee to determine the following within its industry category: industry segments, assessment formula for each industry segment, and any types of business exempt from assessment. The initial segment committees shall consist of the subcommittee for that category as described in subdivision (c) of Section 13995.30. Following approval of the assessment by referendum, the committees shall be selected by the commission, based upon recommendations from the tourism industry. Committee members need not be commission members.

(b) The committee recommendations shall be presented to the commission or selection committee, as applicable. The selection committee may adopt a resolution specifying some or all of the items listed in subdivision (a), plus an allocation of the overall assessment among industry categories. The commission may adopt a resolution specifying one or more of the items listed in subdivision (a), plus an allocation of the proposed assessment. The selection committee and commission are not required to adopt the findings of any committee.

(c) The initial industry category and industry segment allocations shall be included in the selection committee report required by subdivision (b) of Section 13995.30. Changes to the industry segment allocation formula may be recommended to the commission by a segment committee at the biennial commission meeting scheduled to approve the referendum resolution pursuant to Section 13995.60. At the same meeting, the commission may amend the percentage allocations among industry categories. Any item discussed in this section that is approved by resolution of the commission, except amendments to the percentage allocations among industry categories, shall be placed on the

next referendum, and adopted if approved by the majority of weighted votes cast.

(d) Upon approval by referendum, the office shall mail an assessment bill to each assessed business. The secretary shall determine how often assessments are collected, based upon available staffing resources. The secretary may stagger the assessment collection throughout the year, and charge businesses a prorated amount of assessment because of the staggered assessment period. The secretary and office shall not divulge the amount of assessment or weighted votes of any assessed businesses, except as part of an assessment action.

(e) An assessed business may appeal an assessment to the secretary based upon the fact that the business does not meet the definition established for an assessed business within its industry segment or that the level of assessment is incorrect. An appeal brought under this subdivision shall be supported by substantial evidence submitted under penalty of perjury by affidavit or declaration as provided in Section 2015.5 of the Code of Civil Procedure. If the error is based upon failure of the business to provide the required information in a timely manner, the secretary may impose a fee for reasonable costs incurred by the secretary in correcting the assessment against the business as a condition of correcting the assessment.

(f) Notwithstanding any other provision of law, an assessed business may pass on some or all of the assessment to customers. An assessed business that is passing on the assessment may, but shall not be required to, separately identify or itemize the assessment on any document provided to a customer. Assessments levied pursuant to this chapter and passed on to customers are not part of gross receipts or gross revenue for any purpose, including the calculation of sales or use tax and income pursuant to any lease. However, assessments that are passed on to customers shall be included in gross receipts for purposes of income and franchise taxes.

(g) For purposes of calculating the assessment for a business with revenue in more than one industry category or industry segment, that business may elect to be assessed based on either of the following:

(1) The assessment methodology and rate of assessment applicable to each category or segment, respectively, as it relates to the revenue that it derives from that category or segment.

(2) With respect to its total revenue from all industry categories or segments, the assessment methodology and rate of assessment applicable to the revenue in the category and segment in which it earns the most gross revenue.

13995.66. The initial assessment level shall be the amount that the selection committee recommends in its report to the Governor pursuant to Section 13995.30, which may be less than twenty-five million dollars

($25,000,000). This assessment level is a target, and shall serve as the basis for setting application of the assessment formulae, but the actual amount of collected assessments may be more or less than the assessment level.

13995.67. Assessments may be used in furtherance of the purposes set forth in Section 13995.41, or to fund the costs pursuant to Section 13995.57. Assessments may be used to fund these costs regardless of whether the work was performed by the office or commission.

13995.68. (a) The secretary shall establish a list of businesses to be assessed and the amount of assessment owed by each. The secretary shall collect the assessment from all assessed businesses, and in collecting the assessment the secretary may exercise the police powers and bring enforcement actions.

(b) Funds collected by the secretary shall be deposited into the account of the commission. This account shall not be an account of the state government.

(c) Any costs relating to the collection of assessments incurred by the state shall be reimbursed by the commission.

13995.69. (a) The office shall develop a list of California businesses within each segment included within the report required by subdivision (b) of Section 13995.30, periodically updated. Other state agencies shall assist the office in obtaining the names and addresses of these businesses.

(b) The office shall mail to each business identified pursuant to subdivision (a) a form requesting information necessary to determine the assessment for that business. Any business failing to provide this information in a timely manner shall be assessed an amount determined by the secretary to represent the upper assessment level for that segment.

(c) The office, in consultation with the commission, shall establish by regulation the procedure for assessment collection.

13995.70. (a) Funding for the commission is a cooperative venture. Because of the benefits that accrue to the state and to its residents by virtue of having the travel and tourism industry participate cooperatively with the state for the purpose of effectively marketing travel and tourism to and within the state, it is the intent of the Legislature that the state shall be responsible for appropriating a minimum of seven million three hundred thousand dollars ($7,300,000) each fiscal year for travel and tourism, and the industry shall be responsible for targeting the level of assessments for each fiscal year at the amount determined to be appropriate by the commission and approved by referendum. However, that assessment level shall ultimately reach at least twenty-five million dollars ($25,000,000). The industry may terminate the commission by referendum at any time, including during the initial four years, if the state fails to appropriate seven million three hundred thousand dollars

($7,300,000) in any fiscal year, and the state may decide not to appropriate funding in the event that the commission fails in any fiscal year to target its annual assessment level at or above the level set for the initial referendum. Termination of the commission by the industry shall require an adopted resolution of the commission to either include this issue in a regularly scheduled referendum, or to call a special referendum to decide the issue.

(b) The assessed funds shall be audited annually.

(c) The assessed funds shall be under the control of the commission, which shall spend the funds consistent with commission policies and the tourism marketing plan. The state shall have no interest in the fund except the general state interest that the state has in nonprofit corporations.

13995.71. Any assessment levied as provided in this chapter is a personal debt of every person so assessed and shall be due and payable to the secretary. If any assessed person fails to pay any assessment, the secretary may file a complaint against the person in a state court of competent jurisdiction for the collection of the assessment.

13995.72. If any assessed business that is duly assessed pursuant to this chapter fails to pay to the secretary the assessed amount by the due date, the secretary may add to the unpaid assessment an amount not to exceed 10 percent of the unpaid assessment to defray the cost of enforcing the collection of the unpaid assessment. In addition to payment for the cost of enforcing a collection, the assessed business shall pay to the secretary a penalty equivalent to the lesser of either the maximum amount authorized by Section 1 of Article XV of the California Constitution or 5 percent for each 30 days the assessment is unpaid, prorated over the days unpaid, commencing 30 days after the notice has been given to the assessed business of his or her failure to pay the assessment on the date required, unless the secretary determines, to his or her satisfaction, that the failure to pay is due to reasonable cause beyond the control of the assessed business.

13995.73. The secretary may require assessed businesses to deposit with him or her in advance the following amounts:

(a) An amount for necessary expenses.

(b) An amount that shall not exceed 25 percent of the assessment to cover costs that are incurred prior to the receipt of sufficient funds from the assessment.

(c) The amount of any deposit that is required by the secretary shall be based upon the estimated assessment for the assessed business.

13995.74. In lieu of requiring advance deposits pursuant to Section 13395.73, or in order generally to provide funds for defraying administrative expenses or the expenses of implementing the tourism marketing plan until the time that sufficient moneys are collected for this

purpose from the payment of the assessments that are established pursuant to this chapter, the secretary may receive and disburse for the express purposes contributions that are made by assessed businesses. If, however, collections from the payment of established assessments are sufficient to so warrant, the secretary shall authorize the repayment of contributions, or authorize the application of the contributions to the assessment obligations of persons that made the contributions.

13995.75. Upon termination of the commission, any remaining funds that are not required by the secretary to defray commission expenses shall be returned by the secretary upon a pro rata basis, to all persons from whom the assessments were collected unless the secretary finds that the amounts to be returned are so small as to make impractical the computation and remitting of the pro rata refund to the appropriate persons. If the secretary makes a finding that returning the remaining funds would be impractical, he or she may use the moneys in the fund to defray the costs of the office.

13995.76. Any check or warrant that is drawn against the funds of the commission that remains unclaimed or uncashed for a period of six months from the date of issuance shall be canceled and the money retained for disbursement to the original payee or claimant upon satisfactory identification for a period of one year from the time the check or warrant is canceled. The money so retained, if not claimed within the period of one year, shall be used for administration of the commission, and in furtherance of the tourism marketing plan.

13995.77. A business is exempt from the assessments provided for in this chapter if any of the following apply:

(a) The business is a travel agency or tour operator that derives less than 20 percent of its gross revenue annually from travel and tourism occurring within the state. A travel agency or tour operator that qualifies for this exemption may participate as an assessed business by paying an assessment calculated on the same basis applicable to other travel agencies or tour operators, respectively, and by filing a written request with the secretary indicating its desire to be categorized as an assessed business.

(b) The business is a small business. For purposes of this section, ''small business'' means a business location with less than $1,000,000 in total California gross annual revenue from all sources. A business exempted pursuant to this subdivision may enter into a contract for voluntary assessments pursuant to Section 13995.49.

(c) The assessments provided for in this chapter shall not apply to the revenue of regular route intrastate and interstate bus service: provided, however, that this subdivision shall not be deemed to exclude any revenue derived from bus service that is of a type that requires authority, whether in the form of a certificate of public convenience and necessity,

or a permit, to operate as a charter-party carrier of passengers pursuant to Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code.

Article 8. Actions and Penalties

13995.80. Any action for any penalty or other remedy that is prescribed under any provision of this chapter shall be commenced within three years from the date of the alleged violation.

13995.81. Any person who files false information concerning an assessment is civilly liable in an amount of not more than ten thousand dollars ($10,000), in addition to any amount owed as the assessment.

13995.82. (a) When the secretary makes a determination that an assessment is deficient as to the payment due, the secretary may determine the amount of the deficiency, including any applicable penalty, as provided in this chapter. After giving notice that a deficiency determination is proposed and an opportunity to file a report or provide supplemental information is provided, the secretary may make one or more deficiency determinations of the amount due for any reporting period based on information in the secretary's possession. When an assessed business is discontinued, a deficiency determination may be made at anytime thereafter as to the liability arising out of the operation of that business.

(b) The secretary shall give notice of the proposed deficiency determination and the notice of deficiency determination by mailing a copy of the deficiency to the assessed business at the current address for that business on file with the secretary. The giving of notice is complete at the time of deposit in the United States mail. In lieu of mailing, a notice may be served personally by delivering it to the person to be served.

(c) Except in the case of fraud or failure to file required information, a notice of a deficiency determination shall be given within four years of the accrual of the deficiency.

(d) The person against whom a deficiency determination is made may petition the secretary for redetermination within 30 days after the serving of the notice of deficiency determination. If a petition is not filed within 30 days, the deficiency determination shall become final.

(e) A petition for redetermination shall be in writing, state the specific grounds upon which it is based, and be supported by applicable records and declarations under penalty of perjury that the information supporting the petition is accurate and complete. If a petition for redetermination is duly filed, the secretary shall reconsider the deficiency determination and may grant a hearing thereon. The secretary shall, as soon as practicable, make an order on redetermination, which shall become final 30 days after service of notice of the order of

redetermination upon the petitioner. The notice of the order shall be served in the same manner as the notice of the original deficiency determination.

(f) If any amount required to be paid pursuant to a deficiency determination or redetermination is not paid within the time specified in the notice thereof, the secretary may, within four years thereafter, file in the Superior Court in the County of Sacramento, or the superior court in any other county, a certificate specifying the amount required to be paid, the name and address of the person liable as it appears on the records of the secretary, and a request that judgment be entered against the person in that amount 30 days after the filing. Notice of the filing shall be given in the same manner as for the notice of deficiency determination. The court shall enter a judgment in conformance with the secretary's certificate 30 days after its filing, unless a petition for judicial review has been filed within the 30-day period.

(g) An abstract of the judgment, or a copy thereof, may be filed with the county recorder of any county. From the time of filing of the judgment, the amount of the judgment constitutes a lien upon all of the property in the county owned by the judgment debtor. The lien has the force, effect and priority of a judgment lien and shall continue for 10 years from the date of the judgment, unless sooner released or otherwise discharged. The lien imposed by this section is not valid insofar as personal property is concerned against a purchaser of value without actual knowledge of the lien.

(h) Execution shall issue upon the judgment upon request of the secretary in the same manner as execution may issue upon other judgments, and sales shall be held under execution as prescribed in the Code of Civil Procedure.

(i) The person named in a notice of deficiency determination or redetermination may, within 30 days of the notice of filing with the superior court, file an action for judicial review thereof, as provided herein, in the Superior Court in the County of Sacramento or, with the secretary's consent, the superior court in any other county. As a condition of staying entry of judgment or granting other relief, the court shall require the filing of a corporate surety bond with the secretary in the amount of the deficiency stated in the certificate. In any court proceeding, the certificate of the secretary determining the deficiency shall be prima facie evidence of the fee and the amount due and unpaid.

(j) The provisions of this section are supplemental to any other procedures for collection and imposition of fees and penalties provided by this chapter.

(k) In lieu of proceeding pursuant to this section, the secretary may file a complaint for collection of unpaid assessments as provided by law.

13995.83. It is a violation of this chapter for any person to willfully render or furnish a false or fraudulent report, statement, or record that is required by the secretary pursuant to any provision of this chapter.

13995.84. Any suit brought by the secretary to enforce any provision of this chapter, or any regulation, or rule and regulation, that is issued by the secretary shall provide that the defendant pay to the secretary the costs that were incurred by the secretary and by the commission in the prosecution of the action in the event the secretary prevails in the action. Any money that is recovered shall reimburse the account or accounts used to pay the costs.

Article 9. Miscellaneous

13995.90. In any civil or criminal action or proceeding for violation of any of the following, proof that the act that is complained of was done in compliance with the provisions of this chapter is a complete defense to the action or proceeding:

(a) The Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(b) The Unfair Practices Act, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(c) Any rule of statutory or common law against monopolies or combinations in restraint of trade.

13995.91. If any section, sentence, clause, or part of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, that invalidity shall not affect the remaining provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. The Legislature hereby declares that it would have passed this chapter and each section, sentence, clause, and part of this chapter despite the fact that one or more sections, sentences, clauses, or parts of this chapter is declared invalid.

Article 10. Los Angeles County Tourism Marketing

13995.100. (a) The Legislature recognizes that, because of the size and significant economic impact of the tourism industry on the economy of the County of Los Angeles, it being the second largest economic activity within the county, and due to many independent factors that have adversely affected tourism in the county, it is necessary to empower the tourism industry within the County of Los Angeles to create a governance structure in order to foster marketing efforts directed at specifically attracting tourists to the county.

(b) Recognizing the importance of enabling the private-sector tourism industry within the County of Los Angeles to assess itself in order to fund tourism marketing efforts, this article shall authorize the formation of the Los Angeles County Tourism Selection Committee to be appointed by the Los Angeles County Board of Supervisors, and the Los Angeles County Tourism Marketing Commission, the members of which shall be elected by industry referendum and ex officio appointment, as set forth in this article.

13995.101. For the purposes of this article, the following definitions shall apply:

(a) ''County commission'' means the Los Angeles County Tourism Marketing Commission.

(b) ''County commissioner'' means a commissioner of the county commission.

(c) ''County selection committee'' means the Los Angeles County Tourism Selection Committee described in Section 13995.102.

(d) ''Industry category'' means the classifications within the tourism industry designated by the county selection committee, or if not so designated, then as follows:

(1) Accommodations.

(2) Restaurants and retail.

(3) Attractions and recreation.

(4) Transportation and travel services.

(e) ''Referendum'' means any vote by mail ballot of measures recommended by the county commission in accordance with the procedure set forth in Section 13995.110.

13995.102. (a) The Los Angeles County Board of Supervisors shall appoint the Los Angeles County Tourism Selection Committee to consist of persons, or principals of entities, from within the industry categories that are to be assessed, based upon recommendations from established industry associations and destination marketing organizations within Los Angeles County.

(b) The county selection committee shall consist of 24 representatives, with no fewer than three from each industry category. The county selection committee shall appoint a chair and any other officers it deems advisable.

(c) The county selection committee shall convene within 150 days after the effective date of this chapter. Not later than 150 days following the initial convening of the committee, the committee shall issue a report and recommendations listing the following:

(1) Industry segments that will be included in the initial referendum.

(2) Percentage of funds to be levied against each industry category and segment. To the extent possible, the percentages shall be based upon quantifiable industry data. Funds to be levied against businesses shall

bear an appropriate relationship to the benefit derived from travel and tourism by those businesses.

(3) Assessment methodology and rate of assessment within each industry segment, that may include, but not be limited to, a percentage of gross revenue or a per transaction charge.

(4) Businesses, if any, within a segment to be assessed at a reduced rate, which may be set at zero, whether temporarily or permanently, because they do not sufficiently benefit from travel and tourism.

(5) Initial slate of proposed elected commissioners. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(d) Nothing in this section shall preclude the selection committee from setting the assessment rate for a business within a segment at a lower rate, which may be set at zero, than a rate applicable to other businesses within that segment if the selection committee makes specific findings that the lower rate should apply due to unique geographical, financial, or other circumstances affecting the business. No business for which a zero assessment rate is set pursuant to this subdivision shall be sent a ballot or entitled to participate in the initial referendum, or in any subsequent referendum in which its rate of assessment is set at zero.

(e) The committee members for each industry category, also referred to as a subcommittee, shall prepare a recommendation for the entire committee on how the items specified in subdivision (c) should be determined for the industry segments within their industry category. The recommendations shall not include a discussion of industry category levies, which shall be determined solely by the committee. In the event that the subcommittee cannot agree on one or more of the items specified in subdivision (c), no recommendation shall be given in that category. The recommendations shall be presented to the full committee, which shall address each of the items contained in subdivision (c).

(f) In order to be assessed, an industry segment shall be defined with sufficient clarity to allow for the cost-effective identification of assessed businesses within that segment.

(g) It shall be the responsibility of the county selection committee to advertise widely the selection committee process and to schedule public meetings for potential assessed businesses to provide input to the selection committee.

(h) The selection committee process and report shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

(i) The Los Angeles Convention and Visitors Bureau shall be asked to supply staff support to the county selection committee. The Office of Tourism within the Business, Transportation and Housing Agency shall not be required to supply staff support to the county selection committee.

13995.103. (a) Based upon the criteria established by the county selection committee, the county commission shall be established by industry referenda within the county conducted in accordance with subdivision (d) and Section 13995.104, and shall include certain ex officio voting members provided for in subdivision (d).

(b) The county commission shall be a private, nonprofit corporation under the direction of a board of county commissioners. The activities and purposes of the county commission shall be to promote tourism to and within the County of Los Angeles through marketing and other promotional efforts.

(c) The board of county commissioners shall function as the board of directors for purposes of the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code).

(d) The board of county commissioners shall consist of 24 members to be elected by industry category by referendum, from among individuals who are professionally active in the tourism industry, representing diverse elements of the industry. In addition, the board of county commissioners shall include the salaried chief executive officer of each convention and visitors bureau within Los Angeles County that operates either as a part of municipal government or under contract with any municipality within the county. The elected county commissioners need not be limited to representatives of assessed businesses.

(e) In the referendum process, regardless of the number of ballots received for a referendum, the nominee for each county commissioner slot with the most weighted votes, based upon assessment levels, from businesses within that industry category shall be elected county commissioner. Assessed businesses shall vote only for county commissioners representing their industry category.

(f) All elected county commissioners shall serve three-year terms, except that one-third of the county commissioners originally elected shall serve a one-year term, one-third shall serve a two-year term, and the remainder shall serve a three-year term. Every year thereafter, one-third of the county commissioners shall be elected by industry referendum. No county commissioner may serve for more than two consecutive terms.

(g) In the event that a county commissioner resigns, dies, or is removed from office during his or her term, the county commission shall appoint a replacement from the same industry category that the previous county commissioner represented, and that county commissioner shall fill the remaining term of the previous county commissioner.

(h) The county selection committee shall determine the initial slate of candidates for elected county commissioners. Thereafter, the county commissioners, by adopted resolution, shall nominate a slate of candidates, and shall include any additional candidates who may be

placed on the referendum by assessed businesses under a procedure to be adopted by the county commission.

(i) The county commissioners shall annually, within 60 days before commencement of the fiscal year of the county commission, elect from among the county commissioners a chair, vice-chair, secretary, and chief financial officer.

(j) No person shall receive compensation as a county commissioner, but each county commissioner shall receive reimbursement from county assessments for reasonable expenses incurred while on authorized county commission business.

13995.104. (a) The county commission shall be a private, nonprofit corporation, and shall not be part of state or county government, nor be construed in any other manner as a public entity.

(b) No person employed by the county commission shall be a state or county employee.

(c) The procedures adopted by the county commission shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1).

13995.105. (a) Not later than six months following its formation, the county commission shall adopt procedures concerning the operation of the county commission in order to provide due process rights for assessed businesses.

(b) The county commission shall annually provide to all assessed businesses a report on the activities and budget of the county commission including, but not limited to, income and expenses, the fund balance, a Summary Los Angeles County Tourism Marketing Plan, and a report of progress in achieving the goals set forth in the plan.

(c) The county commission shall maintain a report on the percentage assessment allocation between industry categories and industry segments. The report shall also specify the reasons and methodology used for the allocations. This report shall be updated each time the assessment allocations are amended. The report shall be made available to any assessed business, but all confidential information provided shall remain confidential and not be released to any person or entity unless authorized by the county commission.

(d) (1) The county commission shall annually prepare, or cause to be prepared, a Los Angeles County Tourism Marketing Plan. The county commission may amend the plan at any county commission meeting. All expenditures by the county commission shall be consistent with the marketing plan.

(2) The plan shall promote travel to and within Los Angeles County, and shall include, but need not be limited to, the following:

(A) An evaluation of the previous year's budget activities.

(B) Review of state, county, and local tourism trends, conditions, and opportunities.

(C) Target audiences for tourism marketing expenditures.

(D) Marketing strategies, objectives, and targets.

(E) Budget for the current year.

(3) In developing the plan, the county commission shall, to the maximum extent feasible, do both of the following:

(A) Seek advice and recommendations from all segments of the county's travel and tourism industry and from all geographic regions of the county.

(B) Harmonize, as appropriate, the plan with the travel and tourism marketing activities and objectives of the various industry segments and geographic regions.

(e) The county commission may establish committees and may appoint noncommissioners to its committees.

13995.106. County commissioners and employees of the county commission shall not be individually liable in any way to any person for any good faith activity of the county commission, county commissioners, or employees.

13995.107. The county commission may be terminated at any time after the initial four years of operation by referendum of the assessed businesses. Notice of the termination shall be mailed to all assessed businesses. Upon termination, the county commission shall continue its existence as a nonprofit corporation for purposes of winding up its affairs and dissolution.

13995.108. (a) The county may require assessed businesses to maintain books and records that reflect their income or sales as reflected in the assessment, and to furnish the county treasurer/tax collector with any information that may, from time to time, be requested by the treasurer/tax collector, and to permit the inspection by the treasurer/tax collector of portions of books and records that relate to the amount of assessment.

(b) Information pertaining to assessed businesses obtained by the county treasurer/tax collector pursuant to this chapter shall be confidential and shall not be disclosed except to a person with authority to obtain the information, any attorney hired by the county treasurer/tax collector who is employed to give legal advice upon that information, or by court order.

(c) Information obtained by the county treasurer/tax collector in order to determine the assessment level for an assessed business shall be exempt from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

13995.109. (a) The county commission shall recommend the assessments approved by the industry referendum to the board of

supervisors. Upon approval by the board of supervisors, the Los Angeles County Treasurer/Tax Collector shall collect all assessments so approved. In that collection effort, the county treasurer/tax collector may utilize its police powers, and pursue actions and penalties set forth in Article 8 (commencing with Section 13995.80) in the collection of all county assessments.

(b) Direct and actual expenses associated with the collection of assessments by the county commission or the county treasurer/tax collector shall be reimbursed from the assessments collected.

13995.110. (a) No referendum required under this article shall be undertaken until any of the following occurs, whichever is earliest:

(1) A statewide referendum held pursuant to this chapter has obtained a passing vote in the County of Los Angeles.

(2) Two statewide referenda have been held pursuant to this chapter.

(3) July 1, 1998.

(b) Referenda required under this article shall be conducted in a similar manner as provided in Article 6 (commencing with Section 13995.60 as follows:

(1) The county commission shall undertake all duties, and act in all respects, in place of the California Tourism Marketing Commission, and either the county or the county treasurer/tax collector, as designated in this article, shall act in place of the Secretary of Business, Transportation and Housing.

(2) The initial assessment target for the county commission shall be set by the county selection committee.

(3) The first referendum shall be initiated by industry members, with all costs of marketing and promoting of the initial referendum to be provided by the tourism industry.

(4) Each referendum may cover one or more of the following subjects:

(A) Assessment level based upon specified assessment formula.

(B) Amended industry segment allocation formulae.

(C) Percentage allocation of assessments between industry categories and segments.

(D) Election of county commissioners subject to election by referendum.

(E) Termination of the county commission.

(F) Whether to establish, continue, or reestablish an assessment.

(5) The costs of all marketing and promoting of all referenda following the initial referendum shall be paid by the county commission from assessments collected. The county commission may reimburse those who have contributed to the costs of the initial referendum from proceeds raised from assessments collected from the initial referendum.

13995.111. Assessments shall be set by the county commission, as follows:

(a) Each industry category shall establish a committee to determine the following within its industry category: industry segments, assessment formulae for each industry segment, and any type of business exempt from assessment. The committees shall be selected by the county commission based upon recommendations from the tourism industry. Committee members need not be commission members.

(b) The committee recommendations shall be presented to the county commission. The county commission may adopt a resolution specifying one or more of the items listed in subdivision (a), plus an allocation of the proposed assessment. The county commission shall consider the recommendations of any committee.

(c) The initial industry category and industry segment allocations shall be as set in the Selection Committee Report required by subdivision (b) of Section 13995.30. Changes to the industry segment allocation formulae may be recommended to the county commission by a segment committee. At the same meeting, the county commission may amend the percentage allocations among industry categories. Any item discussed in this section that is approved by resolution of the county commission, except amendments to the percentage allocations among industry categories, shall be placed on the next referendum, and adopted if approved by the weighted majority of votes cast. All industry segment members shall be subject to any duly approved assessments.

(d) Upon approval by referendum, and recommendation to the county by the county commission, the county treasurer/tax collector shall calculate the assessments due for each assessed business and mail an assessment bill to each assessed business. The county treasurer/tax collector may stagger the assessment collection throughout the year, and charge businesses a prorated amount of assessment based on the staggered assessment period. The county treasurer/tax collector shall not divulge the amount of assessment or weighted votes of any assessed businesses, except as part of an assessment action.

13995.112. An assessed business may appeal an assessment to the county commission upon the basis that the business does not meet the definition established for an assessed business within its industry segment, or that the level of assessment is incorrect. If the error is based upon failure of the business to provide the required information in a timely manner, the county commission may recommend to the county a fine to be collected by the county treasurer/tax collector as a condition of correcting the assessment.

13995.113. (a) The county treasurer/tax collector shall collect the assessment from all assessed businesses, and, in collecting an assessment, may bring enforcement actions.

(b) Funds collected shall be deposited into an account or accounts for the benefit of the county commission, subject to the county treasurer/tax collector's authority under Section 13995.109 to reimburse his or her office for direct and actual expenses associated with the collection of assessments. These accounts shall not be accounts of the state or county government.

(c) The county treasurer/tax collector shall mail to each business identified pursuant to subdivision (a) of Section 13995.111 a form requesting information necessary to determine the assessment for that business. Any business failing to provide this information in a timely manner shall be assessed an amount determined by the county treasurer/tax collector to represent the upper assessment level for that segment.

(d) The assessed funds shall be audited annually.

(e) The assessed funds shall be under the control of the county commission, which shall spend the funds consistent with commission policies and the Los Angeles County Tourism Marketing Plan. Neither the state nor the county shall have any interest in the fund except the general interest that the state has in nonprofit corporations.

(f) Direct and actual expenses incurred by the county in implementing this article shall be reimbursed from the assessed funds.

13995.114. (a) Any assessment levied as provided in this article is a debt of the business so assessed and shall be due and payable at the direction of the county treasurer/tax collector. If any assessed business fails to pay any assessment, the county treasurer/tax collector may file a complaint in a state court of competent jurisdiction for the collection of the assessment.

(b) If any assessed business that is duly assessed pursuant to this article fails to pay the assessed amount by the due date, the county treasurer/tax collector may add to the unpaid assessment an amount not to exceed 10 percent of the unpaid assessment to defray the cost of enforcing the collection of the unpaid assessment. In addition to payment for the cost of enforcing a collection, the assessed business shall pay a penalty equivalent to the lesser of either the maximum amount authorized by Section 1 of Article XV of the California Constitution or 5 percent for each 30 days the assessment is unpaid, prorated over the days unpaid, commencing 30 days after the notice has been given to the assessed business of its failure to pay the assessment on the date required, unless the county treasurer/tax collector determines that the failure to pay is due to reasonable cause beyond the control of the assessed business.

(c) (1) The county treasurer/tax collector may require assessed businesses to deposit in advance the following amounts:

(A) An amount for necessary expenses.

(B) An amount that shall not exceed 25 percent of the assessment to cover costs that are incurred prior to the receipt of sufficient funds from the assessment.

(2) The amount of any deposit that is required shall be based upon the estimated assessment for the assessed business.

(d) In lieu of requiring advance deposits, or in order generally to provide funds for defraying administrative expenses or the expenses of implementing the Los Angeles County Tourism Marketing Plan until sufficient moneys are collected for this purpose from the payment of the assessments that are established pursuant to this article, the county commission may receive and disburse for those express purposes, contributions that are made by assessed businesses. However, if collections from the payment of established assessments are sufficient, the county commission may authorize the repayment of contributions, or authorize the application of the contributions to the assessment obligations of persons who made the contributions.

(e) Upon termination of the county commission, any remaining funds that are not required to defray commission expenses shall be returned, upon a pro rata basis, to all persons from whom the assessments were collected.

(f) Any check or warrant that is drawn against the funds of the county commission that remains unclaimed or uncashed for a period of six months from the date of issuance shall be canceled and the money retained for disbursement to the original payee or claimant upon satisfactory identification for a period of one year from the time the check or warrant is canceled. The money so retained, if not claimed within the period of one year, shall be used for administration of the county commission and in furtherance of the Los Angeles County Tourism Marketing Plan.

13995.115. The county commission shall separately contract with the Los Angeles Convention and Visitors Bureau to serve as its administrative contractor in the promotion, implementation, and administration of the Los Angeles County Marketing Plan adopted by the county commission. If the county commission believes that the administration of the county marketing plan will be promoted thereby, the commission may borrow money, with or without interest, to carry out the provisions of the county marketing plan, and may hypothecate anticipated assessment collections.

13995.116. This article is subject to Article 8 (commencing with Section 13995.80) and Article 9 (commencing with Section 13995.90) except that, as to Article 8, either the county or the county treasurer/tax collector, as designated in this article, shall act in the place of the Secretary of Business, Transportation and Housing in all respects.

13995.117. A business is exempt from the assessments provided for in this chapter if the business is a travel agency or tour operator that derives less than 20 percent of its gross revenue from travel and tourism occurring within the state. A travel agency or tour operator that qualifies for this exemption may pay the assessment by filing a written request with the commission indicating its desire to be categorized as an assessed business.

13995.118. This article shall become operative only upon adoption by the Los Angeles County Board of Supervisors of a resolution by majority vote making the provisions of this article applicable in that county.

CHAPTER 2. MANUFACTURING TECHNOLOGY PROGRAM

13996. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) ''Agency'' means the Business, Transportation and Housing Agency.

(b) ''Consortia'' means jointly funded or jointly operated nonprofit independent research and development organizations. ''Consortia development'' means the establishment of consortia to manage and fund a variety of projects within a specific technology or industry priority.

(c) ''Industry association'' means a nonprofit organization with a substantial presence in California whose membership consists in whole or in part of California-based companies, and whose funding is derived in whole or in part from California-based companies.

(d) ''Manufacturing technology'' means the assessment and implementation of strategies designed to enhance the competitiveness and viability of specific manufacturing industries.

(e) ''Secretary'' means the Secretary of Business, Transportation and Housing.

(f) ''Strategic technology'' means the utilization of technology as an economic development tool.

(g) ''Technology planning'' means industry specific alliances to identify planning strategies and strategic alliances.

(h) ''Technology transfer'' means the movement of the results of applied technology or scientific research to the design development and production of new or improved products, services, or processes, including the utilization of results of a military or defense-related technology to the development or production of commercial applications.

13996.1. The agency shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5

(commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

13996.2. There is hereby established within the agency the Manufacturing Technology Program. The program shall provide matching grants and technical assistance to California nonprofit organizations and public agencies to perform one or more of the following functions:

(a) Establish and fund a California manufacturers excellence program.

(b) Develop and disseminate an inventory of resources available to assist manufacturers.

(c) Implement a strategy for addressing needs identified in the statewide California Manufacturing Excellence Program Plan, given available resources.

(d) Projects resulting in consortia partnership or alliances for manufacturing technology.

13996.3. The program shall award grants based upon a competitive application process addressing the project's eligibility, a review of the proposal's scientific and technological aspects, and ability to fulfill the goals of the program. Priority in awarding grants shall be given to those projects that will use the grant funds as matching funds for a federal grant, projects with additional sources of funding, projects involving geographic areas or manufacturing segments targeted by the agency, and projects satisfying any other criteria developed by the agency. An example of a project is a joint effort by federal laboratories, universities, and private companies to research and develop advanced manufacturing technologies that would significantly reduce the health, safety, and environmental hazards of an existing manufacturing process.

CHAPTER 3. ECONOMIC DEVELOPMENT

13997. (a) The Secretary of Business, Transportation and Housing may accept private sector moneys in an amount not in excess of ten thousand dollars ($10,000) per donation made to the state for the purposes of promoting international trade and investment, subject to Title 9 (commencing with Section 81000), and not in excess of a total of ten thousand dollars ($10,000) per quarter per donor. All private

sector moneys shall be used for these purposes but the donor may specify the international trade and investment office or international trade or investment event for which the private sector money shall be used. The private sector moneys shall be deposited into the Economic Development and Trade Promotion Account, which is hereby established in the Special Deposit Fund in the State Treasury. The secretary may expend moneys in the account, without regard to fiscal years, for the purposes of this section. Moneys in the Economic Development and Trade Promotion Account may be allocated to an international trade and investment office, and if so allocated shall be maintained by that office in an account. Notwithstanding any other provision of law, the secretary may use the private sector moneys for expenses incurred to promote international trade and investment that will directly benefit California business. Records of donations received and expenditures made pursuant to this section shall be subject to public disclosure.

(b) The international trade and investment office using the funds shall memorialize the payment in a written record as follows:

(1) Identifies the donor and the official or officials receiving or using the payment.

(2) Describes the official agency use and the nature and amount of each payment.

(3) Is filed with the Business, Transportation and Housing Agency that maintains the records of the agency's statements of economic interests, and the filing is done within 30 days of the receipt of the payment by the agency.

(c) Nothing in this section shall affect any requirement of the Political Reform Act (Title 9 (commencing with Section 81000)).

13997.1. (a) The Governor shall instruct the Secretary of Business, Transportation and Housing 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 Business, Transportation and Housing Agency for this purpose from any source, including, but not limited to, federal funding and private donations authorized pursuant to Section 13397. Private donations made pursuant to Section 13397 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.

SEC. 1.7. Section 14669.21 of the Government Code is amended to read:

14669.21. (a) The Director of the Department of General Services is authorized to acquire, develop, design, and construct, according to plans and specifications approved by the Los Angeles Regional Crime Laboratory Facility Authority, an approximately 200,000 gross square foot regional criminal justice laboratory, necessary infrastructure, and related surface parking to accommodate approximately 600 cars on the Los Angeles campus of the California State University. In accordance with this authorization, the director is authorized to enter into any agreements, contracts, leases, or other documents necessary to effectuate and further the transaction. Further, the Los Angeles Regional Crime Laboratory Facility Authority is authorized to assign, and the director is authorized to accept, all contracts already entered into by the Los Angeles Regional Crime Laboratory Facility Authority for the development and design of this project. It is acknowledged that these contracts will have to be modified to make them consistent with the standards for state projects. The director is additionally authorized to enter into a long-term ground lease for 75 years with the Trustees of the California State University for the land within the Los Angeles campus on which the project is to be constructed. At the end of the ground lease term, unencumbered title to the land shall return to the trustees and, at the option of the trustees, ownership of any improvements constructed pursuant to this section shall vest in the trustees. The trustees are authorized and directed to fully cooperate and enter into a ground lease with the Department of General Services upon the terms and conditions that will facilitate the financing of this project by the State Public Works Board. The trustees shall obtain concurrence from the Los Angeles

Regional Crime Laboratory Facility Authority in the development of the long-term ground lease referenced in this section. In his or her capacity, the director is directed to obtain concurrence and approval from the trustees relating to the design and construction of the facility consistent with the trustees' reasonable requirements.

(b) The State Public Works Board is authorized to issue lease revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) for the acquisition, development, design, and construction of the regional crime laboratory as described in this section. The project shall be acquired, developed, designed, and constructed on behalf of the State Public Works Board and the agency or agencies designated by the Director of Finance pursuant to Section 13820 of the Penal Code by the Department of General Services in accordance with state laws applicable to state projects provided, however, that the contractor prequalification specified in Section 20101 of the Public Contract Code may be utilized. For purposes of compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) the agency or agencies designated by the Director of Finance pursuant to Section 13820 of the Penal Code is the lead agency, and the trustees, acting through California State University at Los Angeles, and the Los Angeles Regional Crime Laboratory Facility Authority are responsible agencies.

(c) The State Public Works Board and the agency or agencies designated by the Director of Finance pursuant to Section 13820 of the Penal Code may borrow funds for project costs from the Pooled Money Investment Account, pursuant to Sections 16312 and 16313, or from any other appropriate source. In the event the bonds authorized by this section for the project are not sold, the agency or agencies designated by the Director of Finance pursuant to Section 13820 of the Penal Code shall commit a sufficient amount of its support appropriation to repay any loans made for the project.

(d) The amount of lease revenue bonds, negotiable notes, or negotiable bond anticipation notes to be issued by the State Public Works Board shall not exceed ninety-two million dollars ($92,000,000) and any additional sums necessary to pay interim and permanent financing costs. The additional sums may also include interest and a reasonably required reserve fund. This amount includes additional estimated project costs associated with reformatting the initial local assistance appropriation into a state managed and constructed regional crime laboratory project.

(e) The agency or agencies designated by the Director of Finance pursuant to Section 13820 of the Penal Code may execute a contract with the State Public Works Board for the lease of the regional crime

laboratory facilities described in this section that are financed with the proceeds of the board's bonds. Further, and notwithstanding any other provision of law, the agency or agencies designated by the Director of Finance pursuant to Section 13820 of the Penal Code is authorized to enter into contracts and subleases with the trustees, the Los Angeles Regional Crime Laboratory Facility Authority, the Department of Justice, and any other appropriate state or local agency, with the consent of the State Public Works Board and the Department of General Services, for the use, maintenance, and operation of the financed regional crime laboratory facilities described in this section.

(f) When all of the bonds or notes authorized pursuant to subdivision (d) have been paid in full or provided for in accordance with their terms, notwithstanding any other provision of law, the Department of General Services shall assign the ground lease entered into pursuant to subdivision (a) to the Los Angeles Regional Crime Laboratory Facility Authority or its successor agency. At that time, the ground lease may be amended as agreed to by the trustees and the Los Angeles Regional Crime Laboratory Facility Authority or its successor agency.

SEC. 1.8. Part 6.7 (commencing with Section 15310) of Division 3 of Title 2 of the Government Code is repealed.

SEC. 1.9. Part 10.2 (commencing with Section 15710) is added to Division 3 of Title 2 of the Government Code, to read:

PART 10.2. LOANS FOR REPLACEMENT, REMOVAL, OR UPGRADING OF UNDERGROUND STORAGE TANKS

15710. (a) Upon the effective date of the repeal of Chapter 8.5 (commencing with Section 15399.10), all money remaining in the Petroleum Underground Storage Tank Financing Account and all subsequent loan repayments shall revert to the Underground Storage Tank Cleanup Fund in the General Fund, except that the interest earnings specified in former Section 15399.20, as that section read on the date that it was repealed, that are necessary to support the administrative costs associated with the collection of outstanding loan amounts, shall remain with the Petroleum Underground Storage Tank Financing Account and may be expended by the State Water Resources Control Board for those costs.

(b) The inoperation and repeal of Chapter 8.5 (commencing with Section 15399.10) shall not terminate the following obligations or authorities necessary to administer the obligations until all of the following obligations are satisfied:

(1) The payment of claims filed prior to the date that Chapter 8.5 (commencing with Section 15399.10) becomes inoperative, against the Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75

(commencing with Section 25299.10) of Division 20 of the Health and Safety Code, until the money in the fund is exhausted. Upon exhaustion of the Underground Storage Tank Cleanup Fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of the date that Chapter 8.5 (commencing with Section 15399.10) becomes inoperative, due and payable to the State Water Resources Control Board under the terms of that former chapter.

(3) The resolution of any cost recovery action filed prior to the date that Chapter 8.5 (commencing with Section 15399.10) becomes inoperative, pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

SEC. 2. Section 63021 of the Government Code is amended to read:

63021. (a) There is within the Business, Transportation and Housing Agency the Infrastructure and Economic Development Bank which shall be responsible for administering this division.

(b) The bank shall be under the direction of an executive director appointed by the Governor, and who shall serve at the pleasure of the Governor. The appointment shall be subject to confirmation by the Senate.

SEC. 2.1. Section 63024 of the Government Code is amended to read:

63024. The executive director may contract with the Business, Transportation and Housing Agency, the Department of Finance, the State Department of Health Services, the Department of Transportation, the Department of Water Resources, the California Integrated Waste Management Board, the State Water Resources Control Board, the Governor's Office of Planning and Research, and any other necessary agencies, persons, or firms to enable the agency to properly perform the duties imposed by this division.

SEC. 2.3. Part 14 (commencing with Section 37980) is added to Division 24 of the Health and Safety Code, to read:

PART 14. CALIFORNIA DEFENSE RETENTION AND CONVERSION

37980. This part shall be known and may be cited as the California Defense Retention and Conversion Act of 1999.

37981. The Legislature finds and declares as follows:

(a) For over half a century, California's industries, universities, businesses, and workers have contributed to our nation's defense, utilizing their capital, talents, and skills to develop and bring to production important new technologies and advanced weapons systems, aircraft, and missiles.

(b) Defense spending in California peaked at sixty billion dollars ($60,000,000,000) in 1988. Since then, it has decreased by 16 percent with the resulting loss of 126,000 jobs. The Commission on State Finance projected a further 22 percent reduction to thirty-seven billion dollars ($37,000,000,000) in 1997, with a loss of another 81,000 jobs. California is expected to experience the most severe impact of defense cuts since 1994.

(c) California has experienced four rounds of base closures resulting in the closure or realignment of 29 bases since 1988. Additional bases may be considered for closure in future closure rounds.

(d) California lost more federal payroll jobs from its 29 military base closures under rounds one to four, inclusive, than all of the rest of the states put together. The reduced military payroll, including military and civilian employees, in California is approximately 101,000 jobs. About 300,000 private sector defense industry jobs in California have been lost.

(e) California needs a focused, coordinated defense retention and conversion program within the state in order to protect the existing defense installations and facilities within the state and to assist those communities that have experienced an installation's closing.

(f) Currently, there are over 300,000 active duty and civilian defense personnel in California.

(g) The direct Department of Defense expenditures in California are over thirty billion dollars ($30,000,000,000) for employees, contracts, and capital investment.

(h) California has over 36 major and 25 minor active military installations.

(i) The Department of Defense pays ten million dollars ($10,000,000) annually in fees, permits, and licenses within the state.

(j) Having been the leader in the nation's defense effort, the state must now also assume the role as leader in defending existing military installations within its borders. That role will require a coordinated effort to ensure that California promotes the necessity of existing defense facilities, assist local governments and organizations in planning retention efforts, and design and implement a single unified plan for active defense retention efforts on the federal level.

(k) It is the intent of the Legislature that the state's role in defense retention, conversion, and military base reuse be consolidated in the Department of Housing and Community Development.

37982. The Legislature recognizes the potential for federal legislation to close additional military installations nationwide. In an effort to be proactive in retaining these facilities within California that are necessary for the defense of the nation and to provide for a single, focused defense of these installations, the California Defense Retention

and Conversion Council is hereby created in the Department of Housing and Community Development.

37983. The California Defense Retention and Conversion Council shall consist of the following members, who shall be appointed as follows:

(a) The Governor shall have 11 appointees, who may include, but are not limited to, the following:

(1) The Director of Housing and Community Development, or his or her designee.

(2) The Secretary of Environmental Protection, or his or her designee.

(3) The Director of Employment Development, or his or her designee.

(4) The Director of Planning and Research, or his or her designee.

(5) The Director of the Energy Resources, Conservation and Development Commission, or his or her designee.

(6) The Director of Transportation, or his or her designee.

(7) The Director of the Employment Training Panel, or his or her designee.

(8) The Secretary of Resources, or his or her designee.

(9) A member who is an elected public official from local government representing a community with an active defense installation.

(10) A member who is an elected public official from local government representing a community with a closed defense installation.

(11) A public member selected at large.

(b) The Speaker of the Assembly shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(c) The Senate Committee on Rules shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(d) Nonvoting members, to consist of all of the following:

(1) At his or her option, the President of the University of California, or his or her designee.

(2) The Chancellor of the California State University, or his or her designee.

(3) The Chancellor of the California Community Colleges, or his or her designee.

(4) The Speaker of the Assembly, or his or her designee.

(5) The President pro Tempore of the Senate, or his or her designee.

(6) At the request of the Governor, a flag officer, or his or her designee, from each branch of the United States Armed Forces representing a mission or installation in California to serve as a liaison to the council.

37984. (a) The Director of Housing and Community Development shall serve as chairperson of the council.

(b) The Office of Military Base Retention shall provide staff support to the council.

(c) It shall be the purpose of the council to provide a central clearinghouse for all defense retention, conversion, and base reuse activities in the state.

37985. The council shall do all of the following:

(a) Develop and recommend to the Governor and the Legislature a strategic plan for state and local defense retention and conversion efforts. The plan shall address the state's role in assisting communities with potential base closures and those impacted by previous closures. The council may coordinate with other state agencies, local groups, and interested organizations on this strategic plan to retain current Department of Defense installations, facilities, bases, and related civilian activities. The opportunity shall be provided for public review and comments on the strategic plan prior to submission to the Governor and the Legislature. Notwithstanding Section 7550.5 of the Government Code, the plan shall be submitted to the Governor and the Legislature on or before December 1, 2000.

(b) Conduct outreach to entities and parties involved in defense retention and conversion across the state and provide a network to facilitate assistance and coordination for all defense retention and conversion activities within the state.

(c) Help develop and coordinate state retention advocacy efforts on the federal level.

(d) (1) Conduct an evaluation of existing state retention and conversion programs and provide the Legislature recommendations on the continuation of existing programs, including, but not limited to, the possible elimination or alteration of those programs. Notwithstanding Section 7550.5 of the Government Code, this evaluation shall be transmitted to the Legislature on or before November 1, 2000, and again on or before November 1, 2003.

(2) The council may provide recommendations to the Legislature on the necessity of new programs for defense retention and adequate funding levels.

(e) Utilize and update the plan prepared by the Defense Conversion Council as it existed on December 31, 1998, to minimize California's loss of bases and jobs in future rounds of base closures. This plan shall include, but not be limited to, all of the following:

(1) Identification of major installations in California.

(2) Determination of how best to defend existing bases and base employment in this state.

(3) Coordination with communities that may face base closures.

(4) Development of data and analyses on bases in this state.

(5) Coordination with the congressional delegation, the Legislature, and the Governor. With the consent of the appropriate authority, the council may temporarily borrow technical, policy, and administrative staff from other state agencies, including the Legislature.

(f) Where funds and resources are available, the council may undertake all of the following activities:

(1) Provide a central clearinghouse for all base retention or conversion assistance activities, including, but not limited to, employee training programs and regulation review and permit streamlining.

(2) Provide technical assistance to communities with potential or existing base closure activities.

(3) Provide a central clearinghouse for all defense retention and conversion funding, regulations, and application procedures for federal or state grants.

(4) Serve as a central clearinghouse for input and information, including needs, issues, and recommendations from businesses, industry representatives, labor, local government, and communities relative to retention and conversion efforts.

(5) Identify available state and federal resources to assist businesses, workers, communities, and educational institutions that may have a stake in retention and conversion activities.

(6) Provide one-stop coordination, maintain and disseminate information, standardize state endorsement procedures, and develop fast-track review procedures for proposals seeking state funds to match federal defense conversion funding programs.

(7) Maintain and establish data bases in such fields as defense-related companies, industry organization proposals for the state and federal defense industry, community assistance, training, and base retention, and provide electronic access to the data bases.

35987. (a) The council shall meet at the times and in places it deems necessary, but no less than once a quarter. Whenever possible, meetings shall be held in Sacramento in state facilities.

(b) Under no circumstances shall the council permit absentee or proxy voting at any of its proceedings. However, a vote by a designee, as provided in paragraphs (1) to (8), inclusive, of subdivision (a), and paragraphs (1) to (5), inclusive, of subdivision (d), of Section 37983, shall not be construed to be an absentee or proxy vote under this subdivision.

(c) Council members may receive reimbursement for travel costs directly related to council attendance if funding is available.

(d) The council shall apply for grants and may seek contributions from private industry to fund its operations.

(e) The council shall actively solicit and accept funds from industry, foundations, or other sources to promote and fund research and development of dual technologies, to identify alternative applications of military technologies, to initiate market research for identifying possible defense conversion products, to establish worker and business training programs, and to operate pilot projects to evaluate and demonstrate useful approaches. These efforts should be coordinated with the regional technology alliances.

35988. In addition to the duties specified in Section 37985, the council shall do all of the following:

(a) At the request of a council member and upon majority vote of the council, the council may review actions or programs by state agencies that may affect military base retention and reuse and offer comments or suggest changes to better integrate these actions or programs into the overall state strategic plan required pursuant to subdivision (a) of Section 37985.

(b) The council shall prepare a study considering strategies for the long-term protection of lands adjacent to military bases from development that would be incompatible with the continuing missions of those bases. The study shall include the effects of local land use encroachment, environmental impact considerations, and population growth issues. The study shall recommend basic criteria to assist local governments in identifying lands where incompatible development may adversely impact the long-term missions of these bases. The study shall also identify potential mechanisms, including recommendations for changes in law at the local or state level, to address these issues. In conducting this study, the council may use the Naval Air Station at Lemoore and Edwards Air Force Base as case studies.

The council shall hold public hearings on this study, including at least one in the vicinity of either Lemoore or Edwards. Notwithstanding Section 7550.5 of the Government Code, the council shall prepare and submit to the Governor and the Legislature by November 30, 2000, a report on this study with any recommendations.

35989. The Department of Housing and Community Development with input and assistance from the council, shall establish a Defense Retention Grant Program to grant funds to communities with military bases to assist them in developing a retention strategy. The agency may use grant criteria similar to those for existing defense conversion grant programs as a basis for developing the new grant program. To discourage multiple grant applications for individual defense installations in a region, the criteria shall be drafted to encourage a single application for grant funds to develop, where appropriate, a single, regional defense retention strategy. The structure, requirements, administration, and funding procedures of the grant program shall be submitted to the

Legislature for review at least 90 days prior to making the first grant disbursement. The agency may make no grant award without the local community providing at least 50 percent or more in matching funds or in-kind services.

35990. The Department of Housing and Community Development shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code as provided in subdivision (e) of Section 11346.1 of the Government Code.

35991. This part 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. 2.4. Section 273.82 of the Penal Code is amended to read:

273.82. Spousal abuser prosecution units receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon individuals identified under selection criteria set forth in Section 273.83. Enhanced prosecution efforts and resources shall include, but not be limited to, all of the following:

(a) (1) Vertical prosecutorial representation, whereby the prosecutor who, or prosecution unit that, makes all major court appearances on that particular case through its conclusion, including bail evaluation, preliminary hearing, significant law and motion litigation, trial, and sentencing.

(2) Vertical counselor representation, whereby a trained domestic violence counselor maintains liaison from initial court appearances through the case's conclusion, including the sentencing phase.

(b) The assignment of highly qualified investigators and prosecutors to spousal abuser cases. ''Highly qualified'' for the purposes of this chapter means any of the following:

(1) Individuals with one year of experience in the investigation and prosecution of felonies.

(2) Individuals with at least two years of experience in the investigation and prosecution of misdemeanors.

(3) Individuals who have attended a program providing domestic violence training as approved by the agency or agencies designated by the Director of Finance pursuant to Section 13820 or the Department of Justice.

(c) A significant reduction of caseloads for investigators and prosecutors assigned to spousal abuser cases.

(d) Coordination with local rape victim counseling centers, spousal abuse services programs, and victim-witness assistance programs. That coordination shall include, but not be limited to: referrals of individuals to receive client services; participation in local training programs; membership and participation in local task forces established to improve communication between criminal justice system agencies and community service agencies; and cooperating with individuals serving as liaison representatives of local rape victim counseling centers, spousal abuse victim programs, and victim-witness assistance programs.

SEC. 2.5. Section 999c of the Penal Code is amended to read:

999c. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a program of financial and technical assistance for district attorneys' offices, designated the California Career Criminal Prosecution Program. All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and disbursed by the executive director of that agency or agencies in consultation with the California Council on Criminal Justice, and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The executive director of that agency or agencies is authorized to allocate and award funds to counties in which career criminal prosecution units are established in substantial compliance with the policies and criteria set forth below in Sections 999d, 999e, 999f, and 999g.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney and approved by its board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Career Criminal Prosecution Program, be made available to support the prosecution of felony cases. Funds available under this program shall not be subject to review as specified in Section 14780 of the Government Code.

SEC. 3. Section 999j of the Penal Code is amended to read:

999j. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a program of financial and technical assistance for district attorneys'

offices, designated the Repeat Sexual Offender Prosecution Program. All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 3820 for the purposes of this chapter shall be administered and disbursed by the executive director of that agency or agencies, and shall to the greatest extent feasible, be coordinated or consolidated with any federal or local funds that may be made available for these purposes.

The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall establish guidelines for the provision of grant awards to proposed and existing programs prior to the allocation of funds under this chapter. These guidelines shall contain the criteria for the selection of agencies to receive funding, as developed in consultation with an advisory group to be known as the Repeat Sexual Offender Prosecution Program Steering Committee. The membership of the Steering Committee shall be designated by the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820.

A draft of the guidelines shall be developed and submitted to the Chairpersons of the Assembly Criminal Law and Public Safety Committee and the Senate Judiciary Committee within 60 days of the effective date of this chapter and issued within 90 days of the same effective date. These guidelines shall set forth the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to offer grants pursuant to statutory authority. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(b) The executive director is authorized to allocate and award funds to counties in which repeat sexual offender prosecution units are established or are proposed to be established in substantial compliance with the policies and criteria set forth below in Sections 999k, 999*l*, and 999m.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney and approved by its board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Repeat Sexual Offender Prosecution Program, be made available to support the prosecution of repeat sexual offender felony cases. Local grant awards made under this program shall not be subject to review as specified in Section 14780 of the Government Code.

SEC. 4. Section 999k of the Penal Code is amended to read:

999k. Repeat sexual offender prosecution units receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon individuals identified under selection criteria set forth in

Section 999*l*. Enhanced prosecution efforts and resources shall include, but not be limited to:

(a) Vertical prosecutorial representation, whereby the prosecutor who makes the initial filing or appearance in a repeat sexual offender case will perform all subsequent court appearances on that particular case through its conclusion, including the sentencing phase.

(b) The assignment of highly qualified investigators and prosecutors to repeat sexual offender cases. ''Highly qualified'' for the purposes of this chapter shall be defined as: (1) individuals with one year of experience in the investigation and prosecution of felonies or specifically the felonies listed in subdivision (a) of Section 999*l*; or (2) individuals whom the district attorney has selected to receive training as set forth in Section 13836; or (3) individuals who have attended a program providing equivalent training as approved by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(c) A significant reduction of caseloads for investigators and prosecutors assigned to repeat sexual offender cases.

(d) Coordination with local rape victim counseling centers, child abuse services programs, and victim witness assistance programs. Coordination shall include, but not be limited to: referrals of individuals to receive client services; participation in local training programs; membership and participation in local task forces established to improve communication between criminal justice system agencies and community service agencies; and cooperating with individuals serving as liaison representatives of local rape victim counseling centers and victim witness assistance programs.

SEC. 5. Section 999n of the Penal Code is amended to read:

999n. (a) The selection criteria set forth in Section 999*l* shall be adhered to for each repeat sexual offender case unless, in the reasonable exercise of prosecutor's discretion, extraordinary circumstances require departure from those policies in order to promote the general purposes and intent of this chapter.

(b) Each district attorney's office establishing a repeat sexual offender prosecution unit and receiving state support under this chapter shall submit the following information, on a quarterly basis, to the agency or agencies designated by the Director of Finance pursuant to Section 13820:

(1) The number of sexual assault cases referred to the district attorney's office for possible filing.

(2) The number of sexual assault cases filed for felony prosecution.

(3) The number of sexual assault cases taken to trial.

(4) The percentage of sexual assault cases tried which resulted in conviction.

SEC. 6. Section 999p of the Penal Code is amended to read:

999p. The agency or agencies designated by the Director of Finance pursuant to Section 13820 is encouraged to utilize any federal funds which may become available in order to implement the provisions of this chapter.

SEC. 7. Section 999r of the Penal Code is amended to read:

999r. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a program of financial and technical assistance for district attorneys' offices, designated the Child Abuser Prosecution Program. All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and disbursed by the executive director of that agency or agencies, and shall to the greatest extent feasible, be coordinated or consolidated with any federal or local funds that may be made available for these purposes.

The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall establish guidelines for the provision of grant awards to proposed and existing programs prior to the allocation of funds under this chapter. These guidelines shall contain the criteria for the selection of agencies to receive funding and the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to offer grants pursuant to statutory authority. The guidelines shall not constitute rules, regulations, orders, or standards of general application. The guidelines shall be submitted to the appropriate policy committees of the Legislature prior to their adoption.

(b) The executive director is authorized to allocate and award funds to counties in which child abuser offender prosecution units are established or are proposed to be established in substantial compliance with the policies and criteria set forth below in Sections 999s, 999t, and 999u.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney and approved by its board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Child Abuser Prosecution Program, be made available to support the prosecution of child abuser felony cases. Local grant awards made under this program shall not be subject to review as specified in Section 14780 of the Government Code.

SEC. 8. Section 999s of the Penal Code is amended to read:

999s. Child abuser prosecution units receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon individuals identified under selection criteria set forth in Section

999t. Enhanced prosecution efforts and resources shall include, but not be limited to:

(a) Vertical prosecutorial representation, whereby the prosecutor who, or prosecution unit which, makes the initial filing or appearance in a case performs all subsequent court appearances on that particular case through its conclusion, including the sentencing phase.

(b) The assignment of highly qualified investigators and prosecutors to child abuser cases. ''Highly qualified'' for the purposes of this chapter means: (1) individuals with one year of experience in the investigation and prosecution of felonies or specifically the felonies listed in subdivision (a) of Section 999*l* or 999t; or (2) individuals whom the district attorney has selected to receive training as set forth in Section 13836; or (3) individuals who have attended a program providing equivalent training as approved by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(c) A significant reduction of caseloads for investigators and prosecutors assigned to child abuser cases.

(d) Coordination with local rape victim counseling centers, child abuse services programs, and victim witness assistance programs. That coordination shall include, but not be limited to: referrals of individuals to receive client services; participation in local training programs; membership and participation in local task forces established to improve communication between criminal justice system agencies and community service agencies; and cooperating with individuals serving as liaison representatives of child abuse and child sexual abuse programs, local rape victim counseling centers and victim witness assistance programs.

SEC. 9. Section 999v of the Penal Code is amended to read:

999v. (a) The selection criteria set forth in Section 999t shall be adhered to for each child abuser case unless, in the reasonable exercise of prosecutor's discretion, extraordinary circumstances require departure from those policies in order to promote the general purposes and intent of this chapter.

(b) Each district attorney's office establishing a child abuser prosecution unit and receiving state support under this chapter shall submit the following information, on a quarterly basis, to the agency or agencies designated by the Director of Finance pursuant to Section 13820:

(1) The number of child abuser cases referred to the district attorney's office for possible filing.

(2) The number of child abuser cases filed for felony prosecution.

(3) The number of sexual assault cases taken to trial.

(4) The number of child abuser cases tried which resulted in conviction.

SEC. 10. Section 999x of the Penal Code is amended to read:

999x. The agency or agencies designated by the Director of Finance pursuant to Section 13820 is encouraged to utilize any federal funds which may become available in order to implement the provisions of this chapter.

SEC. 11. Section 999y of the Penal Code is amended to read:

999y. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall report annually to the Legislature concerning the program established by this chapter. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall prepare and submit to the Legislature on or before December 15, 2002, and within six months of the completion of subsequent funding cycles for this program, an evaluation of the Child Abuser Prosecution Program. This evaluation shall identify outcome measures to determine the effectiveness of the programs established under this chapter, which shall include, but not be limited to, both of the following, to the extent that data is available:

(a) Child abuse conviction rates of Child Abuser Prosecution Program units compared to those of nonfunded counties.

(b) Quantification of the annual per capita costs of the Child Abuser Prosecution Program compared to the costs of prosecuting child abuse crimes in nonfunded counties.

SEC. 12. Section 1174.2 of the Penal Code is amended to read:

1174.2. (a) Notwithstanding any other law, the unencumbered balance of Item 5240-311-751 of Section 2 of the Budget Act of 1990 shall revert to the unappropriated surplus of the 1990 Prison Construction Fund. The sum of fifteen million dollars ($15,000,000) is hereby appropriated to the Department of Corrections from the 1990 Prison Construction Fund for site acquisition, site studies, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items for the purpose of constructing facilities for pregnant and parenting women's alternative sentencing programs. These funds shall not be expended for any operating costs, including those costs reimbursed by the department pursuant to subdivision (c) of Section 1174.3. Funds not expended pursuant to this chapter shall be used for planning, construction, renovation, or remodeling by, or under the supervision of, the Department of Corrections, of community-based facilities for programs designed to reduce drug use and recidivism, including, but not limited to, restitution centers, facilities for the incarceration and rehabilitation of drug offenders, multipurpose correctional centers, and centers for intensive programs for parolees. These funds shall not be expended until legislation authorizing the establishment of these programs is enacted. If the Legislature finds that

the Department of Corrections has made a good faith effort to site community-based facilities, but funds designated for these community-based facilities are unexpended as of January 1, 1998, the Legislature may appropriate these funds for other Level I housing.

(b) The Department of Corrections shall purchase, design, construct, and renovate facilities in counties or multicounty areas with a population of more than 450,000 people pursuant to this chapter. The department shall target for selection, among other counties, Los Angeles County, San Diego County, and a bay area, central valley, and an inland empire county as determined by the Director of Corrections. The department, in consultation with the State Department of Alcohol and Drug Programs, shall design core alcohol and drug treatment programs, with specific requirements and standards. Residential facilities shall be licensed by the State Department of Alcohol and Drug Programs in accordance with provisions of the Health and Safety Code governing licensure of alcoholism or drug abuse recovery or treatment facilities. Residential and nonresidential programs shall be certified by the State Department of Alcohol and Drug Programs as meeting its standards for perinatal services. Funds shall be awarded to selected agency service providers based upon all of the following criteria and procedures:

(1) A demonstrated ability to provide comprehensive services to pregnant women or women with children who are substance abusers consistent with this chapter. Criteria shall include, but not be limited to, each of the following:

(A) The success records of the types of programs proposed based upon standards for successful programs.

(B) Expertise and actual experience of persons who will be in charge of the proposed program.

(C) Cost-effectiveness, including the costs per client served.

(D) A demonstrated ability to implement a program as expeditiously as possible.

(E) An ability to accept referrals and participate in a process with the probation department determining eligible candidates for the program.

(F) A demonstrated ability to seek and obtain supplemental funding as required in support of the overall administration of this facility from any county, state, or federal source that may serve to support this program, including the State Department of Alcohol and Drug Programs, the agency or agencies designated by the Director of Finance pursuant to Section 13820, the State Department of Social Services, the State Department of Mental Health, or any county public health department. In addition, the agency shall also attempt to secure other available funding from all county, state, or federal sources for program implementation.

(G) An ability to provide intensive supervision of the program participants to ensure complete daily programming.

(2) Staff from the department shall be available to selected agencies for consultation and technical services in preparation and implementation of the selected proposals.

(3) The department shall consult with existing program operators that are then currently delivering similar program services, the State Department of Alcohol and Drug Programs, and others it may identify in the development of the program.

(4) Funds shall be made available by the department to the agencies selected to administer the operation of this program.

(5) Agencies shall demonstrate an ability to provide offenders a continuing supportive network of outpatient drug treatment and other services upon the women's completion of the program and reintegration into the community.

(6) The department may propose any variation of types and sizes of facilities to carry out the purposes of this chapter.

(7) The department shall secure all other available funding for its eligible population from all county, state, or federal sources.

(8) Each program proposal shall include a plan for the required 12-month residential program, plus a 12-month outpatient transitional services program to be completed by participating women and children.

SEC. 13. Section 1191.21 of the Penal Code is amended to read:

1191.21. (a) (1) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall develop and make available a ''notification of eligibility'' card for victims and derivative victims of crimes as defined in subdivision (c) of Section 13960 of the Government Code that includes, but is not limited to, the following information:

''If you have been the victim of a crime that meets the required definition, you or others may be eligible to receive payment from the California State Restitution Fund for losses directly resulting from the crime. To learn about eligibility and receive an application to receive payments, call the Victims of Crime Program at (800) 777-9229 or call your local county Victim Witness Assistance Center.''

(2) At a minimum, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall develop a template available for downloading on its Internet Web site the information requested in subdivision (b).

(b) In a case involving a crime as defined in subdivision (c) of Section 13960 of the Government Code, the law enforcement officer with primary responsibility for investigating the crime committed against the

victim and the district attorney may provide the ''notification of eligibility'' card to the victim and derivative victim of a crime.

(c) The terms ''victim'' and ''derivative victim'' shall be given the same meaning given those terms in Section 13960 of the Government Code.

SEC. 14. Section 6241 of the Penal Code is amended to read:

6241. (a) The Substance Abuse Community Correctional Detention Centers Fund is hereby created within the State Treasury. The Board of Corrections is authorized to provide funds, as appropriated by the Legislature, for the purpose of establishing substance abuse community correctional detention centers. These facilities shall be operated locally in order to manage parole violators, those select individuals sentenced to state prison for short periods of time, and other sentenced local offenders with a known history of substance abuse, and as further defined by this chapter.

(b) The facilities constructed with funds disbursed pursuant to this chapter in a county shall contain no less than 50 percent of total beds for use by the Department of Corrections.

(1) Upon agreement, the county and the department may negotiate any other mix of state and local bed space, providing the state's proportionate share shall not be less than 50 percent in the portion of the facilities financed through state funding.

(2) Nothing in this chapter shall prohibit the county from using county funds or nonrestricted jail bond funds to build and operate additional facilities in conjunction with the centers provided for in this chapter.

(c) Thirty million dollars ($30,000,000) in funds shall be provided from the 1990 Prison Construction Fund and the 1990–B Prison Construction Fund, with fifteen million dollars ($15,000,000) each from the June 1990 bond issue and the November 1990 bond issue, for construction purposes set forth in this chapter, provided that funding is appropriated in the state budget from the June and November 1990, prison bond issues for purposes of this chapter.

(d) Funds shall be awarded to counties based upon the following policies and criteria:

(1) Priority shall be given to urban counties with populations of 450,000 or more, as determined by Department of Finance figures. The board may allocate up to 10 percent of the funding to smaller counties or combinations of counties as pilot projects, if it concludes that proposals meet the requirements of this chapter, commensurate with the facilities and programming that a smaller county can provide.

(2) Upon application and submission of proposals by eligible counties, representatives of the board shall evaluate proposals and select recipients.

To help ensure that state-of-the-art drug rehabilitation and related programs are designed, implemented, and updated under this chapter, the board shall consult with not less than three authorities recognized nationwide with experience or expertise in the design or operation of successful programs in order to assist the board in all of the following:

(A) Drawing up criteria on which requests for proposals will be sought.

(B) Selecting proposals to be funded.

(C) Assisting the board in evaluation and operational problems of the programs, if those services are approved by the board.

Funding also shall be sought by the board from the federal government and private foundation sources in order to defray the costs of the board's responsibilities under this chapter.

(3) Preference shall be given to counties that can demonstrate a financial ability and commitment to operate the programs it is proposing for a period of at least three years and to make improvements as proposed by the department and the board.

(4) Applicants receiving awards under this chapter shall be selected from among those deemed appropriate for funding according to the criteria, policies, and procedures established by the board. Criteria shall include success records of the types of programs proposed based on nationwide standards for successful programs, if available, expertise and hands-on experience of persons who will be in charge of proposed programs, cost effectiveness, including cost per bed, speed of construction, a demonstrated ability to construct the maximum number of beds which shall result in an overall net increase in the number of beds in the county for state and local offenders, comprehensiveness of services, location, participation by private or community-based organizations, and demonstrated ability to seek and obtain supplemental funding as required in support of the overall administration of this facility from sources such as the Department of Alcohol and Drug Programs, the agency or agencies designated by the Director of Finance pursuant to Section 13820, the National Institute of Corrections, the Department of Justice, and other state and federal sources.

(5) Funds disbursed under subdivision (c) shall be used for construction of substance abuse community correctional centers, with a level of security in each facility commensurate with public safety for the types of offenders being housed in or utilizing the facilities.

(6) Funds disbursed under this chapter shall not be used for the purchase of the site. Sites shall be provided by the county. However, a participating county may negotiate with the state for use of state land at nearby corrections facilities or other state facilities, provided that the locations fit in with the aims of the programs established by this chapter.

The county shall be responsible for ensuring the siting, acquisition, design, and construction of the center consistent with the California Environmental Quality Act pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(7) Staff of the department and the board, as well as persons selected by the board, shall be available to counties for consultation and technical services in preparation and implementation of proposals accepted by the board.

(8) The board also shall seek advice from the Department of Alcohol and Drug Programs in exercising its responsibilities under this chapter.

(9) Funds shall be made available to the county and county agency which is selected to administer the program by the board of supervisors of that county.

(10) Area of greatest need can be a factor considered in awarding contracts to counties.

(11) Particular consideration shall be given to counties that can demonstrate an ability to provide continuing counseling and programming for offenders in programs established under this chapter, once the offenders have completed the programs and have returned to the community.

(12) A county may propose a variety of types and sizes of facilities to meet the needs of its plan and to provide the services for varying types of offenders to be served under this chapter. Funds granted to a county may be utilized for construction of more than one facility.

Any county wishing to use existing county-owned sites or facilities may negotiate those arrangements with the Department of Corrections and the Board of Corrections to meet the needs of its plan.

SEC. 15. Section 11160 of the Penal Code is amended to read:

11160. (a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or

other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this subdivision, and Section 11160.2, and adopted by the agency or agencies designated by the Director of Finance pursuant to Section 13820, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, ''injury'' shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, ''assaultive or abusive conduct'' shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261.

(15) Spousal rape, in violation of Section 262.

(16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

(19) Sodomy, in violation of Section 286.

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation, in violation of Section 288a.

(22) Sexual penetration, in violation of Section 289.

(23) Elder abuse, in violation of Section 368.

(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be 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.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section 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, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

SEC. 16. Section 11161.2 of the Penal Code is amended to read:

11161.2. (a) The Legislature finds and declares that adequate protection of victims of domestic violence and elder and dependent adult abuse has been hampered by lack of consistent and comprehensive medical examinations. Enhancing examination procedures, documentation, and evidence collection will improve investigation and prosecution efforts.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall, in cooperation with the State Department of Health Services, the Department of Aging and the ombudsman program, the State Department of Social Services, law enforcement agencies, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriff's Association, the California Medical Association, the California Police Chiefs' Association, domestic violence advocates, the California Medical Training Center, adult protective services, and other appropriate experts:

(1) Establish medical forensic forms, instructions, and examination protocol for victims of domestic violence and elder and dependent adult abuse and neglect using as a model the form and guidelines developed pursuant to Section 13823.5. The form should include, but not be limited to, a place for a notation concerning each of the following:

(A) Notification of injuries and a report of suspected domestic violence or elder or dependent adult abuse and neglect to law enforcement authorities, Adult Protective Services, or the State Long-Term Care Ombudsmen, in accordance with existing reporting procedures.

(B) Obtaining consent for the examination, treatment of injuries, collection of evidence, and photographing of injuries. Consent to treatment shall be obtained in accordance with the usual hospital policy. A victim shall be informed that he or she may refuse to consent to an examination for evidence of domestic violence and elder and dependent adult abuse and neglect, including the collection of physical evidence, but that refusal is not a ground for denial of treatment of injuries and disease, if the person wishes to obtain treatment and consents thereto.

(C) Taking a patient history of domestic violence or elder or dependent adult abuse and neglect and other relevant medical history.

(D) Performance of the physical examination for evidence of domestic violence or elder or dependent adult abuse and neglect.

(E) Collection of physical evidence of domestic violence or elder or dependent adult abuse.

(F) Collection of other medical and forensic specimens, as indicated.

(G) Procedures for the preservation and disposition of evidence.

(H) Complete documentation of medical forensic exam findings.

(2) Determine whether it is appropriate and forensically sound to develop separate or joint forms for documentation of medical forensic findings for victims of domestic violence and elder and dependent adult abuse and neglect.

(3) The forms shall become part of the patient's medical record pursuant to guidelines established by the agency or agencies designated by the Director of Finance pursuant to Section 13820 advisory committee and subject to the confidentiality laws pertaining to release of medical forensic examination records.

(c) The forms shall be made accessible for use on the Internet.

SEC. 17. Section 11166.9 of the Penal Code is amended to read:

11166.9. (a) (1) The purpose of this section shall be to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.

(2) It is the intent of the Legislature that the California State Child Death Review Council, the Department of Justice, the State Department of Social Services, the State Department of Health Services, and state and local child death review teams shall share data and other information necessary from the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics and the Department of Social Services Child Welfare Services/Case Management System files to establish accurate information on the nature and extent of child abuse or neglect related fatalities in California as those documents relate to child fatality cases. Further, it is the intent of the Legislature to ensure that records of child abuse or neglect related fatalities are entered into the State Department of Social Services, Child Welfare Services/Case Management System. It is also the intent that training and technical assistance be provided to child death review teams and professionals in the child protection system regarding multiagency case review.

(b) (1) It shall be the duty of the California State Child Death Review Council to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse or neglect and to create a body of information to prevent child deaths. The Department of Justice, the State Department of Social Services, the State Department of Health Services, the California Coroner's Association, the County Welfare Directors Association, Prevent Child Abuse California, the California Homicide Investigators Association, the agency or agencies designated by the Director of Finance pursuant to Section 13820, the Inter-Agency Council on Child Abuse and Neglect/National Center on Child Fatality Review, the California Conference of Local Health Officers, the California Conference of Local Directors of Maternal, Child, and Adolescent Health, the California Conference of Local Health Department Nursing Directors, the California District Attorneys

Association, and at least three regional representatives, chosen by the other members of the council, working collaboratively for the purposes of this section, shall be known as the California State Child Death Review Council. The council shall select a chairperson or cochairpersons from the members.

(2) The Department of Justice is hereby authorized to carry out the purposes of this section by coordinating council activities and working collaboratively with the agencies and organizations in paragraph (1), and may consult with other representatives of other agencies and private organizations, to help accomplish the purpose of this section.

(c) Meetings of the agencies and organizations involved shall be convened by a representative of the Department of Justice. All meetings convened between the Department of Justice and any organizations required to carry out the purpose of this section shall take place in this state. There shall be a minimum of four meetings per calendar year.

(d) To accomplish the purpose of this section, the Department of Justice and agencies and organizations involved shall engage in the following activities:

(1) Analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to public officials in the state who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year.

The state data shall include the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics, and the State Department of Social Services Child Welfare Services/Case Management System.

(2) In conjunction with the agency or agencies designated by the Director of Finance pursuant to Section 13820, coordinate statewide and local training for county death review teams and the members of the teams, including, but not limited to, training in the application of the interagency child death investigation protocols and procedures established under Sections 11166.7 and 11166.8 to identify child deaths associated with abuse or neglect.

(e) The State Department of Health Services, in collaboration with the California State Child Death Review Council, shall design, test and implement a statewide child abuse or neglect fatality tracking system incorporating information collected by local child death review teams. The department shall:

(1) Establish a minimum case selection criteria and review protocols of local child death review teams.

(2) Develop a standard child death review form with a minimum core set of data elements to be used by local child death review teams, and collect and analyze that data.

(3) Establish procedural safeguards in order to maintain appropriate confidentiality and integrity of the data.

(4) Conduct annual reviews to reconcile data reported to the State Department of Health Services Vital Statistics, Department of Justice Homicide Files and Child Abuse Central Index, and the State Department of Social Services Child Welfare Services/Case Management System data systems, with data provided from local child death review teams.

(5) Provide technical assistance to local child death review teams in implementing and maintaining the tracking system.

(6) This subdivision shall become operative on July 1, 2000, and shall be implemented only to the extent that funds are appropriated for its purposes in the Budget Act.

(f) Local child death review teams shall participate in a statewide child abuse or neglect fatalities monitoring system by:

(1) Meeting the minimum standard protocols set forth by the State Department of Health Services in collaboration with the California State Child Death Review Council.

(2) Using the standard data form to submit information on child abuse or neglect fatalities in a timely manner established by the State Department of Health Services.

(g) The California State Child Death Review Council shall monitor the implementation of the monitoring system and incorporate the results and findings of the system and review into an annual report.

(h) The Department of Justice shall direct the creation, maintenance, updating, and distribution electronically and by paper, of a statewide child death review team directory, which shall contain the names of the members of the agencies and private organizations participating under this section, and the members of local child death review teams and local liaisons to those teams. The department shall work in collaboration with members of the California State Child Death Review Council to develop a directory of professional experts, resources, and information from relevant agencies and organizations and local child death review teams, and to facilitate regional working relationships among teams. The Department of Justice shall maintain and update these directories annually.

(i) The agencies or private organizations participating under this section shall participate without reimbursement from the state. Costs incurred by participants for travel or per diem shall be borne by the participant agency or organization. The participants shall be responsible for collecting and compiling information to be included in the annual

report. The Department of Justice shall be responsible for printing and distributing the annual report using available funds and existing resources.

(j) The agency or agencies designated by the Director of Finance pursuant to Section 13820, in coordination with the State Department of Social Services, the Department of Justice, and the California State Child Death Review Council shall contract with state or nationally recognized organizations in the area of child death review to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standardized definitions for fatal child abuse or neglect, develop protocols for the investigation of fatal child abuse or neglect, and address relevant issues such as grief and mourning, data collection, training for medical personnel in the identification of child abuse or neglect fatalities, domestic violence fatality review, and other related topics and programs. The provisions of this subdivision shall only be implemented to the extent that the agency or agencies designated by the Director of Finance pursuant to Section 13820 can absorb the costs of implementation within its current funding, or to the extent that funds are appropriated for its purposes in the Budget Act.

(k) Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings.

(*l*) County child welfare agencies shall create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect, whether or not the deceased child has any known surviving siblings. Upon notification that the death was determined not to be related to child abuse or neglect, the child welfare agency shall enter that information into the Child Welfare Services/Case Management System.

SEC. 18. Section 11171 of the Penal Code is amended to read:

11171. (a) (1) The Legislature hereby finds and declares that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California State District Attorneys Association, the California State Sheriffs Association, the

California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocol for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 19823.5.

(c) The form shall include, but not be limited to, a place for notation concerning each of the following:

(1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.

(2) Addressing relevant consent issues, if indicated.

(3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.

(4) The performance of a physical examination for evidence of child physical abuse or neglect.

(5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.

(6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.

(7) Procedures for the preservation and disposition of evidence.

(8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.

(9) An assessment as to whether there are findings that indicate physical abuse or neglect.

(c) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the agency or agencies designated by the Director of Finance pursuant to Section 13820 and subject to the confidentiality laws pertaining to the release of a medical forensic examination records.

(D) The forms shall be made accessible for use on the Internet.

SEC. 19. Section 11501 of the Penal Code is amended to read:

11501. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820, a program of financial assistance to provide for statewide programs of education, training, and research for local public prosecutors and public defenders. All funds made available to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and distributed by the executive director of the office.

(b) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 is authorized to allocate and award funds to public agencies or private nonprofit organizations for purposes of establishing statewide programs of education, training, and research for public prosecutors and public defenders, which programs meet criteria established pursuant to Section 11502.

(c) Annually, the executive director shall submit a report to the Legislature describing the operation and accomplishments of the statewide programs authorized by this title.

SEC. 20. Section 11502 of the Penal Code is amended to read:

11502. (a) Criteria for selection of education, training, and research programs for local public prosecutors and public defenders shall be developed by the agency or agencies designated by the Director of Finance pursuant to Section 13820 in consultation with an advisory group entitled the Prosecutors and Public Defenders Education and Training Advisory Committee.

(b) The Prosecutors and Public Defenders Education and Training Advisory Committee shall be composed of six local public prosecutors and six local public defender representatives, all of whom are appointed by the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, who shall provide staff services to the advisory committee. In appointing the members of the committee, the executive director shall invite the Attorney General, the State Public Defender, the Speaker of the Assembly, and the Senate President pro Tempore to participate as ex officio members of the committee.

(c) The agency or agencies designated by the Director of Finance pursuant to Section 13820, in consultation with the advisory committee, shall develop specific guidelines including criteria for selection of organizations to provide education, training, and research services.

(d) In determining the equitable allocation of funds between prosecution and defense functions, the agency or agencies designated by the Director of Finance pursuant to Section 13820 and the advisory committee shall give consideration to the amount of local government expenditures on a statewide basis for the support of those functions.

(e) The administration of the overall program shall be performed by the agency or agencies designated by the Director of Finance pursuant to Section 13820. The office may, out of any appropriation for this program, expend an amount not to exceed 7.5 percent for any fiscal year for those purposes.

(f) No funds appropriated pursuant to this title shall be used to support a legislative advocate.

(g) To the extent necessary to meet the requirements of the State Bar of California relating to certification of training for legal specialists, the executive director shall insure that, where appropriate, all programs funded under this title are open to all members of the State Bar of California. The program guidelines established pursuant to subdivision (c) shall provide for the reimbursement of costs for all participants deemed eligible by the agency or agencies designated by the Director of Finance pursuant to Section 13820, in conjunction with the Legal Training Advisory Committee, by means of course attendance.

SEC. 21. Section 11504 of the Penal Code is amended to read:

11504. To the extent funds are appropriated from the Assessment Fund to the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall allocate financial resources for statewide programs of education, training, and research for local public prosecutors and public defenders.

SEC. 22. Section 13100.1 of the Penal Code is amended to read:

13100.1. (a) The Attorney General shall appoint an advisory committee to the California-Criminal Index and Identification (Cal-CII) system to assist in the ongoing management of the system with respect to operating policies, criminal records content, and records retention. The committee shall serve at the pleasure of the Attorney General, without compensation, except for reimbursement of necessary expenses.

(b) The committee shall consist of the following representatives:

(1) One representative from the California Police Chiefs' Association.

(2) One representative from the California Peace Officers' Association.

(3) Three representatives from the California State Sheriffs' Association.

(4) One trial judge appointed by the Judicial Council.

(5) One representative from the California District Attorneys' Association.

(6) One representative from the California Court Clerks' Association.

(7) One representative from the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(8) One representative from the Chief Probation Officers' Association.

(9) One representative from the Department of Corrections.

(10) One representative from the Department of the California Highway Patrol.

(11) One member of the public, appointed by the Senate Committee on Rules, who is knowledgeable and experienced in the process of utilizing background clearances.

(12) One member of the public, appointed by the Speaker of the Assembly, who is knowledgeable and experienced in the process of utilizing background clearances.

SEC. 23. Section 13800 of the Penal Code is amended to read:

13800. As used in this title:

(a) ''Council'' means the California Council on Criminal Justice.

(b) ''Office'' means the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(c) ''Local boards'' means local criminal justice planning boards.

(d) ''Federal acts'' means the Federal Omnibus Crime Control and Safe Streets Act of 1968, the Federal Juvenile Delinquency Prevention and Control Act of 1968, and any act or acts amendatory or supplemental thereto.

SEC. 24. Section 13812 of the Penal Code is amended to read:

13812. Members of the council shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties under this title. No compensation or expenses shall be received by the members of any continuing task forces, review committees or other auxiliary bodies created by the council who are not council members, except that persons requested to appear before the council with regard to specific topics on one or more occasions shall be reimbursed for the travel expenses necessarily incurred in fulfilling those requests.

The Advisory Committee on Juvenile Justice and Delinquency Prevention appointed by the Governor pursuant to federal law may be reimbursed by the agency or agencies designated by the Director of Finance pursuant to Section 13820 for expenses necessarily incurred by the members. Staff support for the committee will be provided by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

SEC. 25. Section 13820 of the Penal Code is repealed.

SEC. 26. Section 13820 is added to the Penal Code, to read:

13820. (a) The Office of Criminal Justice Planning is hereby abolished. The Director of Finance shall designate an agency or agencies to carry out the functions of the Office of Criminal Justice Planning in accordance with a plan submitted pursuant to Section 25 of the Budget Act of 2003, and pursuant to subdivision (c). The duties and obligations of that office, and all powers and authority exercised by that office, shall be transferred to and assumed by the agency or agencies so designated.

(b) Except for this section, the phrase ''Office of Criminal Justice Planning'' or any reference to that phrase in this code shall be construed

to mean or refer to the agency or agencies designated pursuant to this section. Any reference to the executive director of the Office of Criminal Justice Planning in this code shall be construed to mean the appropriate person in the agency or agencies designated pursuant to this section.

(c) Until an agency is designated under subdivision (a), juvenile justice programs administered by the Office of Criminal Justice Planning shall be transferred to the Board of Corrections or other appropriate entity as determined by the Director of Finance, law enforcement programs shall be transferred to the Office of Emergency Services or other appropriate entity as determined by the Director of Finance, and victims' services shall be transferred to the Victim's Compensation and Government Claims Board or other appropriate entity as determined by the Director of Finance.

SEC. 27. Section 13821 of the Penal Code is repealed.

SEC. 28. Section 13822 of the Penal Code is repealed.

SEC. 29. Section 13823 of the Penal Code is amended to read:

13823. (a) In cooperation with local boards, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall:

(1) Develop with the advice and approval of the council, the comprehensive statewide plan for the improvement of criminal justice and delinquency prevention activity throughout the state.

(2) Define, develop and correlate programs and projects for the state criminal justice agencies.

(3) Receive and disburse federal funds, perform all necessary and appropriate staff services required by the council, and otherwise assist the council in the performance of its duties as established by federal acts.

(4) Develop comprehensive, unified and orderly procedures to insure that all local plans and all state and local projects are in accord with the comprehensive state plan, and that all applications for grants are processed efficiently.

(5) Cooperate with and render technical assistance to the Legislature, state agencies, units of general local government, combinations of those units, or other public or private agencies, organizations or institutions in matters relating to criminal justice and delinquency prevention.

(6) Conduct evaluation studies of the programs and activities assisted by the federal acts.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 may:

(1) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state.

(2) Perform other functions and duties as required by federal acts, rules, regulations or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants.

SEC. 30. Section 13823.12 of the Penal Code is amended to read:

13823.12. Failure to comply fully with Section 13823.11 or with the protocol or guidelines, or to utilize the form established by the agency or agencies designated by the Director of Finance pursuant to Section 13820, shall not constitute grounds to exclude evidence, nor shall the court instruct or comment to the trier of fact in any case that less weight may be given to the evidence based on the failure to comply.

SEC. 31. Section 13823.13 of the Penal Code is amended to read:

13823.13. (a) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall develop a course of training for qualified health care professionals relating to the examination and treatment of victims of sexual assault. In developing the curriculum for the course, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall consult with health care professionals and appropriate law enforcement agencies. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall also obtain recommendations from the same health care professionals and appropriate law enforcement agencies on the best means to disseminate the course of training on a statewide basis.

(b) The training course developed pursuant to subdivision (a) shall be designed to train qualified health care professionals to do all of the following:

(1) Perform a health assessment of victims of sexual assault in accordance with any applicable minimum standards set forth in Section 13823.11.

(2) Collect and document physical and laboratory evidence in accordance with any applicable minimum standards set forth in Section 13823.11.

(3) Provide information and referrals to victims of sexual assault to enhance the continuity of care of victims.

(4) Present testimony in court.

(c) As used in this section, ''qualified health care professional'' means a physician and surgeon currently licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a nurse currently licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who works in consultation with a physician and surgeon or who conducts examinations described in Section 13823.9 in a general acute care hospital or in the office of a physician and surgeon.

(d) As used in this section, ''appropriate law enforcement agencies'' may include, but shall not be limited to, the Attorney General of the State of California, any district attorney, and any agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

SEC. 32. Section 13823.15 of the Penal Code is amended to read:

13823.15. (a) The Legislature finds the problem of domestic violence to be of serious and increasing magnitude. The Legislature also finds that existing domestic violence services are underfunded and that some areas of the state are unserved.

(b) There is in the agency or agencies designated by the Director of Finance pursuant to Section 13820, a Comprehensive Statewide Domestic Violence Program. The goals of the program shall be to provide local assistance to existing service providers, to maintain and expand services based on a demonstrated need, and to establish a targeted or directed program for the development and establishment of domestic violence services in currently unserved and underserved areas. The program shall provide financial and technical assistance to local domestic violence centers in implementing all of the following services:

(1) Twenty-four-hour crisis hotlines.

(2) Counseling.

(3) Business centers.

(4) Emergency ''safe'' homes or shelters for victims and families.

(5) Emergency food and clothing.

(6) Emergency response to calls from law enforcement.

(7) Hospital emergency room protocol and assistance.

(8) Emergency transportation.

(9) Supportive peer counseling.

(10) Counseling for children.

(11) Court and social service advocacy.

(12) Legal assistance with temporary restraining orders, devices, and custody disputes.

(13) Community resource and referral.

(14) Household establishment assistance.

Priority for financial and technical assistance shall be given to emergency shelter programs and ''safe'' homes for victims of domestic violence and their children.

(c) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall allocate funds to local centers meeting the criteria for funding that shall be established by the office in consultation with practitioners and experts in the field of domestic violence. All organizations funded pursuant to this section shall utilize volunteers to the greatest extent possible.

The centers may seek, receive, and make use of any funds which may be available from all public and private sources to augment any state funds received pursuant to this section.

Centers receiving funding shall provide cash or an in-kind match of at least 10 percent of the funds received pursuant to this section.

(d) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall conduct statewide training workshops

on domestic violence for local centers, law enforcement, and other service providers designed to enhance service programs. The workshops shall be planned in conjunction with practitioners and experts in the field of domestic violence prevention.

(e) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall develop and disseminate throughout the state information and materials concerning domestic violence. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall also establish a resource center for the collection, retention, and distribution of educational materials related to domestic violence. The agency or agencies designated by the Director of Finance pursuant to Section 13820 may utilize and contract with existing domestic violence technical assistance centers in this state in complying with the requirements of this subdivision.

(f) The agency or agencies designated by the Director of Finance pursuant to Section 13820 may hire the support staff and utilize all resources necessary to carry out the purposes of this section. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall not utilize more than 10 percent of any funds appropriated for the purpose of the program established by this section for the administration of that program.

SEC. 33. Section 13823.16 of the Penal Code is amended to read:

13823.16. (a) In implementing the Comprehensive Statewide Domestic Violence Program pursuant to Section 13823.15, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall consult with an advisory council. The membership of the Office of Criminal Justice Planning Domestic Violence Advisory Council shall consist of experts in the provision of either direct or intervention services to battered women and their children, within the scope and intention of the Office of Criminal Justice Planning's Domestic Violence Assistance Program.

(b) The membership of the council shall consist of domestic violence victims' advocates, battered women service providers, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence victims' advocates or battered women service providers from organizations such as the California Alliance Against Domestic Violence. It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state. The council shall be composed of no more than 13 voting members and two nonvoting members who shall be appointed, as follows:

(1) Seven voting members shall be appointed by the Governor.

(2) Three voting members shall be appointed by the Speaker of the Assembly.

(3) Three voting members shall be appointed by the Senate Committee on Rules.

(4) Two nonvoting members shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with the council and participate in its activities to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

(c) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall collaborate closely with the council in developing funding priorities, framing the request for proposals, and soliciting proposals.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 34. Section 13823.2 of the Penal Code is amended to read:

13823.2. (a) The Legislature hereby finds and declares all of the following:

(1) That violent and serious crimes are being committed against the elderly on an alarmingly regular basis.

(2) That in 1985, the United States Department of Justice reported that approximately 1 in every 10 elderly households in the nation would be touched by crime.

(3) That the California Department of Justice, based upon limited data received from local law enforcement agencies, reported that approximately 10,000 violent crimes were committed against elderly victims in 1985.

(4) That while the elderly may not be the most frequent targets of crime, when they are victimized the impact of each vicious attack has long-lasting effects. Injuries involving, for example, a broken hip may never heal properly and often leave the victim physically impaired. The loss of money used for food and other daily living expenses for these costs may be life-threatening for the older citizen on a fixed income. In addition, stolen or damaged property often cannot be replaced.

(5) Although the State of California currently funds programs to provide assistance to victims of crime and to provide general crime prevention information, there are limited specialized efforts to respond directly to the needs of elderly victims or to provide prevention services tailored for the senior population.

(b) It is the intent of the Legislature that victim services, crime prevention, and criminal justice training programs funded by the agency or agencies designated by the Director of Finance pursuant to Section

13820 shall include, consistent with available resources, specialized components that respond to the diverse needs of elderly citizens residing in the state.

SEC. 35. Section 13823.4 of the Penal Code is amended to read:

13823.4. (a) The Legislature finds the problem of family violence to be of serious and increasing magnitude. The Legislature also finds that acts of family violence often result in other crimes and social problems.

(b) There is in the agency or agencies designated by the Director of Finance pursuant to Section 13820, a Family Violence Prevention Program. This program shall provide financial and technical assistance to local domestic and family violence centers in implementing family violence prevention programs.

The goals and functions of the program shall include all of the following:

(1) Promotion of community involvement through public education geared specifically toward reaching and educating the friends and neighbors of members of violent families.

(2) Development and dissemination of model protocols for the training of criminal justice system personnel in domestic violence intervention and prevention.

(3) Increasing citizen involvement in family violence prevention.

(4) Identification and testing of family violence prevention models.

(5) Replication of successful models, as appropriate, through the state.

(6) Identification and testing of domestic violence model protocols and intervention systems in major service delivery institutions.

(7) Development of informational materials and seminars to enable emulation or adaptation of the models by other communities.

(8) Provision of domestic violence prevention education and skills to students in schools.

(c) The executive director shall allocate funds to local centers meeting the criteria for funding that shall be established by the agency or agencies designated by the Director of Finance pursuant to Section 13820 in consultation with practitioners and experts in the field of family violence prevention. All centers receiving funds pursuant to this section shall have had an ongoing recognized program, supported by either public or private funds, dealing with an aspect of family violence, for at least two years prior to the date specified for submission of applications for funding pursuant to this section. All centers funded pursuant to this section shall utilize volunteers to the greatest extent possible.

The centers may seek, receive, and make use of any funds which may be available from all public and private sources to augment any state funds received pursuant to this section. Sixty percent of the state funds received pursuant to this section shall be used to develop and implement

model program protocols and materials. Forty percent of the state funds received pursuant to this section shall be allocated to programs to disseminate model program protocols and materials. Dissemination shall include training for domestic violence agencies in California. Each of the programs funded under this section shall focus on no more than two targeted areas. These targeted model areas shall be determined by the agency or agencies designated by the Director of Finance pursuant to Section 13820 in consultation with practitioners and experts in the field of domestic violence, using the domestic violence model priorities survey of the California Alliance Against Domestic Violence.

Centers receiving funding shall provide matching funds of at least 10 percent of the funds received pursuant to this section.

(d) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall develop and disseminate throughout the state information and materials concerning family violence prevention, including, but not limited to, a procedures manual on prevention models. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall also establish a resource center for the collection, retention, and distribution of educational materials related to family violence and its prevention.

SEC. 36. Section 13823.5 of the Penal Code is amended to read:

13823.5. (a) The agency or agencies designated by the Director of Finance pursuant to Section 13820, with the assistance of the advisory committee established pursuant to Section 13836, shall establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom. The protocol shall contain recommended methods for meeting the standards specified in Section 13823.11.

(b) In addition to the protocol, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall develop informational guidelines, containing general reference information on evidence collection, examination of victims and psychological and medical treatment for victims of sexual assault and attempted sexual assault, including child molestation.

In developing the protocol and the informational guidelines, the agency or agencies designated by the Director of Finance pursuant to Section 13820 and the advisory committee shall seek the assistance and guidance of organizations assisting victims of sexual assault; qualified health care professionals, criminalists, and administrators who are familiar with emergency room procedures; victims of sexual assault; and law enforcement officials.

(c) The agency or agencies designated by the Director of Finance pursuant to Section 13820, in cooperation with the State Department of

Health Services and the Department of Justice, shall adopt a standard and a complete form or forms for the recording of medical and physical evidence data disclosed by a victim of sexual assault or attempted sexual assault, including child molestation.

Each qualified health care professional who conducts an examination for evidence of a sexual assault or an attempted sexual assault, including child molestation, shall use the standard form adopted pursuant to this section, and shall make those observations and perform those tests as may be required for recording of the data required by the form. The forms shall be subject to the same principles of confidentiality applicable to other medical records.

The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall make copies of the standard form or forms available to every public or private general acute care hospital, as requested.

The standard form shall be used to satisfy the reporting requirements specified in Sections 11160 and 11161 in cases of sexual assault, and may be used in lieu of the form specified in Section 11168 for reports of child abuse.

(d) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall distribute copies of the protocol and the informational guidelines to every general acute care hospital, law enforcement agency, and prosecutor's office in the state.

(e) As used in this chapter, ''qualified health care professional'' means a physician and surgeon currently licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a nurse currently licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code and working in consultation with a physician and surgeon who conducts examinations or provides treatment as described in Section 13823.9 in a general acute care hospital or in a physician and surgeon's office.

SEC. 37. Section 13823.9 of the Penal Code is amended to read:

13823.9. (a) Every public or private general acute care hospital that examines a victim of sexual assault or attempted sexual assault, including child molestation, shall comply with the standards specified in Section 13823.11 and the protocol and guidelines adopted pursuant to Section 13823.5.

(b) Each county with a population of more than 100,000 shall arrange that professional personnel trained in the examination of victims of sexual assault, including child molestation, shall be present or on call either in the county hospital which provides emergency medical services or in any general acute care hospital which has contracted with the county to provide emergency medical services. In counties with a

population of 1,000,000 or more, the presence of these professional personnel shall be arranged at least one general acute care hospital for each 1,000,000 persons in the county.

(c) Each county shall designate at least one general acute care hospital to perform examinations on victims of sexual assault, including child molestation.

(d) (1) The protocol published by the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall be used as a guide for the procedures to be used by every public or private general acute care hospital in the state for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom.

(2) The informational guide developed by the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall be consulted where indicated in the protocol, as well as to gain knowledge about all aspects of examination and treatment of victims of sexual assault and child molestation.

SEC. 38. Section 13823.93 of the Penal Code is amended to read:

13823.93. (a) For purposes of this section, the following definitions apply:

(1) ''Medical personnel'' includes physicians, nurse practitioners, physician assistants, nurses, and other health care providers, as appropriate.

(2) To ''perform a medical evidentiary examination'' means to evaluate, collect, preserve, and document evidence, interpret findings, and document examination results.

(b) To ensure the delivery of standardized curriculum, essential for consistent examination procedures throughout the state, one hospital-based training center shall be established through a competitive bidding process, to train medical personnel on how to perform medical evidentiary examinations for victims of child abuse or neglect, sexual assault, domestic violence, elder abuse, and abuse or assault perpetrated against persons with disabilities. The center also shall provide training for investigative and court personnel involved in dependency and criminal proceedings, on how to interpret the findings of medical evidentiary examinations.

The training provided by the training center shall be made available to medical personnel, law enforcement, and the courts throughout the state.

(c) The training center shall meet all of the following criteria:

(1) Recognized expertise and experience in providing medical evidentiary examinations for victims of child abuse or neglect, sexual assault, domestic violence, elder abuse, and abuse or assault perpetrated against persons with disabilities.

(2) Recognized expertise and experience implementing the protocol established pursuant to Section 13823.5.

(3) History of providing training, including, but not limited to, the clinical supervision of trainees and the evaluation of clinical competency.

(4) Recognized expertise and experience in the use of advanced medical technology and training in the evaluation of victims of child abuse or neglect, sexual assault, domestic violence, elder abuse, and abuse or assault perpetrated against persons with disabilities.

(5) Significant history in working with professionals in the field of criminalistics.

(6) Established relationships with local crime laboratories, clinical laboratories, law enforcement agencies, district attorneys' offices, child protective services, victim advocacy programs, and federal investigative agencies.

(7) The capacity for developing a telecommunication network between primary, secondary, and tertiary medical providers.

(8) History of leadership in working collaboratively with medical forensic experts, criminal justice experts, investigative social worker experts, state criminal justice, social services, health and mental health agencies, and statewide professional associations representing the various disciplines, especially those specified in paragraph (6) of subdivision (d).

(9) History of leadership in working collaboratively with state and local victim advocacy organizations, especially those addressing sexual assault and domestic violence.

(10) History and experience in the development and delivery of standardized curriculum for forensic medical experts, criminal justice professionals, and investigative social workers.

(11) History of research, particularly involving databases, in the area of child physical and sexual abuse, sexual assault, elder abuse, or domestic violence.

(d) The training center shall do all of the following:

(1) Develop and implement a standardized training program for medical personnel that has been reviewed and approved by a multidisciplinary peer review committee.

(2) Develop a telecommunication system network between the training center and other areas of the state, including rural and midsized counties. This service shall provide case consultation to medical personnel, law enforcement, and the courts and provide continuing medical education.

(3) Provide ongoing basic, advanced, and specialized training programs.

(4) Develop guidelines for the reporting and management of child physical abuse and neglect, domestic violence, and elder abuse.

(5) Develop guidelines for evaluating the results of training for the medical personnel performing examinations.

(6) Provide standardized training for law enforcement officers, district attorneys, public defenders, investigative social workers, and judges on medical evidentiary examination procedures and the interpretation of findings. This training shall be developed and implemented in collaboration with the Peace Officer Standards and Training Program, the California District Attorney's Association, the California Peace Officers Association, the California Police Chiefs Association, the California State Sheriffs Association, the California Association of Crime Laboratory Directors, the California Sexual Assault Investigators Association, the California Alliance Against Domestic Violence, the Statewide California Coalition for Battered Women, the Family Violence Prevention Fund, child victim advocacy organizations, the California Welfare Directors Association, the California Coalition Against Sexual Assault, the Department of Justice, the agency or agencies designated by the Director of Finance pursuant to Section 13820, the Child Welfare Training Program, and the University of California extension programs.

(7) Promote an interdisciplinary approach in the assessment and management of child abuse and neglect, sexual assault, elder abuse, domestic violence, and abuse or assault against persons with disabilities.

(8) Provide training in the dynamics of victimization, including, but not limited to, rape trauma syndrome, battered woman syndrome, the effects of child abuse and neglect, and the various aspects of elder abuse. This training shall be provided by individuals who are recognized as experts within their respective disciplines.

(e) Nothing in this section shall be construed to change the scope of practice for any health care provider, as defined in other provisions of law.

SEC. 39. Section 13825 of the Penal Code is amended to read:

13825. The State Graffiti Clearinghouse is hereby created in the agency or agencies designated by the Director of Finance pursuant to Section 13820. The State Graffiti Clearinghouse shall do all of the following, subject to federal funding:

(a) Assess and estimate the present costs to state and local agencies for graffiti abatement.

(b) Award grants to state and local agencies that have demonstrated implementation of effective graffiti reduction and abatement programs.

(c) Receive and disburse funds to effectuate the purposes of the clearinghouse.

SEC. 40. Section 13826.1 of the Penal Code is amended to read:

13826.1. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820, the Gang Violence Suppression Program, a program of financial and technical assistance for district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations which are primarily engaged in the suppression of gang violence. All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and disbursed by the executive director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 in consultation with the California Council on Criminal Justice, and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The executive director is authorized to allocate and award funds to cities, counties, school districts, county offices of education, or any consortium thereof, and community-based organizations in which gang violence suppression programs are established in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made on the application of the district attorney, chief law enforcement officer, or chief probation officer of the applicant unit of government and approved by the legislative body, on the application of school districts, county offices of education, or any consortium thereof, or on the application of the chief executive of a community-based organization. All programs funded pursuant to this chapter shall work cooperatively to ensure the highest quality provision of services and to reduce unnecessary duplication. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the Gang Violence Suppression Program, be made available to support the activities set forth in this chapter. Funds awarded under this program as local assistance grants shall not be subject to review as specified in Section 10295 of the Public Contract Code.

(d) The executive director shall prepare and issue written program and administrative guidelines and procedures for the Gang Violence Suppression Program, consistent with this chapter. These guidelines shall set forth the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders, or standards of general application.

(e) Annually, commencing November 1, 1984, the executive director shall prepare a report to the Legislature describing in detail the operation

of the statewide program and the results obtained by district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations receiving funds under this chapter and under comparable federally financed awards.

(f) Criteria for selection of district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations to receive gang violence suppression funding shall be developed in consultation with the Gang Violence Suppression Advisory Committee whose members shall be appointed by the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, unless otherwise designated.

(g) The Gang Violence Suppression Advisory Committee shall be composed of five district attorneys; two chief probation officers; two representatives of community-based organizations; three attorneys primarily engaged in the practice of juvenile criminal defense; three law enforcement officials with expertise in gang-related investigations; one member from the California Youth Authority Gang Task Force nominated by the Director of the California Youth Authority; one member of the Department of Corrections Law Enforcement Liaison Unit nominated by the Director of the Department of Corrections; one member from the Department of Justice nominated by the Attorney General; the Superintendent of Public Instruction, or his or her designee; one member of the California School Boards Association; and one representative of a school program specializing in the education of the target population identified in this chapter.

Five members of the Gang Violence Suppression Advisory Committee appointed by the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall be from rural or predominately suburban counties and shall be designated by the Executive Director as comprising the Rural Gang Task Force Subcommittee.

The Rural Gang Task Force Subcommittee, in coordination with the Gang Violence Suppression Advisory Committee and the agency or agencies designated by the Director of Finance pursuant to Section 13820, shall review the Gang Violence Suppression Program participation requirements and recommend changes in the requirements which recognize the unique conditions and constraints that exist in small rural jurisdictions and enhance the ability of small rural jurisdictions to participate in the Gang Violence Suppression Program.

(h) The Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall designate a staff member in

the Gang Violence Suppression Program to act as the Rural Gang Prevention Coordinator and to provide technical assistance and outreach to rural jurisdictions with emerging gang activities. It is the intent of the Legislature that compliance with this subdivision not necessitate an additional staff person.

(i) This section shall be operative January 1, 1994.

SEC. 41. Section 13826.15 of the Penal Code is amended to read:

13826.15. (a) The Legislature hereby finds and declares that the implementation of the Gang Violence Suppression Program, as provided in this chapter, has made a positive impact in the battle against crimes committed by gang members in California.

The Legislature further finds and declares that the program, when it was originally created in 1981, provided financial and technical assistance only for district attorneys' offices. Since that time, however, the provisions of the program have been amended by the Legislature to enable additional public entities and community-based organizations to participate in the program. In this respect, the agency or agencies designated by the Director of Finance pursuant to Section 13820, pursuant to Section 13826.1, administers funding for the program by awarding grants to worthy applicants. Therefore, it is the intent of the Legislature in enacting this measure to assist the agency or agencies designated by the Director of Finance pursuant to Section 13820 in setting forth guidelines for this funding.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 may give priority to applicants for new grant awards, as follows:

(1) First priority may be given to applicants representing unfunded single components, as specified in Sections 13826.2, 13826.4, 13826.5, 13826.6, and 13826.65, in those counties that receive Gang Violence Suppression Program funding for some, but not all, of the program's components. The purpose of establishing this priority is to provide funding for a full complement of the five Gang Violence Suppression Program components in those counties that have less than all five components established.

(2) Second priority may be given to those applicants that propose a multiagency, or multijurisdictional single component project, whereby more than one agency would be funded as a joint project under the single components specified in Sections 13826.2, 13826.4, 13826.5, 13826.6, and 13826.65, and the funding would be provided through a single grant award.

(3) Third priority may be given to applicants that propose multijurisdictional multicomponent projects, whereby all five Gang Violence Suppression Program components, as specified in Sections 13826.2, 13826.4, 13826.5, 13826.6, and 13826.65, would be funded in

a county that does not currently receive Gang Violence Suppression Program funds.

(4) Fourth priority may be given to those single agency single component applicants, in counties wherein the program component is not currently funded.

(c) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall consider the unique needs of, and circumstances of jurisdiction in, rural and suburban counties when awarding new grant funds.

SEC. 42. Section 13826.62 of the Penal Code is amended to read:

13826.62. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820, the Urban Corps Program. The Urban Corps Program is established as an optional activity under Section 13826.6. Community-based organizations receiving grants to participate in the Urban Corps Program shall implement the following activities:

(1) Identification of publicly and privately administered programs in the county dealing with the suppression or prevention of criminal gang activities, or both.

(2) Maintenance of a listing of programs within the county identified as dealing with the suppression or prevention of criminal gang activities, or both.

(3) Surveying gang suppression and prevention organizations for the types of services and activities each is engaged in, and identifying needs among these organizations for resources to provide services and fulfill their activities.

(4) Recruitment of volunteers, identification of their skills, abilities and interests, and matching volunteers with the resources needs of gang prevention and suppression organizations.

(5) Establishment of an urban respite program for the purpose of preventing self-destructive activities and diverting (A) identified youth gang members, and (B) youths who are at risk of becoming gang members, for the purposes of reducing or eliminating incentives for those youths to participate in gang-related crime activities.

(b) The Urban Corps Program shall operate within the agency or agencies designated by the Director of Finance pursuant to Section 13820 for two years following the establishment of a contract with a community-based organization to administer the program.

(c) This section shall be implemented to the extent that funds are available to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for this purpose.

SEC. 43. Section 13826.7 of the Penal Code is amended to read:

13826.7. The agency or agencies designated by the Director of Finance pursuant to Section 13820 and the California Council on

Criminal Justice are encouraged to utilize any federal funds that may become available for purposes of this act. This act becomes operative only if federal funds are made available for its implementation.

SEC. 44. Section 13830 of the Penal Code is amended to read:

13830. There is hereby created in state government a Judicial Criminal Justice Planning Committee of seven members. The Judicial Council shall appoint the members of the committee who shall hold office at its pleasure. In this respect the Legislature finds as follows:

(a) The California court system has a constitutionally established independence under the judicial and separation of power clauses of the State Constitution.

(b) The California court system has a statewide structure created under the Constitution, state statutes and state court rules, and the Judicial Council of California is the constitutionally established state agency having responsibility for the operation of that structure.

(c) The California court system will be directly affected by the criminal justice planning that will be done under this title and by the federal grants that will be made to implement that planning.

(d) For effective planning and implementation of court projects it is essential that the agency or agencies designated by the Director of Finance pursuant to Section 13820 have the advice and assistance of a state judicial system planning committee.

SEC. 45. Section 13832 of the Penal Code is amended to read:

13832. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall consult with, and shall seek the advice of, the Judicial Criminal Justice Planning Committee in carrying out its functions under Chapter 3 of this title insofar as they affect the California court system.

In addition, any grant of federal funds made or approved by the office which is to be implemented in the California court system shall be submitted to the Judicial Criminal Justice Planning Committee for its review and recommendations before being presented to the California Council on Criminal Justice for its action.

SEC. 46. Section 13833 of the Penal Code is amended to read:

13833. The expenses necessarily incurred by the members of the Judicial Criminal Justice Planning Committee in the performance of their duties under this title shall be paid by the Judicial Council, but it shall be reimbursed by the agency or agencies designated by the Director of Finance pursuant to Section 13820 to the extent that federal funds can be made available for that purpose. Staff support for the committee's activities shall be provided by the Judicial Council, but the cost of that staff support shall be reimbursed by the agency or agencies designated by the Director of Finance pursuant to Section 13820 to the extent that federal funds can be made available for that purpose.

SEC. 47. Section 13835.2 of the Penal Code is amended to read:

13835.2. (a) Funds appropriated from the Victim-Witness Assistance Fund shall be made available through the agency or agencies designated by the Director of Finance pursuant to Section 13820 to any public or private nonprofit agency for the assistance of victims and witnesses which meets all of the following requirements:

(1) It provides comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs which do not restrict services to victims and witnesses of a particular type of crime, and which do not restrict services to victims of crime where there is a suspect in the case.

(2) It is recognized by the board of supervisors as the major provider of comprehensive services to victims and witnesses in the county.

(3) It is selected by the board of supervisors as the agency to receive funds pursuant to this article.

(4) It assists victims of crime in the preparation, verification, and presentation of their claims to the State Board of Control for indemnification pursuant to Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) It cooperates with the State Board of Control in verifying the data required by Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall consider the following factors, together with any other circumstances it deems appropriate, in awarding funds to public or private nonprofit agencies designated as victim and witness assistance centers:

(1) The capability of the agency to provide comprehensive services as defined in this article.

(2) The stated goals and objectives of the center.

(3) The number of people to be served and the needs of the community.

(4) Evidence of community support.

(5) The organizational structure of the agency which will operate the center.

(6) The capability of the agency to provide confidentiality of records.

(c) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall conduct an evaluation of the activities and performance of the centers established pursuant to Chapter 1256 of the Statutes of 1977 to determine their ability to comply with the intent of this article, and shall report the findings thereon to the Legislature by January 1, 1985.

SEC. 48. Section 13835.6 of the Penal Code is amended to read:

13835.6. (a) The agency or agencies designated by the Director of Finance pursuant to Section 13820, in cooperation with representatives from local victim and witness assistance centers, shall develop standards defining the activities and services enumerated in this article.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 in cooperation with representatives from local victim and witness assistance centers, shall develop a method of evaluating the activities and performance of centers established pursuant to this article.

By January 1, 1985, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall prepare and submit to the Legislature a report summarizing the effectiveness of victim and witness assistance centers established pursuant to this article. That report shall include, but not be limited to, the effectiveness in achieving the functions and the services enumerated in the article.

SEC. 49. Section 13835.7 of the Penal Code is amended to read:

13835.7. There is in the State Treasury the Victim-Witness Assistance Fund. Funds appropriated thereto shall be dispensed to the agency or agencies designated by the Director of Finance pursuant to Section 13820 exclusively for the purposes specified in this article and for the support of the centers specified in Section 13837.

SEC. 50. Section 13825.10 of the Penal Code is amended and renumbered to read:

13835.10. (a) The Legislature finds and declares all of the following:

(1) That the provision of quality services for victims of crime is of high priority.

(2) That existing victim service programs do not have sufficient financial resources to consistently recruit and employ fully trained personnel.

(3) That there is no consistency in the training provided to the various agencies serving victims.

(4) That comprehensive training for victim service agencies is geographically limited or unavailable.

(5) That there is currently no statewide comprehensive training system in place for the state to insure that all service providers receive adequate training to provide quality services to victims of crime.

(6) It is the intention of the Legislature to establish a statewide training program within the agency or agencies designated by the Director of Finance pursuant to Section 13820 to provide comprehensive standardized training to victim service providers.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall establish a statewide victim-assistance training program, the purpose of which is to develop minimum training

and selection standards, certify training courses, and provide funding to enable local victim service providers to acquire the required training.

(c) (1) For the purpose of raising the level of competence of local victim service providers, the office shall adopt guidelines establishing minimum standards of training for employees of victim-witness and sexual assault programs funded by the office to provide services to victims of crime. The agency or agencies shall establish an advisory committee composed of recognized statewide victim service organizations, representatives of local victim service programs, and others selected at the discretion of the executive director to consult on the research and development of the training, selection, and equivalency standards.

(2) Any local unit of government, community-based organization, or any other public or private nonprofit entity funded by the agency or agencies as a victim-witness or sexual assault program to provide services to victims of crime shall adhere to the training and selection standards established by the agency or agencies. The standards for sexual assault victim service programs developed by the advisory committee established pursuant to Section 13836 shall be the standards for purposes of this section. With the exception of the sexual assault standards, the agency or agencies shall conduct or contract with an appropriate firm or entity for research on validated standards pursuant to this section in consultation with the advisory committee established pursuant to paragraph (1). The agency or agencies may defer the adoption of the selection standards until the necessary research is completed. Until the standards are adopted, affected victim service programs may receive state funding from the agency or agencies upon certification of their willingness to adhere to the training standards adopted by the agency or agencies.

(3) Minimum training and selection standards may include, but shall not be limited to, basic entry, continuation, supervisory, management, specialized curricula, and confidentiality.

(4) Training and selection standards shall apply to all victim service and management personnel of the victim-witness and sexual assault agencies funded by the agency or agencies to provide services to victims of crime. Exemptions from this requirement may be made by the agency or agencies. An agency which, despite good faith efforts, is unable to meet the standards established pursuant to this section, may apply to the agency or agencies for an exemption. For the purpose of exemptions, the agency or agencies may establish procedures that allow for partial adherence. The agency or agencies may develop equivalency standards which recognize professional experience, education, training, or a combination of the above, for personnel hired before July 1, 1987.

(5) Nothing in this section shall prohibit an agency, funded by the agency or agencies to provide services to victims of crime, from establishing training and selection standards which exceed the minimum standards established by the agency or agencies pursuant to this section.

(d) For purposes of implementing this section, the agency or agencies has all of the following powers:

(1) To approve or certify, or both, training courses selected by the agency or agencies.

(2) To make those inquiries which may be necessary to determine whether every local unit of government, community-based organization, or any other public or private entity receiving state aid from the agency or agencies as a victim-witness or sexual assault program for the provision of services to victims of crime, is adhering to the standards for training and selection established pursuant to this section.

(3) To adopt those guidelines which are necessary to carry out the purposes of this section.

(4) To develop or present, or both, training courses for victim service providers, or to contract with coalitions, councils, or other designated entities, to develop or present, or both, those training courses.

(5) To perform other activities and studies necessary to carry out the intent of this section.

(e) (1) The agency or agencies may utilize any funds that may become available from the Victim-Witness Assistance Fund to fund the cost of training staff of victim service agencies which are funded by the agency or agencies from the fund. The agency or agencies may utilize federal or other state funds that may become available to fund the cost of training staff of victim service agencies which are not eligible for funding from the Victim-Witness Assistance Fund.

(2) Peace officer personnel whose jurisdictions are eligible for training subvention pursuant to Chapter 1 (commencing with Section 13500) of Title 4 of this part and correctional or probation personnel whose jurisdictions are eligible for state aid pursuant to Article 2 (commencing with Section 6035) of Chapter 5 of Title 7 of Part 3 are not eligible to receive training reimbursements under this section unless the person receiving the training is assigned to provide victim services in accordance with a grant award agreement with the agency or agencies and is attending training to meet the established standards.

SEC. 51. Section 13836 of the Penal Code is amended to read:

13836. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall establish an advisory committee which shall develop a course of training for district attorneys in the investigation and prosecution of sexual assault cases, child sexual exploitation cases, and child sexual abuse cases and shall approve grants

awarded pursuant to Section 13837. The courses shall include training in the unique emotional trauma experienced by victims of these crimes.

It is the intent of the Legislature in the enactment of this chapter to encourage the establishment of sex crime prosecution units, which shall include, but not be limited to, child sexual exploitation and child sexual abuse cases, in district attorneys' offices throughout the state.

SEC. 52. Section 13836.1 of the Penal Code is amended to read:

13836.1. The committee shall consist of 11 members. Five shall be appointed by the executive director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, and shall include three district attorneys or assistant or deputy district attorneys, one representative of a city police department or a sheriff or a representative of a sheriff's department, and one public defender or assistant or deputy public defender of a county. Six shall be public members appointed by the Commission on the Status of Women, and shall include one representative of a rape crisis center, and one medical professional experienced in dealing with sexual assault trauma victims. The committee members shall represent the points of view of diverse ethnic and language groups.

Members of the committee shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties. Staff support for the committee shall be provided by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

SEC. 53. Section 13837 of the Penal Code is amended to read:

13837. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall provide grants to proposed and existing local rape, child sexual exploitation, and child sexual abuse victim counseling centers and prevention programs. Grant recipients shall provide appropriate in-person counseling and referral services during normal business hours, and maintain other standards or services which shall be determined to be appropriate by the advisory committee established pursuant to Section 13836 as grant conditions. Rape victim counseling centers shall provide a 24-hour telephone counseling service for sex crime victims. The advisory committee shall identify the criteria to be utilized in awarding the grants provided by this chapter before any funds are allocated.

In order to be eligible for funding pursuant to this chapter, the centers shall demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources which may be used to augment any state funds appropriated for purposes of this chapter. Each center receiving funds pursuant to this chapter shall make every attempt to qualify for any available federal funding.

State funds provided to establish centers shall be utilized when possible, as determined by the advisory committee, to expand the program and shall not be expended to reduce fiscal support from other public or private sources. The centers shall maintain quarterly and final fiscal reports in a form to be prescribed by the administering agency. In granting funds, the advisory committee shall give priority to centers which are operated in close proximity to medical treatment facilities.

SEC. 54. Section 13843 of the Penal Code is amended to read:

13843. (a) Allocation and award of funds made available under this chapter shall be made upon application to the agency or agencies designated by the Director of Finance pursuant to Section 13820. All applications shall be reviewed and evaluated by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(b) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 may allocate and award funds to communities developing and providing ongoing citizen involvement and crime resistance programs in compliance with the established policies and criteria of the agency or agencies designated by the Director of Finance pursuant to Section 13820. Applications receiving funding under this section shall be selected from among those deemed appropriate for funding according to the criteria, policy, and procedures established by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(c) With the exception of funds awarded for programs authorized under paragraph (2) of subdivision (b) of Section 13844, no single award of funds under this chapter shall exceed a maximum of two hundred fifty thousand dollars ($250,000) for a 12-month grant period.

(d) Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Community Crime Resistance Program, be made available to support crime resistance programs.

(e) Funds disbursed under this chapter shall be supplemented with local funds constituting, at a minimum, 10 percent of the total crime resistance program budget during the initial year and 20 percent in subsequent periods of funding.

(f) Annually, up to a maximum of 10 percent of the total funds appropriated to the Community Crime Resistance Program may be used by the agency or agencies designated by the Director of Finance pursuant to Section 13820 to support statewide technical assistance, training, and public awareness activities relating to crime prevention.

(g) Funds awarded under this program as local assistance grants shall not be subject to review as specified in Section 14780 of the Government Code.

(h) Guidelines shall set forth the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders or standards of general application.

SEC. 55. Section 13844 of the Penal Code is amended to read:

13844. (a) Use of funds granted under the California Community Crime Resistance Program are restricted to the following activities:

(1) Further the goal of a statewide crime prevention network by supporting the initiation or expansion of local crime prevention efforts.

(2) Provide information and encourage the use of new and innovative refinements to the traditional crime prevention model in localities that currently maintain a well-established crime prevention program.

(3) Support the development of a coordinated service network, including information exchange and case referral between such programs as local victim-witness assistance programs, sexual assault programs, gang violence reduction programs, drug suppression programs, elderly care custodians, state and local elderly service programs, or any other established and recognizable local programs devoted to the lessening of crime and the promotion of the community's well-being.

(b) With respect to the initiation or expansion of local crime prevention efforts, projects supported under the California Community Crime Resistance Program shall do either of the following:

(1) Carry out as many of the following activities as deemed, in the judgment of the agency or agencies designated by the Director of Finance pursuant to Section 13820, to be consistent with available resources:

(A) Crime prevention programs using tailored outreach techniques in order to provide effective and consistent services for the elderly in the following areas:

(i) Crime prevention information to elderly citizens regarding personal safety, fraud, theft, grand theft, burglary, and elderly abuse.

(ii) Services designed to respond to the specific and diverse crime prevention needs of elderly residential communities.

(iii) Specific services coordinated to assist in the installation of security devices or provision of escort services and victim assistance.

(B) Programs to provide training, information, and prevention literature to peace officers, elderly care custodians, health practitioners, and social service providers regarding physical abuse and neglect within residential health care facilities for the elderly.

(C) Programs to promote neighborhood involvement such as, but not limited to, block clubs and other community or resident-sponsored anticrime programs.

(D) Personal safety programs.

(E) Domestic violence prevention programs.

(F) Crime prevention programs specifically geared to youth in schools and school district personnel.

(G) Programs which make available to residents and businesses information on locking devices, building security and related crime resistance approaches.

(H) In cooperation with the Commission on Peace Officer Standards and Training, support for the training of peace officers in crime prevention and its effects on the relationship between citizens and law enforcement.

(I) Efforts to address the crime prevention needs of communities with high proportions of teenagers and young adults, low-income families, and non-English-speaking residents, including juvenile delinquency diversion, social service referrals, and making available crime resistance literature in appropriate languages other than English.

(2) Implement a community policing program in targeted neighborhoods that are drug infested. The goal of this program shall be to empower the people against illegal drug activity. A program funded pursuant to this chapter shall be able to target one or more neighborhoods within the grant period. In order to be eligible for funding, the program shall have the commitment of the community, local law enforcement, school districts, and community service groups; and shall be supported by either the city council or the board of supervisors, whichever is applicable.

(c) With respect to the support of new and innovative techniques, communities taking part in the California Crime Resistance Program shall carry out those activities as determined by the agency or agencies designated by the Director of Finance pursuant to Section 13820, that conform to local needs and are consistent with available expertise and resources. These techniques may include, but are not limited to, community policing programs or activities involving the following:

(1) Programs to reinforce the security of ''latchkey'' children, including neighborhood monitoring, special contact telephone numbers, emergency procedure training for the children, daily telephone checks for the children's well-being, and assistance in developing safe alternatives to unsupervised conditions for children.

(2) Programs dedicated to educating parents in procedures designed to do all of the following:

(A) Minimize or prevent the abduction of children.

(B) Assist children in understanding the risk of child abduction.

(C) Maximize the recovery of abducted children.

(3) Programs devoted to developing automated systems for monitoring and tracking crimes within organized neighborhoods.

(4) Programs devoted to developing timely ''feedback mechanisms'' whose goals would be to alert residents to new crime problems and to reinforce household participation in neighborhood security organizations.

(5) Programs devoted to creating and packaging special crime prevention approaches tailored to the special needs and characteristics of California's cultural and ethnic minorities.

(6) Research into the effectiveness of local crime prevention efforts including the relationships between crime prevention activities, participants' economic and demographic characteristics, project costs, local or regional crime rate, and law enforcement planning and staff deployment.

(7) Programs devoted to crime and delinquency prevention through the establishment of partnership initiatives utilizing elderly and juvenile volunteers.

(d) All approved programs shall utilize volunteers to assist in implementing and conducting community crime resistance programs. Programs providing elderly crime prevention programs shall recruit senior citizens to assist in providing services.

(e) Programs funded pursuant to this chapter shall demonstrate a commitment to support citizen involvement with local funds after the program has been developed and implemented with state moneys.

SEC. 56. Section 13846 of the Penal Code is amended to read:

13846. (a) Evaluation and monitoring of all grants made under this section shall be the responsibility of the agency or agencies designated by the Director of Finance pursuant to Section 13820. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall issue standard reporting forms for reporting the level of activities and number of crimes reported in participating communities. The information shall be used in the biannual report to the Legislature required in subdivision (i) of Section 13843. The biannual report shall include, but not be limited to:

(1) The level of volunteer participation.

(2) The level of home and business security inspections.

(3) The number of programs directed at senior citizens and teenagers.

(4) The report due November 1, 1992, as set forth in subdivision (i) of Section 13843, shall also include the plan for implementation of the program expansion authorized pursuant to this chapter and shall include the results of a survey conducted by the agency or agencies designated by the Director of Finance pursuant to Section 13820 to determine the types of community policing programs that already exist to combat illegal drug activity in targeted neighborhoods.

(b) Information on successful programs shall be made available and relayed to other California communities through the technical assistance

procedures of the agency or agencies designated by the Director of Finance pursuant to Section 13820.

SEC. 57. Section 13847 of the Penal Code is amended to read:

13847. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a program of financial and technical assistance for local law enforcement, called the Rural Indian Crime Prevention Program. The program shall target the relationship between law enforcement and Native American communities to encourage and to strengthen cooperative efforts and to implement crime suppression and prevention programs.

(b) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 may allocate and award funds to those local units of government, or combinations thereof, in which a special program is established in law enforcement agencies that meets the criteria set forth in Sections 13847.1 and 13847.2.

(c) The allocation and award of funds shall be made upon application executed by the chief law enforcement officer of the applicant unit of government and approved by the legislative body. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the Rural Indian Crime Prevention Program, be made available to support the suppression and prevention of crime on reservations and rancherias.

(d) The executive director shall prepare and issue administrative guidelines and procedures for the Rural Indian Crime Prevention Program consistent with this chapter.

(e) The guidelines shall set forth the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders, or standards of general application.

(f) Every three years, commencing on and after January 1, 1991, the executive director shall prepare a report to the Legislature describing in detail the operation of the program and the results obtained from law enforcement rural Indian crime prevention programs receiving funds under this chapter.

SEC. 58. Section 13847.2 of the Penal Code is amended to read:

13847.2. (a) The Rural Indian and Law Enforcement Local Advisory Committee shall be composed of a chief executive of a law enforcement agency, two tribal council members, two tribal elders, one Indian law enforcement officer, one Indian community officer, one representative of the Bureau of Indian Affairs, and any additional members that may prove to be crucial to the committee. All members of the advisory committee shall be designated by the executive director of the agency or agencies designated by the Director of Finance pursuant

to Section 13820, who shall provide staff services to the advisory committee.

(b) The executive director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, in consultation with the advisory committee, shall develop specific guidelines, and administrative procedures, for the selection of projects to be funded by the Rural Indian Crime Prevention Program which guidelines shall include the selection criteria described in this chapter.

(c) Administration of the overall program and the evaluation and monitoring of all grants made under this chapter shall be performed by the agency or agencies designated by the Director of Finance pursuant to Section 13820, provided that funds expended for these functions shall not exceed 5 percent of the total annual amount made available for the purpose of this chapter.

SEC. 59. Section 13848.2 of the Penal Code is amended to read:

13848.2. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a program of financial and technical assistance for law enforcement and district attorneys' offices, designated the High Technology Theft Apprehension and Prosecution Program. All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and disbursed by the executive director of the office in consultation with the High Technology Crime Advisory Committee as established in Section 13848.6 and shall to the extent feasible be coordinated with federal funds and private grants or private donations that are made available for these purposes.

(b) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 is authorized to allocate and award funds to regional high technology crime programs which are established in compliance with Section 13848.4.

(c) The allocation and award of funds under this chapter shall be made on application executed by the district attorney, county sheriff, or chief of police and approved by the board of supervisors for each county that is a participant of a high technology theft apprehension and prosecution unit.

(d) In identifying program areas that will be eligible for competitive application during the 1998–99 fiscal year for federal funding pursuant to the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs (Subchapter V (commencing with Section 3750) of Chapter 46 of the United States Code), the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall include, to the extent possible, an emphasis on high technology crime by selecting funding areas that would further the use of federal funds to

address high technology crime and facilitate the establishment of high technology multijurisdictional task forces.

(e) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall allocate any increase in federal funding pursuant to the Anti-Drug Abuse Act (Public Law 100-690) for the 1998–99 fiscal year to those programs described in subdivision (d).

SEC. 60. Section 13848.4 of the Penal Code is amended to read:

13848.4. (a) All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be deposited in the High Technology Theft Apprehension and Prosecution Program Trust Fund, which is hereby established. The fund shall be under the direction and control of the executive director. Moneys in the fund, upon appropriation by the Legislature, shall be expended to implement this chapter.

(b) Moneys in the High Technology Theft Apprehension and Prosecution Program Trust Fund shall be expended to fund programs to enhance the capacity of local law enforcement and prosecutors to deter, investigate, and prosecute high technology related crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (f), the High Technology Theft Apprehension and Prosecution Program Trust Fund shall be expended to fund programs to enhance the capacity of local law enforcement, state police, and local prosecutors to deter, investigate, and prosecute high technology related crimes. Any funds distributed under this chapter shall be expended for the exclusive purpose of deterring, investigating, and prosecuting high technology related crimes.

(c) Up to 10 percent of the funds shall be used for developing and maintaining a statewide database on high technology crime for use in developing and distributing intelligence information to participating law enforcement agencies. In addition, the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 may allocate and award up to 5 percent of the funds available to public agencies or private nonprofit organizations for the purposes of establishing statewide programs of education, training, and research for public prosecutors, investigators, and law enforcement officers relating to deterring, investigating, and prosecuting high technology related crimes. Any funds not expended in a fiscal year for these purposes shall be distributed to regional high technology theft task forces pursuant to subdivision (b).

(d) Any regional task force receiving funds under this section may elect to have the Department of Justice administer the regional task force program. The department may be reimbursed for any expenditures incurred for administering a regional task force from funds given to local law enforcement pursuant to subdivision (b).

(e) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall distribute funds in the High Technology Theft Apprehension and Prosecution Program Trust Fund to eligible agencies pursuant to subdivision (b) in consultation with the High Technology Crime Advisory Committee established pursuant to Section 13848.6.

(f) Administration of the overall program and the evaluation and monitoring of all grants made pursuant to this chapter shall be performed by the agency or agencies designated by the Director of Finance pursuant to Section 13820, provided that funds expended for these functions shall not exceed 5 percent of the total amount made available under this chapter.

SEC. 61. Section 13848.6 of the Penal Code is amended to read:

13848.6. (a) The High Technology Crime Advisory Committee is hereby established for the purpose of formulating a comprehensive written strategy for addressing high technology crime throughout the state and to advise the agency or agencies designated by the Director of Finance pursuant to Section 13820 on the appropriate disbursement of funds to regional task forces.

(b) This strategy shall be designed to be implemented through regional task forces. In formulating that strategy, the committee shall identify various priorities for law enforcement attention, including the following goals:

(1) To apprehend and prosecute criminal organizations, networks, and groups of individuals engaged in the following activities:

(A) Theft of computer components and other high technology products.

(B) Violations of Penal Code Sections 211, 350, 351a, 459, 496, 537e, 593d, and 593e.

(C) Theft of telecommunications services and other violations of Penal Code Sections 502.7 and 502.8.

(D) Counterfeiting of negotiable instruments and other valuable items through the use of computer technology.

(E) Creation and distribution of counterfeit software and other digital information, including the use of counterfeit trademarks to misrepresent the origin of that software or digital information.

(2) To apprehend and prosecute individuals and groups engaged in the unlawful access, destruction, or unauthorized entry into and use of private, corporate, or government computers and networks, including wireless and wireline communications networks and law enforcement dispatch systems, and the theft, interception, manipulation, destruction, and unauthorized disclosure of data stored within those computers.

(3) To apprehend and prosecute individuals and groups engaged in the theft of trade secrets.

(4) To investigate and prosecute high technology crime cases requiring coordination and cooperation between regional task forces and local, state, federal, and international law enforcement agencies.

(c) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall appoint the following members to the committee:

(1) A designee of the California District Attorneys Association.

(2) A designee of the California State Sheriffs Association.

(3) A designee of the California Police Chiefs Association.

(4) A designee of the Attorney General.

(5) A designee of the California Highway Patrol.

(6) A designee of the High Tech Criminal Investigators Association.

(7) A designee of the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(8) A designee of the American Electronic Association to represent California computer system manufacturers.

(9) A designee of the American Electronic Association to represent California computer software producers.

(10) A designee of the California Cellular Carriers Association.

(11) A representative of the California Internet industry.

(12) A designee of the Semiconductor Equipment and Materials International.

(13) A designee of the California Cable Television Association.

(14) A designee of the Motion Picture Association of America.

(15) A designee of either the California Telephone Association or the California Association of Long Distance Companies. This position shall rotate every other year between designees of the two associations.

(16) A designee of the Science and Technology Agency, if Senate Bill 1136 is enacted, and, as enacted, creates the Science and Technology Agency, otherwise, a designee of the Department of Information Technology.

(17) A representative of the California banking industry.

(d) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall designate the Chair of the High Technology Crime Advisory Committee from the appointed members.

(e) The advisory committee shall not be required to meet more than 12 times per year. The advisory committee may create subcommittees of its own membership, and each subcommittee shall meet as often as the subcommittee members find necessary. It is the intent of the Legislature that all advisory committee members shall actively participate in all advisory committee deliberations required by this chapter.

Any member who, without advance notice to the executive director and without designating an alternative representative, misses three scheduled meetings in any calendar year for any reason other than severe temporary illness or injury (as determined by the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820) shall automatically be removed from the advisory committee. If a member wishes to send an alternative representative in his or her place, advance written notification of this substitution shall be presented to the executive director. This notification shall be required for each meeting the appointed member elects not to attend.

Members of the advisory committee shall receive no compensation for their services, but shall be reimbursed for travel and per diem expenses incurred as a result of attending meetings sponsored by the agency or agencies designated by the Director of Finance pursuant to Section 13820 under this chapter.

(f) The executive director, in consultation with the High Technology Crime Advisory Committee, shall develop specific guidelines and administrative procedures for the selection of projects to be funded by the High Technology Theft Apprehension and Prosecution Program, which guidelines shall include the following selection criteria:

(1) Each regional task force that seeks funds shall submit a written application to the committee setting forth in detail the proposed use of the funds.

(2) In order to qualify for the receipt of funds, each proposed regional task force submitting an application shall provide written evidence that the agency meets either of the following conditions:

(A) The regional task force devoted to the investigation and prosecution of high technology related crimes is comprised of local law enforcement and prosecutors, and has been in existence for at least one year prior to the application date.

(B) At least one member of the task force has at least three years of experience in investigating or prosecuting cases of suspected high technology crime.

(3) In order to qualify for funds, a regional task force shall be comprised of local law enforcement and prosecutors from at least two counties. At the time of funding, the proposed task force shall also have at least one investigator assigned to it from a state law enforcement agency. Each task force shall be directed by a local steering committee composed of representatives of participating agencies and members of the local high technology industry.

(4) Additional criteria that shall be considered by the advisory committee in awarding grant funds shall include, but not be limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, or corporations, as a result of the high technology crime cases filed, and those under active investigation by that task force.

(5) Each regional task force that has been awarded funds authorized under the High Technology Theft Apprehension and Prosecution Program during the previous grant-funding cycle, upon reapplication for funds to the committee in each successive year, shall be required to submit a detailed accounting of funds received and expended in the prior year in addition to any information required by this section. The accounting shall include all of the following information:

(A) The amount of funds received and expended.

(B) The use to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.

(C) The number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds.

(g) The committee shall annually review the effectiveness of the regional task forces created in deterring, investigating, and prosecuting high technology crimes and provide its findings in a report to the Legislature and the Governor. This report shall be based on information provided by the regional task forces in an annual report to the committee which shall detail the following:

(1) Facts based upon, but not limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The number of convictions obtained in the prior year.

(E) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include all of the following:

(A) The amount of funds received and expended.

(B) The uses to which those funds were put, including payment of salaries and expenses, purchase of supplies, and other expenditures of funds.

(C) Any other relevant information requested.

SEC. 62. Section 13851 of the Penal Code is amended to read:

13851. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a program of financial, training, and technical assistance for local law enforcement, called the California Career Criminal Apprehension Program. All funds made available to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and disbursed by the executive director of of the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(b) The executive director is authorized to allocate and award funds to those local units of government or combinations thereof, in which a special program is established in law enforcement agencies that meets the criteria set forth in Sections 13852 and 13853.

(c) The allocation and award of funds shall be made upon application executed by the chief law enforcement officer of the applicant unit of government and approved by the legislative body. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Career Criminal Apprehension Program, be made available to support the apprehension of multiple or repeat felony criminal offenders.

(d) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall prepare and issue administrative guidelines and procedures for the California Career Criminal Apprehension Program consistent with this chapter.

(e) These guidelines shall set forth the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders or standards of general application.

SEC. 63. Section 13854 of the Penal Code is amended to read:

13854. (a) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, shall develop specific guidelines, and administrative procedures, for the selection of the California Career Criminal Apprehension Program.

(b) Administration of the overall program and the evaluation and monitoring of all grants made under this chapter shall be performed by the agency or agencies designated by the Director of Finance pursuant to Section 13820, provided that funds expended for those functions shall not exceed 7.5 percent of the total annual amount made available for the purpose of this chapter.

(c) Local assistance grants made pursuant to this chapter shall not be subject to review pursuant to Section 10290 of the Public Contract Code.

SEC. 64. Section 13861 of the Penal Code is amended to read:

13861. There is hereby created in the agency or agencies designated by the Director of Finance pursuant to Section 13820 the Suppression of Drug Abuse in Schools Program. All funds made available to the agency or agencies designated by the Director of Finance pursuant to Section 13820 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 agency or agencies designated by the Director of Finance pursuant to Section 13820. 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 schoolage 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 agency or agencies designated by the Director of Finance pursuant to Section 13820 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. 65. Section 13864 of the Penal Code is amended to read:

13864. There is hereby created, in the agency or agencies designated by the Director of Finance pursuant to Section 13820, the Comprehensive Alcohol and Drug Prevention Education component of the Suppression of Drug Abuse in Schools Program in public elementary schools in grades 4 to 6, inclusive. Notwithstanding Section 13861 or any other provision in this code, all Comprehensive Alcohol and Drug Prevention Education component funds made available to the agency or agencies designated by the Director of Finance pursuant to Section 13820 in accordance with the Classroom Instructional Improvement and Accountability Act shall be administered by and disbursed to county superintendents of schools in this state by the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820. All applications for that funding shall be reviewed and evaluated by the agency or agencies designated by the Director of Finance pursuant to Section 13820, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education.

(a) The executive director is authorized to allocate and award funds to county department superintendents of schools for allocation to individual school districts or to a consortium of two or more school districts. Applications funded under this section shall comply with the criteria, policies, and procedures established under subdivision (b) of this section.

(b) As a condition of eligibility for the funding described in this section, the school district or consortium of school districts shall have entered into an agreement with a local law enforcement agency to jointly implement a comprehensive alcohol and drug abuse prevention, intervention, and suppression program developed by the agency or agencies designated by the Director of Finance pursuant to Section 13820, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education, containing all of the following components:

(1) A standardized age-appropriate curriculum designed for pupils in grades 4 to 6, inclusive, specifically tailored and sensitive to the socioeconomic and ethnic characteristics of the target pupil population. Although new curricula shall not be required to be developed, existing curricula may be modified and adapted to meet local needs. The elements of the standardized comprehensive alcohol and drug prevention education program curriculum shall be defined and approved by the Governor's Policy Council on Drug and Alcohol Abuse, as established by Executive Order # D-70-80.

(2) A planning process that shall include both assessment of the school district's characteristics, resources and the extent of problems related to juvenile drug abuse, and input from local law enforcement agencies.

(3) A school district governing board policy that provides for a coordinated intervention system that, at a minimum, includes procedures for identification, intervention, and referral of at-risk alcohol- and drug-involved youth, and identifies the roles and responsibilities of law enforcement, school personnel, parents, and pupils.

(4) Early intervention activities that include, but are not limited to, the identification of pupils who are high risk or have chronic drug abuse problems, assessment, and referral for appropriate services, including ongoing support services.

(5) Parent education programs to initiate and maintain parental involvement, with an emphasis for parents of at-risk pupils.

(6) Staff and in-service training programs, including both indepth training for the core team involved in providing program services and general awareness training for all school faculty and administrative, credentialed, and noncredentialed school personnel.

(7) In-service training programs for local law enforcement officers.

(8) School, law enforcement, and community involvement to ensure coordination of program services. Pursuant to that coordination, the school district or districts and other local agencies are encouraged to use a single community advisory committee or task force for drug, alcohol, and tobacco abuse prevention programs, as an alternative to the creation of a separate group for that purpose under each state or federally funded program.

(c) The application of the county superintendent of schools shall be submitted to the agency or agencies designated by the Director of Finance pursuant to Section 13820. Funds made available to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for allocation under this section are intended to enhance, but shall not supplant, local funds that would, in the absence of the Comprehensive Alcohol and Drug Prevention Education component, be made available to prevent, intervene in, or suppress drug abuse among schoolage children. For districts that are already implementing a comprehensive drug abuse prevention program for pupils in grades 4 to 6, inclusive, the county superintendent shall propose the use of the funds for drug prevention activities in school grades other than 4 to 6, inclusive, compatible with the program components of this section. The expenditure of funds for that alternative purpose shall be approved by the executive director.

(1) Unless otherwise authorized by the agency or agencies designated by the Director of Finance pursuant to Section 13820, each county superintendent of schools shall be the fiscal agent for any Comprehensive Alcohol and Drug Prevention Education component award, and shall be responsible for ensuring that each school district within that county receives the allocation prescribed by the agency or agencies designated by the Director of Finance pursuant to Section 13820. Each county superintendent shall develop a countywide plan that complies with program guidelines and procedures established by the agency or agencies designated by the Director of Finance pursuant to Section 13820 pursuant to subdivision (d). A maximum of 5 percent of the county's allocation may be used for administrative costs associated with the project.

(2) Each county superintendent of schools shall establish and chair a local coordinating committee to assist the superintendent in developing and implementing a countywide implementation plan. This committee shall include the county drug administrator, law enforcement executives, school district governing board members and administrators, school faculty, parents, and drug prevention and intervention program executives selected by the superintendent and approved by the county board of supervisors.

(d) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education, shall prepare and issue guidelines and procedures for the Comprehensive Alcohol and Drug Prevention Education component consistent with this section.

(e) The Comprehensive Alcohol and Drug Prevention Education component guidelines shall set forth the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to award grants of funds pursuant to this section. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(f) Funds awarded under the Comprehensive Alcohol and Drug Prevention Education Program shall not be subject to Section 10318 of the Public Contracts Code.

(g) Funds available pursuant to Item 8100-111-001 and Provision 1 of Item 8100-001-001 of the Budget Act of 1989, or the successor provision of the appropriate Budget Act, shall be allocated to implement this section.

(h) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall collaborate, to the extent possible, with other state agencies that administer drug, alcohol, and tobacco abuse prevention education programs to streamline

and simplify the process whereby local educational agencies apply for drug, alcohol, and tobacco education funding under this section and under other state and federal programs. The agency or agencies designated by the Director of Finance pursuant to Section 13820, the State Department of Alcohol and Drug Programs, the State Department of Education, and other state agencies, to the extent possible, shall develop joint policies and collaborate planning in the administration of drug, alcohol, and tobacco abuse prevention education programs.

SEC. 66. Section 13876 of the Penal Code is amended to read:

13876. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a pilot program of technical and financial assistance for counties, designated the California Drug Endangered Child Protection Act. All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and disbursed by the executive director and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes. The agency or agencies designated by the Director of Finance pursuant to Section 13820 may retain up to 5 percent of the amount appropriated for purposes of this act to cover costs associated with administering this program.

(b) The executive director is authorized to allocate and award funds to counties in which the California Drug Endangered Child Protection Act is implemented in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney, or county sheriff, if the sheriff is currently the lead agency in the county's existing Drug Endangered Children Program, and approved by its board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Drug Endangered Child Protection Act, be made available to support the functions of this program. The district attorney or county sheriff shall consult with each agency receiving funding as part of the county's Drug Endangered Children Program to develop the budget submitted to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of implementing this chapter.

(d) Law enforcement, prosecution, health, and children's services personnel working on multiagency teams established pursuant to this chapter shall be considered ''multidisciplinary personnel'' as defined in Section 18951 of the Welfare and Institutions Code, and may share information necessary for the protection of the minor.

SEC. 67. Section 13879 of the Penal Code is amended to read:

13879. Commencing one year after the effective date of this chapter, the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall make an annual report to the Legislature on the fiscal and operational status of the program. This report shall include, at a minimum, an evaluation of the number of clandestine laboratories seized, the number of children located and removed from clandestine laboratories, and the number of prosecutions of individuals involved in the manufacturing and distribution of methamphetamine or other controlled substances manufactured at clandestine laboratories where children are present.

SEC. 68. Section 13879.5 of the Penal Code is amended to read:

13879.5. (a) Available funds may be used by the agency or agencies designated by the Director of Finance pursuant to Section 13820 to fund countywide Drug Endangered Children Programs in the Counties of Butte, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Shasta, for the purpose of implementing this chapter.

(b) (1) The funds available in subdivision (a) that remain after funding the countywide programs specified in subdivision (a) may be distributed to up to five additional counties to fund Drug Endangered Children Programs. These funds shall be distributed to counties on a competitive grant basis.

(2) The following factors shall be considered in awarding these grants:

(A) Size of the county.

(B) Number of clandestine laboratories seized in the county.

(C) Number of prosecutions brought against clandestine laboratories at which children were found.

(D) Number of children found at seized or prosecuted clandestine laboratories.

(E) Does the county have the demonstrated ability to utilize multiagency emergency response teams to meet the immediate health and safety needs of children found at clandestine drug laboratories, as well as a demonstrated ability to prosecute the individuals operating those laboratories.

(3) One representative of each local agency involved in implementing a county's Drug Endangered Children Program shall form an executive committee, the function of which is to distribute the grant funds awarded the county under subdivision (a) in a fair and equitable manner and for the purposes of implementing this chapter.

(4) The county health and welfare agencies shall be responsible for coordinating health-related services for children living in clandestine laboratories seized by a county drug endangered children response team pursuant to this program. The county health and welfare agencies shall consult with the district attorney when developing the health services

protocols in order to ensure that the health services protocols do not interfere with the law enforcement functions of the drug endangered children response teams.

SEC. 69. Section 13881 of the Penal Code is amended to read:

13881. (a) There is hereby established in the agency or agencies designated by the Director of Finance pursuant to Section 13820 a program of financial and technical assistance for district attorneys' offices, designated the California Major Narcotic Vendors Prosecution Law. All funds appropriated to the agency or agencies designated by the Director of Finance pursuant to Section 13820 for the purposes of this chapter shall be administered and disbursed by the executive director of the office in consultation with the California Council on Criminal Justice, and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The executive director is authorized to allocate and award funds to counties in which the California Major Narcotic Vendors Prosecution Law is implemented in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney and approved by its board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Major Narcotic Vendors Prosecution Law, be made available to support the prosecution of felony drug cases. Funds available under this program shall not be subject to review, as specified in Section 14780 of the Government Code.

(d) The executive director shall prepare and issue written program and administrative guidelines and procedures for the California Major Narcotic Vendors Prosecution Program consistent with this chapter, which shall be submitted to the Chairpersons of the Assembly Committee on Public Safety and the Senate Committee on Criminal Procedure. These guidelines shall permit the selection of a county for the allocation and award of funds only on a finding by the agency or agencies designated by the Director of Finance pursuant to Section 13820 that the county is experiencing a proportionately significant increase in major narcotic cases. Further, the guidelines shall provide for the allocation and award of funds to small county applicants, as designated by the executive director. The guidelines shall also provide that any funds received by a county under this chapter shall be used only for the prosecution of cases involving major narcotic dealers. For purposes of this subdivision, ''small county'' means a county having a population of 200,000 or less.

SEC. 70. Section 13897.2 of the Penal Code is amended to read:

13897.2. (a) The agency or agencies designated by the Director of Finance pursuant to Section 13820 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 agency or agencies designated by the Director of Finance pursuant to Section 13820 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 agency or agencies designated by the Director of Finance pursuant to Section 13820 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. 71. Section 13897.3 of the Penal Code is amended to read:

13897.3. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall develop written guidelines for funding and performance standards for monitoring the effectiveness of the resource center program. The program shall be evaluated by a public or private nonprofit entity under a contract with the agency or agencies designated by the Director of Finance pursuant to Section 13820.

SEC. 72. Section 13901 of the Penal Code is amended to read:

13901. (a) For the purposes of coordinating local criminal justice activities and planning for the use of state and federal action funds made available through any grant programs, criminal justice and delinquency prevention planning districts shall be established.

(b) On January 1, 1976, all planning district boundaries shall remain as they were immediately prior to that date. Thereafter, the number and

boundaries of those planning districts may be altered from time to time by a two-thirds vote of the California Council on Criminal Justice pursuant to this section; provided that no county shall be divided into two or more districts, nor shall two or more counties which do not comprise a contiguous area form a single district.

(c) Prior to taking any action to alter the boundaries of any planning district, the council shall adopt a resolution indicating its intention to take the action and, at least 90 days prior to the taking of the action, shall forward a copy of the resolution to all units of government directly affected by the proposed action together with notice of the time and place at which the action will be considered by the council.

(d) If any county or a majority of the cities directly affected by the proposed action objects thereto, and a copy of the resolution of each board of supervisors or city council stating its objection is delivered to the executive office of the agency or agencies designated by the Director of Finance pursuant to Section 13820 within 30 days following the giving of the notice of the proposed action, the council, or a duly constituted committee thereof, shall conduct a public meeting within the boundaries of the district as they are proposed to be determined. Notice of the time and place of the meeting shall be given to the public and to all units of local government directly affected by the proposed action, and reasonable opportunity shall be given to members of the public and representatives of those units to present their views on the proposed action.

SEC. 73. Section 14111 of the Penal Code is amended to read:

14111. The Legislature further finds that:

(a) It is in the public interest to translate the findings of the California Commission on Crime Control and Violence Prevention into community-empowering, community-activated violence prevention efforts that would educate, inspire, and inform the citizens of California about, coordinate existing programs relating to, and provide direct services addressing the root causes of, violence in California.

(b) The recommendations in the report of the commission can serve as both the foundation and guidelines for short-, intermediate-, and long-term programs to address and alleviate violence in California.

(c) It is in the public interest to facilitate the highest degree of coordination between, cooperation among, and utilization of public, nonprofit, and private sector resources, programs, agencies, organizations, and institutions toward maximally successful violence prevention and crime control efforts.

(d) Prevention is a sound fiscal, as well as social, policy objective. Crime and violence prevention programs can and should yield substantially beneficial results with regard to the exorbitant costs of both violence and crime to the public and private sectors.

(e) The agency or agencies designated by the Director of Finance pursuant to Section 13820 is the appropriate state agency to contract for programs addressing the root causes of violence.

SEC. 74. Section 14112 of the Penal Code is amended to read:

14112. The Legislature therefore intends:

(a) To develop community violence prevention and conflict resolution programs, in the state, based upon the recommendations of the California Commission on Crime Control and Violence Prevention, that would present a balanced, comprehensive educational, intellectual, and experiential approach toward eradicating violence in our society.

(b) That these programs shall be regulated, and funded pursuant to contracts with the agency or agencies designated by the Director of Finance pursuant to Section 13820.

SEC. 75. Section 14117 of the Penal Code is amended to read:

14117. (a) Each program shall have a governing board or an interagency coordinating team, or both, of at least nine members representing a cross section of existing and recipient, community-based, public and private persons, programs, agencies, organizations, and institutions. Each team shall do all of the following:

(1) As closely as possible represent the socioeconomic, ethnic, linguistic, and cultural makeup of the community and shall evidence an interest in and commitment to the categorical areas of violence prevention and conflict resolution.

(2) Be responsible for the implementation, evaluation, and operation of the program and all its constituent elements, including those specific direct services as may be provided pursuant to Section 14115.

(3) Be accountable for the distribution of all funds.

(4) Designate and appoint a responsible administrative authority acceptable to the agency or agencies designated by the Director of Finance pursuant to Section 13820 prior to the receipt of a grant.

(5) Submit an annual report to the agency or agencies designated by the Director of Finance pursuant to Section 13820 which shall include information on all of the following:

(A) The number of learning events.

(B) The number of persons trained.

(C) An overview of the changing level of information regarding root causes of violence.

(D) An overview of the changing level of attitude regarding root causes of violence.

(E) The changing level of behavior regarding root causes of violence.

(F) The degree to which the program has been successful in satisfying the requirements set forth in subdivisions (e) and (f) of Section 14114.

(G) Other measures of program efficacy as specified by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

(b) Coordinating teams established under this section may adopt local policies, procedures, and bylaws consistent with this title.

SEC. 76. Section 14118 of the Penal Code is amended to read:

14118. (a) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall prepare and issue written program, fiscal, and administrative guidelines for the contracted programs that are consistent with this title, including guidelines for identifying recipient programs, agencies, organizations, and institutions, and organizing the coordinating teams. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall then issue a request for proposals. The responses to the request for proposals shall be rated according to the priorities set forth in subdivision (b) and additional criteria established by the guidelines. The highest rated responses shall be selected. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall do all of the following:

(1) Subject the proposed program and administrative guidelines to a 30-day period of broad public evaluation with public hearings commencing in May 1985, prior to adoption, including specific solicitation of input from culturally, geographically, socioeconomically, educationally, and ethnically diverse persons, programs, agencies, organizations, and institutions.

(2) Provide adequate public notice of the public evaluation around the state in major metropolitan and rural newspapers and related media outlets, and to local public, private, and nonprofit human service executives and advisory boards, and other appropriate persons and organizations.

(3) Establish a mechanism for obtaining, evaluating, and incorporating when appropriate and feasible, public input regarding the written program and administrative guidelines prior to adoption.

(b) Applicants for contracts under this title may be existing community-based public and nonprofit programs, agencies, organizations, and institutions, newly developed nonprofit corporations, or joint proposals from combinations of either or both of the above.

SEC. 77. Section 14119 of the Penal Code is amended to read:

14119. (a) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall promote, organize, and conduct a series of one-day crime and violence prevention training workshops around the state. The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall seek participation in the

workshops from ethnically, linguistically, culturally, educationally, and economically diverse persons, agencies, organizations, and institutions.

(b) The training workshops shall have all of the following goals:

(1) To identify phenomena which are thought to be root causes of crime and violence.

(2) To identify local manifestations of those root causes.

(3) To examine the findings and recommendations of the California Commission on Crime Control and Violence Prevention.

(4) To focus on team building and interagency cooperation and coordination toward addressing the local problems of crime and violence.

(5) To examine the merits and necessity of a local crime and violence prevention effort.

(c) There shall be at least three workshops.

SEC. 78. Section 14120 of the Penal Code is amended to read:

14120. (a) Programs shall be funded, depending upon the availability of funds, for a period of two years.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall provide 50 percent of the program costs, to a maximum amount of fifty thousand dollars ($50,000) per program per year. The recipient shall provide the remaining 50 percent with other resources which may include in-kind contributions and services. The administrative expenses for the pilot programs funded under Section 14120 shall not exceed 10 percent.

(c) Programs should be seeking private sector moneys and developing ways to become self-sufficient upon completion of pilot program funding.

(d) The recipient programs shall be responsible for a yearend independent audit.

(e) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall do an interim evaluation of the programs, commencing in July 1986, and shall report to the Legislature and the people with the results of the evaluation prior to October 31, 1986. The evaluation shall include, but not be limited to, an assessment and inventory of all of the following:

(1) The number of learning events.

(2) The number of persons trained.

(3) The changing level of information regarding root causes of violence.

(4) The changing level of attitude regarding root causes of violence.

(5) The changing level of behavior regarding root causes of violence.

(6) The reduced level of violence in our society.

(7) The degree to which the program has succeeded in reaching and impacting positively upon local ethnic, cultural, and socioeconomic groups in the service area.

A final evaluation shall be made with a report prior to October 31, 1987, which shall also include specific recommendations to the Legislature and the people of this state regarding methods and means by which these violence prevention and crime control programmatic efforts can be enhanced and improved.

SEC. 79. Section 14121 of the Penal Code is amended to read:

14121. The agency or agencies designated by the Director of Finance pursuant to Section 13820 may hire support staff and utilize resources necessary to carry out the purposes of this title.

SEC. 80. Section 14140 of the Penal Code is amended to read:

14140. (a) Each county is authorized and encouraged to create a county task force on violent crimes against women. The board of supervisors of a county which elects to create a task force under this section shall notify the agency or agencies designated by the Director of Finance pursuant to Section 13820 that the county is establishing, by appointment, a countywide task force. Each county task force shall develop a countywide policy on violent crimes against women.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 may provide technical assistance to, and collect and disseminate information on, the county task forces established under this section.

SEC. 81. Section 14172 of the Penal Code is amended to read:

14172. By June 30, 2001, each designated county shall prepare and submit to the Legislative Analyst a detailed cost-benefit analysis of the entire program, wherein the cost to operate the program shall be measured against savings realized from crime prevention, crime suppression, and the number of prosecutions resulting from the program. These savings shall include the reduction of economic loss resulting from crime during the life of the project. The Legislative Analyst shall evaluate the program, in consultation with the agency or agencies designated by the Director of Finance pursuant to Section 13820, and shall present its evaluation, including a detailed cost-benefit analysis of the entire program, to the Governor, the Joint Legislative Budget Committee, and the fiscal committees of the Legislature, by December 31, 2001.

CHAPTER 230

An act to amend Sections 6254 and 16531.1 of, and to repeal Section 13967 of, the Government Code, to amend Sections 1266, 104465, 104898.5, 120955, 124555, 124710, and 127280.1 of, to amend and repeal Section 1316.5 of, to add Sections 104181.6, 104466, 123853, and 125191 to, to add Article 7.5 (commencing with Section 1324) to Chapter 2 of Division 2 of, and to add Chapter 16 (commencing with Section 121345) to Part 4 of Division 105 of, the Health and Safety Code, to amend Sections 12693.43, 12693.70, 12693.73, 12693.91, 12693.98, 12695.04, 12695.06, 12695.08, 12696.7, 12697, 12698.05, 12698.30, 12699.50, 12699.51, 12699.52, 12699.53, 12699.54, 12699.56, 12699.58, 12699.60, 12699.61, and 12699.62 of, to amend the heading of Part 6.4 (commencing with Section 12699.50) of Division 2 of, to add Section 12693.765 to, to add and repeal Section 12693.275 of, and to repeal Sections 12693.99 and 12698.10 of, the Insurance Code, to amend Section 1026.2 of the Penal Code, to amend Sections 4094.2, 4433, 4512, 4631.5, 4640.6, 4643, 4685.5, 4781.5, 5775, 14011.7, 14019.3, 14105.37, 14124.79, 14126.02, 14132.88, 14154, and 16809 of, to amend and repeal Sections 14005.81 and 14110.65 of, to add Sections 4620.2, 4648.4, 4681.5, 4691.6, 14044, 14087.101, 14087.103, 14087.105, 14105.06, 14105.21, 14105.22, 14105.395, 14105.48, 14105.49, 14105.51, 14105.86, 14124.795, 14132.27, 14159, and 14684.1 to, to add Article 5.5 (commencing with Section 14464.5) to Chapter 8 of Part 3 of Division 9 of, and to add and repeal Section 14105.19 of, the Welfare and Institutions Code, and to repeal Section 13 of Chapter 9 of the Statutes of the First Extraordinary Session of 2003, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memorandums that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of

those investigative files that reflect the analysis or conclusions of the investigating officer.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section

7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety

Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the

board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing

with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by a local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 2. Section 13967 of the Government Code is repealed.

SEC. 3. Section 16531.1 of the Government Code is amended to read:

16531.1. (a) Notwithstanding any other provision of law and without regard to fiscal year, if the annual State Budget is not enacted by June 30 of any fiscal year preceding the fiscal year to which the budget would apply or there is a deficiency in the Medi-Cal budget during any fiscal year, both of the following shall occur:

(1) The Controller shall annually transfer from the General Fund, in the form of one or more loans, an amount not to exceed a cumulative total of one billion dollars ($1,000,000,000) in any fiscal year, to the Medical Providers Interim Payment Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the Medical Providers Interim Payment Fund is hereby continuously appropriated for the purpose of making payments to Medi-Cal providers, providers of services under Chapter 6 (commencing with Section 120950) of Part 4 of Division 105 of the Health and Safety Code, and providers of services under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, for services provided on or after July 1 of the fiscal year for which no budget has been enacted and before September 1 of that year or for the purpose of making payments to Medi-Cal providers, providers of services under Chapter 6 (commencing with Section 120950) of Part 4 of Division 105 of the Health and Safety Code, and providers of services under Division 4.5 (commencing with Section 4500), during the period in which the Medi-Cal Program has a deficiency. Payments shall be made pursuant to this subdivision if both of the following conditions have been met:

(A) An invoice has been submitted for the services.

(B) Payment for the services is due and payable and the State Department of Health Services determines that payment would be valid.

(2) For any fiscal year to which this subdivision applies, there is hereby appropriated the sum of one billion dollars ($1,000,000,000) from the Federal Trust Fund to the Medical Providers Interim Payment Fund.

(b) Upon the enactment of the annual Budget Act or a deficiency bill in any fiscal year to which subdivision (a) applies, the Controller shall transfer all expenditures and unexpended funds in the Medical Providers Interim Payment Fund to the appropriate Budget Act item.

(c) The amount of any loan made pursuant to subdivision (a) and for which moneys were expended from the Medical Providers Interim Payment Fund shall be repaid by debiting the appropriate Budget Act item in accordance with the procedure prescribed by the Department of Finance.

SEC. 4. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) Each new and renewal application for a license for the health facilities listed below shall be accompanied by an annual fee as set forth below.

(1) The annual fee for a general acute care hospital, acute psychiatric hospital, special hospital, and chemical dependency recovery hospital, based on the number of licensed beds, is as follows:

1–49 beds	$460 plus $8 per bed
50–99 beds	$850 plus $8 per bed
100 or more beds	$1,175 plus $8 per bed

(2) The annual fee for a skilled nursing facility, intermediate care facility, and intermediate care facility/developmentally disabled, based on the number of licensed beds, is as follows:

1–59 beds	$2,068 plus $26 per bed
60–99 beds	$2,543 plus $26 per bed
100 or more beds	$3,183 plus $26 per bed

(3) The fees provided in this subdivision shall be adjusted, commencing July 1, 1983, as proposed in the state department's 1983–84 fiscal year Health Facility License Fee Report to the Legislature. Commencing July 1, 1984, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(b) (1) By March 17 of each year, the State Department of Health Services shall make available to interested parties, upon request, information regarding the methodology and calculations used to determine the fee amounts specified in this section, the staffing and systems analysis required under subdivision (e), program costs associated with the licensing provisions of this division, and the actual numerical fee charges to be implemented on July 1 of that year. This information shall specifically identify federal funds received, but not

previously budgeted for, the licensing provisions of this division that are used to offset the amount of General Fund money to be recovered through license fees. The information shall also identify the purpose of federal funds received for any additional activities under the licensing provisions of this division that are not used to offset the amount of General Fund money.

(2) The methodology and calculations used to determine the fee amounts shall result in fee levels in an amount sufficient to provide revenues equal to the sum of the following:

(A) The General Fund expenditures for the fiscal year beginning on July 1 of that year, as specified in the Governor's proposed budget, less license fees estimated to be collected in that fiscal year by the licensing provisions of this division, excluding licensing fees collected pursuant to this section.

(B) The amount of federal funds budgeted for the fiscal year ending June 30 of that year for the licensing provisions of the division, less federal funds received or credited, or anticipated to be received or credited, during that fiscal year for that purpose.

The methodology for calculating the fee levels shall include an adjustment that takes into consideration the actual amount of license fee revenue collected pursuant to this section for that prior fiscal year.

(3) If the Budget Act provides for expenditures that differ by 5 percent from the Governor's proposed budget, the Department of Finance shall adjust the fees to reflect that difference and shall instruct the State Department of Health Services to publish those fees in accordance with subdivision (d).

(c) The annual fees determined pursuant to this section shall be waived for any health facility conducted, maintained, or operated by this state or any state department, authority, bureau, commission, or officer, or by the Regents of the University of California, or by a local hospital district, city, county, or city and county.

(d) The department shall, within 30 calendar days of the enactment of the Budget Act, publish a list of actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees, any adjustment by the Department of Finance, and the publication of the fee list shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. If the published list of fees is higher than that made available to interested parties pursuant to subdivision (b), the affected health facilities may choose to pay the fee in the amount presented at the public hearing and to defer payment of the additional increment until 60 days after publication of the list of fees pursuant to this subdivision.

(e) Prior to the establishment of the annual fee, the department shall prepare a staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

The analysis under this subdivision shall be included in the information made available pursuant to subdivision (b), and shall include all of the following:

(1) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(2) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(3) The number of facilities receiving full surveys and the frequency and number of followup visits.

(4) The number and timeliness of complaint investigations.

(5) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(6) Training courses provided for surveyors.

(7) Other applicable activities of the licensing and certification division.

The analysis shall also include recommendations for administrative changes to streamline and prioritize the survey process, complaint investigations, management information systems, word processing capabilities and effectiveness, consumer information system, and surveyor training.

The annual staffing and systems analysis shall be presented to the Health Care Advisory Committee and the Legislature prior to the establishment and adoption of the annual fee.

(f) The annual fee for a congregate living health facility shall initially, and until adjusted by the Legislature in a Budget Act, be based on the number of licensed beds as follows:

1–3 beds	$ 800
4–6 beds	$1,000
7–10 beds	$1,200
11–15 beds	$1,500
16 or more beds	$1,700

Commencing July 1, 1991, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual budget.

(g) The annual fee for a pediatric day health and respite care facility, as defined in Section 1760.2, shall initially, and until adjusted by the

Legislature in a Budget Act, be based on the number of licensed beds as follows:

1–3 beds or clients	$ 800
4–6 beds or clients	$1,000
7–10 beds or clients	$1,200
11–15 beds or clients	$1,500
16 or more beds or clients	$1,700 plus $50 for each additional bed or client over 16 beds or clients

Commencing July 1, 1993, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(h) The department shall, in consultation with affected provider representatives, develop a specific proposal by July 1, 1995, to do all of the following:

(1) Revise the health facility licensure fee methodologies in a manner that addresses the fee methodology and subsidy issues described in the State Auditor Report Number 93020, Issues 2 and 3.

(2) Ensure the validity and reliability of the data systems used to calculate the license fee.

(3) Address the subsidy of licensing and certification activities regarding health facilities for which the annual license fee is waived.

(4) Develop a licensing and certification special fund into which all fees collected by the state department, for health facility licensing, certification, regulation, and inspection duties, functions, and responsibilities, shall be deposited.

SEC. 4.5. Section 1316.5 of the Health and Safety Code, as amended by Section 1 of Chapter 717 of the Statutes of 1998, is amended to read:

1316.5. (a) (1) Each health facility owned and operated by the state offering care or services within the scope of practice of a psychologist shall establish rules and medical staff bylaws that include provisions for medical staff membership and clinical privileges for clinical psychologists within the scope of their licensure as psychologists, subject to the rules and medical staff bylaws governing medical staff membership or privileges as the facility shall establish. The rules and regulations shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the member's respective licensure. Each of these health facilities owned and operated by the state shall establish a staff comprised of physicians and surgeons, dentists, podiatrists, psychologists, or any combination thereof, that shall regulate the

admission, conduct, suspension, or termination of the staff appointment of psychologists employed by the health facility.

(2) With regard to the practice of psychology in health facilities owned and operated by the state offering care or services within the scope of practice of a psychologist, medical staff status shall include and provide for the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure. These rights and privileges shall be limited or restricted only upon the basis of an individual practitioner's demonstrated competence. Competence shall be determined by health facility rules and medical staff bylaws that are necessary and are applied in good faith, equally and in a nondiscriminatory manner, to all practitioners, regardless of whether they hold an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology.

(3) Nothing in this subdivision shall be construed to require a health facility owned and operated by the state to offer a specific health service or services not otherwise offered. If a health service is offered in such a health facility that includes provisions for medical staff membership and clinical privileges for clinical psychologists, the facility shall not discriminate between persons holding an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology who are authorized by law to perform the service within the scope of the person's respective licensure.

(4) The rules and medical staff bylaws of a health facility owned and operated by the state that include provisions for medical staff membership and clinical privileges for medical staff and duly licensed clinical psychologists shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the member's respective licensure. The health facility staff of these health facilities who process, review, evaluate, and determine qualifications for staff privileges for medical staff shall include, if possible, staff members who are clinical psychologists.

(b) (1) The rules of a health facility not owned or operated by this state may enable the appointment of clinical psychologists on the terms and conditions that the facility shall establish. In these health facilities, clinical psychologists may hold membership and serve on committees of the medical staff and carry professional responsibilities consistent with the scope of their licensure and their competence, subject to the rules of the health facility.

(2) Nothing in this subdivision shall be construed to require a health facility not owned or operated by this state to offer a specific health service or services not otherwise offered. If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physicians and

surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination.

(3) This subdivision shall not prohibit a health facility that is a clinical teaching facility owned or operated by a university operating a school of medicine from requiring that a clinical psychologist have a faculty teaching appointment as a condition for eligibility for staff privileges at that facility.

(4) In any health facility that is not owned or operated by this state that provides staff privileges to clinical psychologists, the health facility staff who process, review, evaluate, and determine qualifications for staff privileges for medical staff shall include, if possible, staff members who are clinical psychologists.

(c) No classification of health facilities by the department, nor any other classification of health facilities based on quality of service or otherwise, by any person, body, or governmental agency of this state or any subdivision thereof shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any classification of these facilities be affected by the subjection of the psychologists to the rules and regulations of the organized professional staff. No classification of health facilities by any governmental agency of this state or any subdivision thereof pursuant to any law, whether enacted prior or subsequent to the effective date of this section, for the purposes of ascertaining eligibility for compensation, reimbursement, or other benefit for treatment of patients shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any classification of these facilities be affected by the subjection of the psychologists to the rules and regulations of the organized professional staff which govern the psychologists' use of the facilities.

(d) ''Clinical psychologist,'' as used in this section, means a psychologist licensed by this state who meets both of the following requirements:

(1) Possesses an earned doctorate degree in psychology from an educational institution meeting the criteria of subdivision (b) of Section 2914 of the Business and Professions Code.

(2) Has not less than two years clinical experience in a multidisciplinary facility licensed or operated by this or another state or by the United States to provide health care, or, is listed in the latest edition of the National Register of Health Service Providers in Psychology, as adopted by the Council for the National Register of Health Service Providers in Psychology.

(e) Nothing in this section is intended to expand the scope of licensure of clinical psychologists. Notwithstanding the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1

of the Government Code), the Public Employment Relations Board is precluded from creating any additional bargaining units for the purpose of exclusive representation of state psychologist employees that might result because of medical staff membership and/or privilege changes for psychologists due to the enactment of provisions by Assembly Bill No. 3141 of the 1995–96 Regular Session.

(f) The State Department of Mental Health, the State Department of Developmental Services, and the Department of Corrections shall report to the Legislature no later than January 1, 2006, on the impact of medical staff membership and privileges for clinical psychologists on quality of care, and on cost-effectiveness issues.

SEC. 4.6. Section 1316.5 of the Health and Safety Code, as amended by Section 2 of Chapter 717 of the Statutes of 1998, is repealed.

SEC. 5. Article 7.5 (commencing with Section 1324) is added to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 7.5. Intermediate Care Facilities' Quality Assurance Fees

1324. For purposes of this article, the following definitions shall apply:

(a) (1) ''Gross receipts'' means gross receipts paid as compensation for services provided to residents of a designated intermediate care facility.

(2) ''Gross receipts'' does not mean charitable contributions.

(3) For state and local government owned facilities, ''gross receipts'' shall include any contributions from government sources or General Fund expenditures for the care of residents of a designated intermediate care facility.

(b) ''Eligible facility'' means a designated intermediate care facility that has paid the fee as described in Section 1324.2, for a particular state fiscal year.

(c) ''Designated intermediate care facility'' or ''facility'' means a facility as defined in subdivision (e), (g), or (h) of Section 1250.

1324.2. (a) As a condition for participation in the Medi-Cal program, there shall be imposed each state fiscal year upon the entire gross receipts of a designated intermediate care facility a quality assurance fee, as calculated in accordance with subdivision (b).

(b) The quality assurance fee to be paid pursuant to subdivision (c) of Section 1324.4 shall be an amount determined each quarter of the state fiscal year by multiplying the facility's gross receipts in the preceding quarter by 6 percent. For reporting purposes, the quality assurance fee is considered to be on a cash basis of accounting.

1324.4. (a) On or before August 31 of each year, each designated intermediate care facility subject to Section 1324.2 shall report to the

department, in a prescribed form, the facility's gross receipts for the preceding state fiscal year.

(b) On or before the last day of each calendar quarter, each designated intermediate care facility shall file a report with the department, in a prescribed form, showing the facility's gross receipts for the preceding quarter.

(c) A newly licensed care facility, as defined by the department, shall be exempt from the requirements of subdivision (a) for its year of operation, but shall complete all requirements of subdivision (b) for any portion of the quarter in which it commences operations.

(d) The quality assurance fee, as calculated pursuant to subdivision (b) of Section 1324.2, shall be paid to the department on or before the last day of the quarter following the quarter for which the fee is imposed.

(e) The payment of the quality assurance fee a designated intermediate care facility shall be reported as an allowable cost for Medi-Cal reimbursement purposes.

(f) The department shall make retrospective adjustments, as necessary, to the amounts calculated pursuant to subdivision (b) of Section 1324.2 in order to assure that the facility's aggregate quality assurance fee for any particular state fiscal year does not exceed 6 percent of the facility's aggregate annual gross receipts for that year.

1324.6. (a) The Director of Health Services, or his or her designee, shall administer this article.

(b) The director may adopt regulations as are necessary to implement this article. These regulations may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this article, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall include, but not be limited to, any regulations necessary for either of the following purposes:

(1) The administration of this article, including the proper imposition and collection of the quality assurance fee.

(2) The development of any forms necessary to obtain required information from facilities subject to the quality assurance fee.

(c) As an alternative to subdivision (b), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article by means of a provider bulletin, or other similar instructions, without taking regulatory action.

1324.8. The quality assurance fee assessed and collected pursuant to this article shall be deposited in the General Fund.

1324.10. In addition to the rate of payment that an eligible facility would otherwise receive for intermediate care facility services provided to Medi-Cal beneficiaries, an eligible facility shall receive quarterly supplemental Medi-Cal reimbursement, in an amount determined by the department.

The supplemental Medi-Cal reimbursement provided by this section shall be paid to support the facility's quality improvement efforts and shall be distributed under a payment methodology based on intermediate care services provided to Medi-Cal patients at the eligible facility, either on a per diem basis, or on any other federally permissible basis.

1324.12. (a) (1) The department shall seek approval from the federal Centers for Medicare and Medicaid Services for the implementation of this article.

(2) If after seeking federal approval, federal approval is not obtained, this article shall not be implemented.

(3) The Director of Health Services may alter the methodology specified in this article to the extent necessary to meet the requirements of federal law or regulations, or to obtain federal approval.

(b) If there is a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Center for Medicare and Medicaid Services that the supplemental reimbursement provided by this article shall be made to any facility not described in this article, this article shall immediately become inoperative.

1324.14. In implementing this article, the department may utilize the services of the Medi-Cal fiscal intermediary through a change order to the fiscal intermediary contract to administer this program, consistent with the requirements of Sections 14104.6, 14104.7, 14104.8, and 14104.9 of the Welfare and Institutions Code.

SEC. 6. Section 104181.6 is added to the Health and Safety Code, to read:

104181.6. Notwithstanding subdivision (a) of Section 2.00 of the Budget Act of 2002 and any other provision of law, commencing with the appropriation for the 2002–03 fiscal year, and for each fiscal year thereafter, any amount appropriated to the department for the Cancer Research Program shall be available, for purposes of that program, for encumbrance for one fiscal year beyond the year of appropriation and for expenditure for three fiscal years beyond the year of encumbrance.

SEC. 7. Section 104465 of the Health and Safety Code is amended to read:

104465. (a) The department may annually set aside three million dollars ($3,000,000) appropriated for the purposes of the competitive grants program established pursuant to this article in order to support

efforts to link the statewide media campaign to local communities and to provide regional public and community relations or media initiatives.

(b) Local community initiatives may include, but are not limited to, all of the following:

(1) Encouraging volunteer efforts.

(2) Local media programming.

(3) Provision of assistance in, and facilitation of, public and community events.

(c) The efforts described in subdivision (b) shall be directed principally to the target communities described in Section 104360.

(d) Regular application procedures for competitive grants under this article shall apply to applications for grants under this section.

(e) Funds awarded pursuant to this section shall be awarded in the same manner as other competitive grants under this article.

SEC. 8. Section 104466 is added to the Health and Safety Code, to read:

104466. Notwithstanding subdivision (a) of Section 2.00 of the Budget Act of 2002 and any other provision of law, commencing with the appropriation for the 2002–03 fiscal year, and for each fiscal year thereafter, any amount appropriated to the department to implement the following tobacco use prevention programs shall be available for encumbrance and expenditure for three fiscal years beyond the date of the appropriation:

(a) The program to evaluate tobacco control programs provided for in subdivisions (b) and (c) of Section 104375.

(b) The tobacco use prevention media campaign provided for in subdivision (e) of Section 104375.

(c) The competitive grant program provided for in Section 104385.

(d) The local lead agency tobacco use prevention programs provided for in Section 104400.

(e) The tobacco use prevention program directed at schools provided for in Sections 104420, 104425, 104430, and 104435.

SEC. 9. Section 104898.5 of the Health and Safety Code is amended to read:

104898.5. (a) Notwithstanding any other provision of law, there shall be transferred annually from the General Fund to the Tobacco Settlement Fund an amount, not to exceed one hundred million dollars ($100,000,000) out of funds not otherwise appropriated, as a loan to cover appropriations from the fund when moneys from the Master Settlement Agreement have not been received by the state.

(b) This loan from the General Fund shall be repaid on or before June 30 of each year, without interest, from the funds received pursuant to the Master Settlement Agreement.

SEC. 10. Section 120955 of the Health and Safety Code is amended to read:

120955. (a) (1) To the extent that state and federal funds are appropriated in the annual Budget Act for these purposes, the director shall establish and may administer a program to provide drug treatments to persons infected with human immunodeficiency virus (HIV), the etiologic agent of acquired immune deficiency syndrome (AIDS). If the director makes a formal determination that, in any fiscal year, funds appropriated for the program will be insufficient to provide all of those drug treatments to existing eligible persons for the fiscal year and that a suspension of the implementation of the program is necessary, the director may suspend eligibility determinations and enrollment in the program for the period of time necessary to meet the needs of existing eligible persons in the program.

(2) The director shall develop, maintain, and update as necessary a list of drugs to be provided under this program.

(b) The director may grant funds to a county public health department through standard agreements to administer this program in that county. To maximize the recipients' access to drugs covered by this program, the director shall urge the county health department in counties granted these funds to decentralize distribution of the drugs to the recipients.

(c) The director shall establish a rate structure for reimbursement for the cost of each drug included in the program. Rates shall not be less than the actual cost of the drug. However, the director may purchase a listed drug directly from the manufacturer and negotiate the most favorable bulk price for that drug.

(d) Manufacturers of the drugs on the list shall pay the department a rebate equal to the rebate that would be applicable to the drug under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) plus an additional rebate to be negotiated by each manufacturer with the department, except that no rebates shall be paid to the department under this section on drugs for which the department has received a rebate under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) or that have been purchased on behalf of county health departments or other eligible entities at discount prices made available under Section 256b of Title 42 of the United States Code.

(e) The department shall submit an invoice, not less than two times per year, to each manufacturer for the amount of the rebate required by subdivision (d).

(f) Drugs may be removed from the list for failure to pay the rebate required by subdivision (d), unless the department determines that removal of the drug from the list would cause substantial medical hardship to beneficiaries.

(g) The department may adopt emergency regulations to implement amendments to this chapter made during the 1997–98 Regular Session, in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(h) Reimbursement under this chapter shall not be made for any drugs that are available to the recipient under any other private, state, or federal programs, or under any other contractual or legal entitlements, except that the director may authorize an exemption from this subdivision where exemption would represent a cost savings to the state.

SEC. 11. Chapter 16 (commencing with Section 121345) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 16. THERAPEUTIC MONITORING PROGRAM

121345. (a) The Legislature finds and declares that therapeutic monitoring is necessary to make appropriate life-prolonging and cost-effective treatment decisions in the management of HIV disease.

(b) The Director of the Office of AIDS may provide funding for the coverage of therapeutic monitoring assays for HIV disease through the State HIV Therapeutic Monitoring Program.

(c) (1) The purpose of the program under this chapter shall be to provide the therapeutic assays for HIV-positive people who could not otherwise afford them.

(2) The scope of the program shall be determined by the federal and state guidelines for standards of HIV care and availability of funding.

(3) Priority for funding under the State HIV Therapeutic Monitoring Program shall be given to the state-funded Early Intervention Program sites.

(d) Therapeutic monitoring under this chapter shall include, but not be limited to, viral load and resistance assays.

(e) Coverage awards shall be made to counties on the basis of need. The determination of awards shall be made by the Office of AIDS, depending on the availability of state and federal funding for the program. Counties may cover those assays that are determined to be necessary and are not covered under the state program.

SEC. 12. Section 123853 is added to the Health and Safety Code, to read:

123853. (a) The department may enter into contracts with one or more manufacturers on a negotiated or bid basis as the purchaser, but not the dispenser or distributor, of factor replacement therapies under the California Children's Services Program for the purpose of enabling the department to obtain the full range of available therapies and services required for clients with hematological disorders at the most favorable price and to enable the department, notwithstanding any other provision of state law, to obtain discounts, rebates, or refunds from the manufacturers based upon the large quantities purchased under the program. Nothing in this subdivision shall interfere with the usual and customary distribution practices of factor replacement therapies. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this section is necessary. Therefore, a contract under this subdivision may be on a negotiated basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of the Government Code.

(b) The department may enter into contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of pharmaceuticals, appliances, durable medical equipment, medical supplies, and other product-type health care services and laboratories for the purpose of obtaining the most favorable prices to the state and to assure adequate access and quality of the product or service. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this subdivision is necessary. Therefore, contracts under this subdivision may be on a negotiated basis and shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825), Part 5.5, Division 3 of the Government Code. This subdivision shall not apply to pharmacies or suppliers that provide blood, blood derivatives, or blood factor products, or any product or service provided by those pharmacies or suppliers.

(c) The department may contract with one or more manufacturers of each multisource prescribed product or supplier of outpatient clinical laboratory services on a bid or negotiated basis. Contracts for outpatient clinical laboratory services shall require that the contractor be a clinical laboratory licensed or certified by the State of California or certified under Section 263a of Title 42 of the United States Code. Nothing in this subdivision shall be construed as prohibiting the department from contracting with less than all manufacturers or clinical laboratories, including just one manufacturer or clinical laboratory, on a bid or negotiated basis.

SEC. 13. Section 124555 of the Health and Safety Code is amended to read:

124555. (a) (1) It is the intent of the Legislature that funds distributed under this section promote stability for participating clinics, as a part of the state's health care safety net, and at the same time be distributed in a manner that best promotes access to health care to seasonal agricultural and migratory workers and their families.

(2) The department shall grant funds, for a minimum of three years per grant, retroactive to funds appropriated in the Budget Act of 2002 (Chapter 379 of the Statutes of 2002), to eligible, private, nonprofit, community-based primary care clinics for the purpose of establishing and maintaining a health services program for seasonal agricultural and migratory workers and their families. The department may continue to pay any grantee whose grant expired on June 30, 2003, until June 30, 2004, as if the grant had been extended, provided that funds are appropriated for this purpose in the Budget Act of 2003 and the grantee agrees in writing to expend the money as if the grant had been extended.

(b) In order to be eligible to receive funds under this program, a clinic shall, at a minimum, meet all of the following conditions:

(1) The clinic shall be licensed under either paragraph (1) or (2) of subdivision (a) of Section 1204.

(2) The clinic's patient population shall include at least 25 percent farmworkers and their dependents.

(3) The clinic shall operate in a medically underserved area, including a Health Professional Shortage Area, or serve a medically underserved population, as designated by the United States Department of Health and Human Services, or shall be able to demonstrate that at least 50 percent of its patients are persons with incomes at or below 200 percent of the federal poverty level.

(c) The department shall seek input from stakeholders in designing the methodology for distribution of funds under this section.

SEC. 14. Section 124710 of the Health and Safety Code is amended to read:

124710. (a) (1) It is the intent of the Legislature that funds distributed under this section promote stability for participating clinics, as a part of the state's health care safety net, and at the same time be distributed in a manner that best promotes access to health care to geographically isolated populations.

(2) The department shall grant funds, for a minimum of three years per grant, retroactive to funds appropriated in the Budget Act of 2002 (Chapter 379 of the Statutes of 2002), to eligible, private, nonprofit, community-based primary care clinics for the purpose of establishing and maintaining rural health services and development projects as specified under this article. The department may continue to pay any

grantee whose grant expired on June 30, 2003, until June 30, 2004, as if the grant had been extended, provided that funds are appropriated for this purpose in the Budget Act of 2003 and the grantee agrees in writing to expend the money as if the grant had been extended.

(b) In order to be eligible to receive funds under this program, a clinic shall, at a minimum, meet all of the following conditions:

(1) The clinic shall be licensed under paragraph (1) or (2) of subdivision (a) of Section 1204.

(2) The clinic shall operate in a ''rural'' Medical Study Service Area, as defined by the Health Manpower Commission.

(3) The clinic shall operate in a medically underserved area, including a Health Professional Shortage Area, or serve a medically underserved population, as designated by the United States Department of Health and Human Services, or shall be able to demonstrate that at least 50 percent of its patients are persons with incomes at or below 200 percent of the federal poverty level.

(c) The department shall seek input from stakeholders in designing the methodology for distribution of funds under this section.

(d) If the funds that are available for purposes of this section for any fiscal year are greater than funds that were available for the prior fiscal year, the department shall establish a base funding level that is applicable to all sites funded in the prior fiscal year. To the extent that funds are available, the base funding level shall not be less than seventy-five thousand dollars ($75,000) for each site. To implement this section, the department shall not be required to reduce funding for clinics that are above the minimum awards.

SEC. 15. Section 125191 is added to the Health and Safety Code, to read:

125191. (a) The department may enter into contracts with one or more manufacturers on a negotiated or bid basis as the purchaser, but not the dispenser or distributor, of factor replacement therapies under the genetically handicapped persons program for the purpose of enabling the department to obtain the full range of available therapies and services required for clients with hematological disorders at the most favorable price and to enable the department, notwithstanding any other provision of state law, to obtain discounts, rebates, or refunds from the manufacturers based upon the large quantities purchased under the program. Nothing in this subdivision shall interfere with the usual and customary distribution practices of factor replacement therapies. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this section is necessary. Therefore, a contract under this subdivision may be on a negotiated basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and

Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of the Government Code.

(b) The department may enter into contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of pharmaceuticals, appliances, durable medical equipment, medical supplies, and other product-type health care services and laboratories for the purpose of obtaining the most favorable prices to the state and to assure adequate access and quality of the product or service. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process under this subdivision is necessary. Therefore, contracts under this subdivision may be on a negotiated basis and shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825), Part 5.5, Division 3 of the Government Code. This subdivision shall not apply to pharmacies or suppliers that provide blood, blood derivatives, or blood factor products, or any product or service provided by those pharmacies or suppliers.

(c) The department may contract with one or more manufacturers of each multisource prescribed product or supplier of outpatient clinical laboratory services on a bid or negotiated basis. Contracts for outpatient clinical laboratory services shall require that the contractor be a clinical laboratory licensed or certified by the State of California or certified under Section 263a of Title 42 of the United States Code. Nothing in this subdivision shall be construed as prohibiting the department from contracting with less than all manufacturers or clinical laboratories, including just one manufacturer or clinical laboratory, on a bid or negotiated basis.

SEC. 16. Section 127280.1 of the Health and Safety Code is amended to read:

127280.1. Notwithstanding any other provision of law, up to two hundred thousand dollars ($200,000) of the moneys collected pursuant to Section 127280 may be used by the State Department of Health Services for data collection on, analysis of, and reporting on, maternal and perinatal outcomes, if funds are appropriated in the Budget Act.

SEC. 16.5. Section 12693.275 is added to the Insurance Code, to read:

12693.275. (a) The Legislature finds and declares that the state faces a fiscal crisis that requires that unprecedented measures be taken to reduce General Fund expenditures.

(b) Notwithstanding any other provision of law or regulation, the rates in effect on July 1, 2003, for health, dental, and vision plans participating in the Healthy Families Program shall remain in effect through June 30, 2005.

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 12693.43 of the Insurance Code is amended to read:

12693.43. (a) Applicants applying to the purchasing pool shall agree to pay family contributions, unless the applicant has a family contribution sponsor. Family contribution amounts consist of the following two components:

(1) The flat fees described in subdivision (b) or (d).

(2) Any amounts that are charged to the program by participating health, dental, and vision plans selected by the applicant that exceed the cost to the program of the highest cost Family Value Package in a given geographic area.

(b) In each geographic area, the board shall designate one or more Family Value Packages for which the required total family contribution is:

(1) Seven dollars ($7) per child with a maximum required contribution of fourteen dollars ($14) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Nine dollars ($9) per child with a maximum required contribution of twenty-seven dollars ($27) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level and for applicants on behalf of children described in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70.

(c) Combinations of health, dental, and vision plans that are more expensive to the program than the highest cost Family Value Package may be offered to and selected by applicants. However, the cost to the program of those combinations that exceeds the price to the program of the highest cost Family Value Package shall be paid by the applicant as part of the family contribution.

(d) The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area that has been designated as the Community Provider Plan. The discount shall reduce the portion of the family contribution described in subdivision (b) to the following:

(1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Six dollars ($6) per child with a maximum required contribution of eighteen dollars ($18) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level and for applicants on behalf of children described in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70.

(e) Applicants, but not family contribution sponsors, who pay three months of required family contributions in advance shall receive the fourth consecutive month of coverage with no family contribution required.

(f) Applicants, but not family contribution sponsors, who pay the required family contributions by an approved means of electronic fund transfer shall receive a 25-percent discount from the required family contributions.

(g) It is the intent of the Legislature that the family contribution amounts described in this section comply with the premium cost sharing limits contained in Section 2103 of Title XXI of the Social Security Act. If the amounts described in subdivision (a) are not approved by the federal government, the board may adjust these amounts to the extent required to achieve approval of the state plan.

SEC. 18. Section 12693.70 of the Insurance Code is amended to read:

12693.70. To be eligible to participate in the program, an applicant shall meet all of the following requirements:

(a) Be an applicant applying on behalf of an eligible child, which means a child who is all of the following:

(1) Less than 19 years of age. An application may be made on behalf of a child not yet born up to three months prior to the expected date of delivery. Coverage shall begin as soon as administratively feasible, as determined by the board, after the board receives notification of the birth. However, no child less than 12 months of age shall be eligible for coverage until 90 days after the enactment of the Budget Act of 1999.

(2) Not eligible for no-cost full-scope Medi-Cal or Medicare coverage at the time of application.

(3) In compliance with Sections 12693.71 and 12693.72.

(4) A child who meets citizenship and immigration status requirements that are applicable to persons participating in the program established by Title XXI of the Social Security Act, except as specified in Section 12693.76.

(5) A resident of the State of California pursuant to Section 244 of the Government Code; or, if not a resident pursuant to Section 244 of the Government Code, is physically present in California and entered the state with a job commitment or to seek employment, whether or not

employed at the time of application to or after acceptance in, the program.

(6) (A) In either of the following:

(i) In a family with an annual or monthly household income equal to or less than 200 percent of the federal poverty level.

(ii) When implemented by the board, subject to subdivision (b) of Section 12693.765 and pursuant to this section, a child under the age of two years who was delivered by a mother enrolled in the Access for Infants and Mothers Program as described in Part 6.3 (commencing with Section 12695). For purposes of this clause, any infant born to a woman whose enrollment in the Access for Infants and Mothers Program begins after June 30, 2004, shall be automatically enrolled in the Healthy Families Program. This enrollment shall cover the first 12 months of the infant's life. At the end of the 12 months, as a condition of continued eligibility, the applicant shall provide income information. The infant shall be disenrolled if the gross annual household income exceeds the income eligibility standard that was in effect in the Access for Infants and Mothers Program at the time the infant's mother became eligible, or following the two-month period established in Section 12693.981 if the infant is eligible for Medi-Cal with no share of cost. At the end of the second year, infants shall again be screened for program eligibility pursuant to this section, with income eligibility evaluated pursuant to clause (i), subparagraphs (B) and (C), and paragraph (2) of subdivision (a).

(B) All income over 200 percent of the federal poverty level but less than or equal to 250 percent of the federal poverty level shall be disregarded in calculating annual or monthly household income.

(C) In a family with an annual or monthly household income greater than 250 percent of the federal poverty level, any income deduction that is applicable to a child under Medi-Cal shall be applied in determining the annual or monthly household income. If the income deductions reduce the annual or monthly household income to 250 percent or less of the federal poverty level, subparagraph (B) shall be applied.

(b) If the applicant is applying for the purchasing pool, and does not have a family contribution sponsor the applicant shall pay the first month's family contribution and agree to remain in the program for six months, unless other coverage is obtained and proof of the coverage is provided to the program.

(c) An applicant shall enroll all of the applicant's eligible children in the program.

(d) In filing documentation to meet program eligibility requirements, if the applicant's income documentation cannot be provided, as defined in regulations promulgated by the board, the applicant's signed

statement as to the value or amount of income shall be deemed to constitute verification.

(e) An applicant shall pay in full any family contributions owed in arrears for any health, dental, or vision coverage provided by the program within the prior 12 months.

SEC. 19. Section 12693.73 of the Insurance Code is amended to read:

12693.73. Notwithstanding any other provision of law, children excluded from coverage under Title XXI of the Social Security Act are not eligible for coverage under the program, except as specified in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70 and Section 12693.76.

SEC. 20. Section 12693.765 is added to the Insurance Code, to read:

12693.765. (a) Notwithstanding any other provision of law and subject to subdivision (b), a child described in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70 shall be deemed eligible to participate in the program at birth.

(b) Notwithstanding any other provision of law, subdivision (a) and clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70 may only be implemented to the extent that funds are appropriated for that purpose in the annual Budget Act or other statute.

SEC. 21. Section 12693.91 of the Insurance Code is amended to read:

12693.91. (a) The State Department of Health Services, in conjunction with the Managed Risk Medical Insurance Board, the County Medical Services Program board, and the Rural Health Policy Council, may develop and administer up to five demonstration projects in rural areas that are likely to contain a significant level of uninsured children, including seasonal and migratory worker dependents. In addition to any other funds provided pursuant to this section the grants for demonstration projects may include funds pursuant to subdivision (d).

(b) The purpose of the demonstration projects shall be to fund rural collaborative health care networks to alleviate unique problems of access to health care in rural areas.

(c) The State Department of Health Services, in conjunction with the Managed Risk Medical Insurance Board and Rural Health Policy Council, shall establish the criteria and standards for eligibility to be used in requests for proposals or requests for application, the application review process, determining the maximum amount and number of grants to be awarded, preference and priority of projects, and compliance monitoring after receiving comment from the public.

(d) The grants may include funds for purchasing equipment, making capital expenditures, and providing infrastructure, including, but not

limited to, salaries and payment of leaseholds. The funds under this subdivision may only be awarded to qualified eligible health care entities as determined by the State Department of Health Services. Title to any equipment or capital improvement purchased or acquired with grant funds shall vest in the grantee for the public good and not the state. Capital expenditures shall not include the acquisition of land. Notwithstanding subdivision (e), this subdivision shall be implemented only when funds are appropriated in the annual Budget Act or another statute to fund the cost of implementing this subdivision.

(e) This section shall only become operative upon federal approval of the state plan or subsequent amendments for the program and approval of federal financial participation.

SEC. 22. Section 12693.98 of the Insurance Code is amended to read:

12693.98. (a) (1) The Medi-Cal-to-Healthy Families Bridge Benefits Program is hereby established to provide any child who meets the criteria set forth in subdivision (b) with a one calendar-month period of health care benefits in order to provide the child with an opportunity to apply for the Healthy Families Program established under Chapter 16 (commencing with Section 12693).

(2) The Medi-Cal-to-Healthy Families Bridge Benefits Program shall be administered by the board.

(b) (1) Any child who meets all of the following requirements shall be eligible for one calendar month of Healthy Families benefits funded by Title XXI of the Social Security Act, known as the State Children's Health Insurance Program:

(A) He or she has been receiving, but is no longer eligible for, full-scope Medi-Cal benefits without a share of cost.

(B) He or she is eligible for full-scope Medi-Cal benefits with a share of cost.

(C) He or she is under 19 years of age at the time he or she is no longer eligible for full-scope Medi-Cal benefits without a share of cost.

(D) He or she has family income at or below 200 percent of the federal poverty level.

(E) He or she is not otherwise excluded under the definition of targeted low-income child under subsections (b)(1)(B)(ii), (b)(1)(C), and (b)(2) of Section 2110 of the Social Security Act (42 U.S.C. Secs. 1397jj(b)(1)(B)(ii), 1397jj(b)(1)(C), and 1397jj(b)(2)).

(2) The one calendar month of benefits under this chapter shall begin on the first day of the month following the last day of the receipt of benefits without a share of cost.

(c) The income methodology for determining a child's family income, as required by paragraph (1) of subdivision (b) shall be the same

methodology used in determining a child's eligibility for the full scope of Medi-Cal benefits.

(d) The one calendar-month period of Healthy Families benefits provided under this chapter shall be identical to the scope of benefits that the child was receiving under the Medi-Cal program without a share of cost.

(e) The one calendar-month period of Healthy Families benefits provided under this chapter shall only be made available through a Medi-Cal provider or under a Medi-Cal managed care arrangement or contract.

(f) Except as provided in subdivision (j), nothing in this section shall be construed to provide Healthy Families benefits for more than a one calendar-month period under any circumstances, including the failure to apply for benefits under the Healthy Families Program or the failure to be made aware of the availability of the Healthy Families Program, unless the circumstances described in subdivision (b) reoccur.

(g) (1) This section shall become operative on the first day of the second month following the effective date of this section, subject to paragraph (2).

(2) Under no circumstances shall this section become operative until, and shall be implemented only to the extent that, all necessary federal approvals, including approval of any amendments to the State Child Health Plan have been sought and obtained and federal financial participation under the federal State Children's Health Insurance Program, as set forth in Title XXI of the Social Security Act, has been approved.

(h) This section shall become inoperative if an unappealable court decision or judgment determines that any of the following apply:

(1) The provisions of this section are unconstitutional under the United States Constitution or the California Constitution.

(2) The provisions of this section do not comply with the State Children's Health Insurance Program, as set forth in Title XXI of the Social Security Act.

(3) The provisions of this section require that the health care benefits provided pursuant to this section are required to be furnished for more than two calendar months.

(i) If the State Child Health Insurance Program waiver described in Section 12693.755 is approved, and at the time the waiver is implemented, the benefits described in this section shall also be available to persons who meet the eligibility requirements of the program and are parents of, or, as defined by the board, adults responsible for, children enrolled to receive coverage under this part or enrolled to receive full scope Medi-Cal services with no share of cost.

(j) The one month of benefits provided in this section shall be increased to two months commencing on implementation of the waiver referred to in Section 12693.755.

SEC. 23. Section 12693.99 of the Insurance Code is repealed.

SEC. 24. Section 12695.04 of the Insurance Code is amended to read:

12695.04. ''Advisory panel'' means the Managed Risk Medical Insurance Board Access for Infants and Mothers Advisory Panel created pursuant to Section 12696.5.

SEC. 25. Section 12695.06 of the Insurance Code is amended to read:

12695.06. ''Applicant'' means an individual who applies for coverage through the program.

SEC. 26. Section 12695.08 of the Insurance Code is amended to read:

12695.08. ''Board'' means the Managed Risk Medical Insurance Board created pursuant to Section 12710.

SEC. 27. Section 12696.7 of the Insurance Code is amended to read:

12696.7. (a) The board may contract with a variety of health plans and types of health care service delivery systems in order to offer subscribers a choice of plans, providers, and types of service delivery.

(b) Participating health plans contracting with the board pursuant to this part shall provide benefits or coverage to subscribers only as determined by the board pursuant to subdivision (b) of Section 12696.05.

SEC. 28. Section 12697 of the Insurance Code is amended to read:

12697. The board may negotiate or arrange for stop-loss insurance coverage that limits the program's fiscal responsibility for the total costs of health services provided to program subscribers, or arrange for participating health plans to share or assume the financial risk for a portion of the total cost of health care services to program subscribers, or both.

SEC. 29. Section 12698.05 of the Insurance Code is amended to read:

12698.05. A person shall not be eligible to participate in the program if the person is eligible for Medi-Cal without a share of cost or eligible for Medicare at the time of application.

SEC. 30. Section 12698.10 of the Insurance Code is repealed.

SEC. 31. Section 12698.30 of the Insurance Code is amended to read:

12698.30. (a) At a minimum, coverage shall be provided to subscribers during one pregnancy, and for 60 days thereafter, and to children less than two years of age who were born of a pregnancy covered

under this program to a woman enrolled in the program before July 1, 2004.

(b) Coverage provided pursuant to this part shall include, at a minimum, those services required to be provided by health care service plans approved by the Secretary of Health and Human Services as a federally qualified health care service plan pursuant to Section 417.101 of Title 42 of the Code of Federal Regulations.

(c) Coverage shall include health education services related to tobacco use.

(d) Medically necessary prescription drugs shall be a required benefit in the coverage provided under this part.

SEC. 32. The heading of Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended to read:

PART 6.4. COUNTY HEALTH INITIATIVE MATCHING FUND

SEC. 33. Section 12699.50 of the Insurance Code is amended to read:

12699.50. This part shall be known and may be cited as the County Health Initiative Matching Fund.

SEC. 34. Section 12699.51 of the Insurance Code is amended to read:

12699.51. For the purposes of this part, the following definitions shall apply:

(a) ''Administrative costs'' means those expenses that are described in Section 1397ee(a)(1)(D) of Title 42 of the United States Code.

(b) ''Applicant'' means a county, county agency, a local initiative, or a county organized health system.

(c) ''Board'' means the Managed Risk Medical Insurance Board.

(d) ''Child'' means a person under 19 years of age.

(e) ''Comprehensive health insurance coverage'' means the coverage described in Section 12693.60.

(f) ''County organized health system'' means a health system implemented pursuant to Article 2.8 (commencing with Section 14087.5) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code and Article 1 (commencing with Section 101675) of Chapter 3 of Part 4 of Division 101 of the Health and Safety Code.

(g) ''Fund'' means the County Health Initiative Matching Fund.

(h) ''Local initiative'' has the same meaning as set forth in Section 12693.08.

SEC. 35. Section 12699.52 of the Insurance Code is amended to read:

12699.52. (a) The County Health Initiative Matching Fund is hereby created within the State Treasury. The fund shall accept

intergovernmental transfers as the nonfederal matching fund requirement for federal financial participation through the State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code).

(b) Amounts deposited in the fund shall be used only for the purposes specified by this part.

(c) The board shall administer this fund and the provisions of this part in collaboration with the State Department of Health Services for the express purpose of allowing local funds to be used to facilitate increasing the state's ability to utilize federal funds available to California. These federal funds shall be used prior to the expiration of their authority for programs designed to improve and expand access for uninsured persons.

(d) The board shall authorize the expenditure of money in the fund to cover program expenses, including cost to the state to administer the program.

SEC. 36. Section 12699.53 of the Insurance Code is amended to read:

12699.53. (a) An applicant that will provide an intergovernmental transfer may submit a proposal to the board for funding for the purpose of providing comprehensive health insurance coverage to any child who meets citizenship and immigration status requirements that are applicable to persons participating in the program established by Title XXI of the Social Security Act whose family income is at or below 300 percent of the federal poverty level in specific geographic areas, as published quarterly in the Federal Register by the Department of Health and Human Services, and who does not qualify for either the Healthy Families Program (Part 6.2 (commencing with Section 12693) or Medi-Cal with no share of cost pursuant to the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) The proposal shall guarantee at least one year of intergovernmental transfer funding by the applicant at a level that ensures compliance with the requirements of an approved federal waiver and shall, on an annual basis, either commit to fully funding the necessary intergovernmental amount to meet the conditions of the waiver or withdraw from the program. The board may identify specific geographical areas that, in comparison to the national level, have a higher cost of living or housing or a greater need for additional health services, using data obtained from the most recent federal census, the federal Consumer Expenditure Survey, or from other sources. The proposal may include an administrative mechanism for outreach and eligibility.

(c) The applicant may include in its proposal reimbursement of medical, dental, vision, or mental health services delivered to children

who are eligible under the State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code), if these services are part of an overall program with the measurable goal of enrolling served children in the Healthy Families Program.

(d) If a child is determined to be eligible for benefits for the treatment of an eligible medical condition under the California Children's Services Program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, the health, dental, or vision plan providing services to the child pursuant to this part shall not be responsible for the provision of, or payment for, those authorized services for that child. The proposal from an applicant shall contain provisions to ensure that a child whom the health, dental, or vision plan reasonably believes would be eligible for services under the California Children's Services Program is referred to that program. The California Children's Services Program shall provide case management and authorization of services if the child is found to be eligible for the California Children's Services Program. Diagnosis and treatment services that are authorized by the California Children's Services Program shall be performed by paneled providers for that program and approved special care centers of that program and approved by the California Children's Services Program. All other services provided under the proposal from the applicant shall be made available pursuant to this part to a child who is eligible for services under the California Children's Services Program.

SEC. 37. Section 12699.54 of the Insurance Code is amended to read:

12699.54. (a) The board, in consultation with the State Department of Health Services, the Healthy Families Advisory Committee, and other appropriate parties, shall establish the criteria for evaluating an applicant's proposal, which shall include, but not be limited to, the following:

(1) The extent to which the program described in the proposal provides comprehensive coverage including health, dental, and vision benefits.

(2) Whether the proposal includes a promotional component to notify the public of its provision of health insurance to eligible children.

(3) The simplicity of the proposal's procedures for applying to participate and for determining eligibility for participation in its program.

(4) The extent to which the proposal provides for coordination and conformity with benefits provided through Medi-Cal and the Healthy Families Program.

(5) The extent to which the proposal provides for coordination and conformity with existing Healthy Families Program administrative entities in order to prevent administrative duplication and fragmentation.

(6) The ability of the health care providers designated in the proposal to serve the eligible population and the extent to which the proposal includes traditional and safety net providers, as defined in regulations adopted pursuant to the Healthy Families Program.

(7) The extent to which the proposal intends to work with the school districts and county offices of education.

(8) The total amount of funds available to the applicant to implement the program described in its proposal, and the percentage of this amount proposed for administrative costs as well as the cost to the state to administer the proposal.

(9) The extent to which the proposal seeks to minimize the substitution of private employer health insurance coverage for health benefits provided through a governmental source.

(10) The extent to which local resources may be available after the depletion of federal funds to continue any current program expansions for persons covered under local health care financing programs or for expanded benefits.

(b) The board may, in its discretion, approve or disapprove projects for funding pursuant to this part on an annual basis.

(c) To the extent that an applicant's proposal pursuant to this part provides for health plan or administrative services under a contract entered into by the board or at rates negotiated for the applicant by the board, a contract entered into by the board or by an applicant shall be exempt from any provision of law relating to competitive bidding, and shall be exempt from the review or approval of any division of the Department of General Services to the same extent as contracts entered into pursuant to Part 6.2 (commencing with Section 12693). The board and the applicant shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on the projected or actual subscriber enrollments to a total amount not to exceed the amount appropriated for the project including family contributions.

SEC. 38. Section 12699.56 of the Insurance Code is amended to read:

12699.56. (a) Upon its approval of a proposal, the board, in collaboration with the State Department of Health Services, may provide the applicant reimbursement in an amount equal to the amount that the applicant will contribute to implement the program described in its proposal, plus the appropriate and allowable amount of federal funds under the State Children's Health Insurance Program (Subchapter 21

(commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code). Not more than 10 percent of the County Health Initiative Matching Fund and matching federal funds shall be expended in any one fiscal year for administrative costs, including the costs to the state to administer the proposal, unless the board permits the expenditure consistent with the availability of federal matching funds not needed for the purposes described in paragraph (3) of subdivision (a) of Section 12699.62. The board, in collaboration with the State Department of Health Services, may audit the expenses incurred by the applicant in implementing its program to ensure that the expenditures comply with the provisions of this part. No reimbursement may be made to an applicant that fails to meet its financial participation obligation under this part. The state's reasonable startup costs and ongoing costs for administering the program shall be reimbursed by those entities applying for funding.

(b) Each applicant that is provided funds under this part shall submit to the board a plan to limit initial and continuing enrollment in its program in the event the amount of moneys for its program is insufficient to maintain health insurance coverage for those participating in the program.

SEC. 39. Section 12699.58 of the Insurance Code is amended to read:

12699.58. (a) The board, in collaboration with the State Department of Health Services, shall administer the provisions of this part and may do all of the following:

(1) Administer the expenditure of moneys from the fund.

(2) Issue rules and regulations as necessary.

(3) Enter into contracts.

(4) Sue and be sued.

(5) Employ necessary staff.

(6) Exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed by this part.

(b) The adoption and readoption of regulations pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of 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 not more than 180 days. The regulation shall become effective immediately upon filing with the Secretary of State.

SEC. 40. Section 12699.60 of the Insurance Code is amended to read:

12699.60. Nothing in this part creates a right or an entitlement to the provision of health insurance coverage or health care benefits. No costs shall accrue to the state for the provision of these services. The state shall not be liable beyond the assets of the fund for any obligation incurred or liabilities sustained by applicants in the operation of the fund or of the projects authorized by this part.

SEC. 41. Section 12699.61 of the Insurance Code is amended to read:

12699.61. To the extent necessary to obtain federal financial participation for projects approved pursuant to this part, the Governor, in collaboration with the Managed Risk Medical Insurance Board and the State Department of Health Services, shall apply for one or more waivers or shall file state plan amendments pursuant to the federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) in coordination with the Managed Risk Medical Insurance Board and the State Department of Health Services to allow a county agency, local initiative, or county organized health system to apply for matching funds through the federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) using local funds for the state matching funds.

SEC. 42. Section 12699.62 of the Insurance Code is amended to read:

12699.62. (a) The provisions of this part shall be implemented only if all of the following conditions are met:

(1) Federal financial participation is available for this purpose.

(2) Federal participation is approved.

(3) The Managed Risk Medical Insurance Board determines that federal State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code) funds remain available after providing funds for all current enrollees and eligible children and parents that are likely to enroll in the Healthy Families Program and, to the extent funded through the federal State Children's Health Insurance Program, the Access for Infants and Mothers Program and Medi-Cal program, as determined by a Department of Finance estimate.

(4) Funds are appropriated specifically for this purpose.

(b) The State Department of Health Services and the Managed Risk Medical Insurance Board may accept funding necessary for the preparation of the federal waiver applications or state plan amendments described in Section 12699.61 from a not-for-profit group or foundation.

SEC. 43. Section 1026.2 of the Penal Code is amended to read:

1026.2. (a) An application for the release of a person who has been committed to a state hospital or other treatment facility, as provided in Section 1026, upon the ground that sanity has been restored, may be made to the superior court of the county from which the commitment was made, either by the person, or by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600). The court shall give notice of the hearing date to the prosecuting attorney, the community program director or a designee, and the medical director or person in charge of the facility providing treatment to the committed person at least 15 judicial days in advance of the hearing date.

(b) Pending the hearing, the medical director or person in charge of the facility in which the person is confined shall prepare a summary of the person's programs of treatment and shall forward the summary to the community program director or a designee and to the court. The community program director or a designee shall review the summary and shall designate a facility within a reasonable distance from the court in which the person may be detained pending the hearing on the application for release. The facility so designated shall continue the program of treatment, shall provide adequate security, and shall, to the greatest extent possible, minimize interference with the person's program of treatment.

(c) A designated facility need not be approved for 72-hour treatment and evaluation pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). However, a county jail may not be designated unless the services specified in subdivision (b) are provided and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. If there is evidence that the treatment program is not being complied with or accommodations have not been provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person transferred to an appropriate facility or make any other appropriate order, including continuance of the proceedings.

(d) No hearing upon the application shall be allowed until the person committed has been confined or placed on outpatient status for a period of not less than 180 days from the date of the order of commitment.

(e) The court shall hold a hearing to determine whether the person applying for restoration of sanity would be a danger to the health and safety of others, due to mental defect, disease, or disorder, if under supervision and treatment in the community. If the court at the hearing determines the applicant will not be a danger to the health and safety of

others, due to mental defect, disease, or disorder, while under supervision and treatment in the community, the court shall order the applicant placed with an appropriate forensic conditional release program for one year. All or a substantial portion of the program shall include outpatient supervision and treatment. The court shall retain jurisdiction. The court at the end of the one year, shall have a trial to determine if sanity has been restored, which means the applicant is no longer a danger to the health and safety of others, due to mental defect, disease, or disorder. The court shall not determine whether the applicant has been restored to sanity until the applicant has completed the one year in the appropriate forensic conditional release program, unless the community program director sooner makes a recommendation for restoration of sanity and unconditional release as described in subdivision (h). The court shall notify the persons required to be notified in subdivision (a) of the hearing date.

(f) If the applicant is on parole or outpatient status and has been on it for one year or longer, then it is deemed that the applicant has completed the required one year in an appropriate forensic conditional release program and the court shall, if all other applicable provisions of law have been met, hold the trial on restoration of sanity as provided for in this section.

(g) Before placing an applicant in an appropriate forensic conditional release program, the community program director shall submit to the court a written recommendation as to what forensic conditional release program is the most appropriate for supervising and treating the applicant. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the court record. Sections 1605 to 1610, inclusive, shall be applicable to the person placed in the forensic conditional release program unless otherwise ordered by the court.

(h) If the court determines that the person should be transferred to an appropriate forensic conditional release program, the community program director or a designee shall make the necessary placement arrangements, and, within 21 days after receiving notice of the court finding, the person shall be placed in the community in accordance with the treatment and supervision plan, unless good cause for not doing so is made known to the court.

During the one year of supervision and treatment, if the community program director is of the opinion that the person is no longer a danger to the health and safety of others due to a mental defect, disease, or disorder, the community program director shall submit a report of his or her opinion and recommendations to the committing court, the prosecuting attorney, and the attorney for the person. The court shall then set and hold a trial to determine whether restoration of sanity and

unconditional release should be granted. The trial shall be conducted in the same manner as is required at the end of one full year of supervision and treatment.

(i) If at the trial for restoration of sanity the court rules adversely to the applicant, the court may place the applicant on outpatient status, pursuant to Title 15 (commencing with Section 1600) of Part 2, unless the applicant does not meet all of the requirements of Section 1603.

(j) If the court denies the application to place the person in an appropriate forensic conditional release program or if restoration of sanity is denied, no new application may be filed by the person until one year has elapsed from the date of the denial.

(k) In any hearing authorized by this section, the applicant shall have the burden of proof by a preponderance of the evidence.

(*l*) If the application for the release is not made by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600), no action on the application shall be taken by the court without first obtaining the written recommendation of the medical director of the state hospital or other treatment facility or of the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600).

(m) This subdivision shall apply only to persons who, at the time of the petition or recommendation for restoration of sanity, are subject to a term of imprisonment with prison time remaining to serve or are subject to the imposition of a previously stayed sentence to a term of imprisonment. Any person to whom this subdivision applies who petitions or is recommended for restoration of sanity may not be placed in a forensic conditional release program for one year, and a finding of restoration of sanity may be made without the person being in a forensic conditional release program for one year. If a finding of restoration of sanity is made, the person shall be transferred to the custody of the California Department of Corrections to serve the term of imprisonment remaining or shall be transferred to the appropriate court for imposition of the sentence that is pending, whichever is applicable.

SEC. 44. Section 4094.2 of the Welfare and Institutions Code is amended to read:

4094.2. (a) For the purpose of establishing payment rates for community treatment facility programs, the private nonprofit agencies selected to operate these programs shall prepare a budget that covers the total costs of providing residential care and supervision and mental health services for their proposed programs. These costs shall include categories that are allowable under California's Foster Care program and

existing programs for mental health services. They shall not include educational, nonmental health medical, and dental costs.

(b) Each agency operating a community treatment facility program shall negotiate a final budget with the local mental health department in the county in which its facility is located (the host county) and other local agencies, as appropriate. This budget agreement shall specify the types and level of care and services to be provided by the community treatment facility program and a payment rate that fully covers the costs included in the negotiated budget. All counties that place children in a community treatment facility program shall make payments using the budget agreement negotiated by the community treatment facility provider and the host county.

(c) A foster care rate shall be established for each community treatment facility program by the State Department of Social Services. These rates shall be established using the existing foster care ratesetting system for group homes, with modifications designed as necessary. It is anticipated that all community treatment facility programs will offer the level of care and services required to receive the highest foster care rate provided for under the current group home ratesetting system.

(d) For the 2001–02 fiscal year, the 2002–03 fiscal year, and the 2003–04 fiscal year, community treatment facility programs shall also be paid a community treatment facility supplemental rate of up to two thousand five hundred dollars ($2,500) per child per month on behalf of children eligible under the foster care program and children placed out of home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. Subject to the availability of funds, the supplemental rate shall be shared by the state and the counties. Counties shall be responsible for paying a county share of cost equal to 60 percent of the community treatment rate for children placed by counties in community treatment facilities and the state shall be responsible for 40 percent of the community treatment facility supplemental rate. The community treatment facility supplemental rate is intended to supplement, and not to supplant, the payments for which children placed in community treatment facilities are eligible to receive under the foster care program and the existing programs for mental health services.

(e) For initial ratesetting purposes for community treatment facility funding, the cost of mental health services shall be determined by deducting the foster care rate and the community treatment facility supplemental rate from the total allowable cost of the community treatment facility program. Payments to certified providers for mental health services shall be based on eligible services provided to children who are Medi-Cal beneficiaries, up to the statewide maximum allowances for these services.

(f) Although there is statutory authorization for up to 400 community treatment facility beds statewide, it is anticipated that there will be a phased-in implementation of community treatment facilities, and that the average monthly community treatment facility caseload, by fiscal year, will be as follows:

(1) During the 2001–02 fiscal year, approximately 100.

(2) During the 2002–03 fiscal year, approximately 140.

(3) During the 2003–04 fiscal year, approximately 175.

(g) The department shall provide the community treatment facility supplemental rates to the counties for advanced payment to the community treatment facility providers in the same manner as the regular foster care payment and within the same required payment time limits.

(h) In order to facilitate a study of the costs of community treatment facilities, licensed community treatment facilities shall provide all documents regarding facility operations, treatment, and placements requested by the department.

(i) It is the intent of the Legislature that the department and the State Department of Social Services work to maximize federal financial participation in funding for children placed in community treatment facilities through funds available pursuant to Titles IV-E and XIX of the federal Social Security Act (Title 42 U.S.C. Sec. 670 and following and Sec. 1396 and following) and other appropriate federal programs.

(j) The department and the State Department of Social Services may adopt emergency regulations necessary to implement joint protocols for the oversight of community treatment facilities, to modify existing licensing regulations governing reporting requirements and other procedural and administrative mandates to take into account the seriousness and frequency of behaviors that are likely to be exhibited by the seriously emotionally disturbed children placed in community treatment facility programs, to modify the existing foster care ratesetting regulations, and to pay the community treatment facility supplemental rate. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 45. Section 4433 of the Welfare and Institutions Code is amended to read:

4433. (a) The Legislature finds and declares all of the following:

(1) The State of California accepts its responsibility to ensure and uphold the rights of persons with developmental disabilities and an obligation to ensure that laws, regulations, and policies on the rights of persons with developmental disabilities are observed and protected.

(2) Persons with developmental disabilities are vulnerable to abuse, neglect, and deprivations of their rights.

(3) Clients' rights advocacy services provided by the regional centers, the advocacy services currently provided by the department at the state hospitals, and the services provided by the department's Office of Human Rights may have conflicts of interest, or the appearance of a conflict of interest.

(4) The services provided to individuals with developmental disabilities and their families are of such a special and unique nature that they cannot satisfactorily be provided by state agencies or regional centers and must be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130 of the Government Code.

(b) (1) To avoid the potential for a conflict of interest or the appearance of a conflict of interest, beginning January 1, 1998, the department shall contract for clients' rights advocacy services. The department shall solicit a single statewide contract with a nonprofit agency that results in at least three responsive bids that meet all of the criteria specified in paragraph (2) to perform the services specified in subdivision (d). If three responsive bids are not received, the department may rebid the contract on a regional basis, not to exceed three regional contracts and one contract for developmental centers and headquarters.

(2) Any contractor selected shall meet the following requirements:

(A) The contractor can demonstrate the capability to provide statewide advocacy services to individuals with developmental disabilities living in developmental centers and in the community.

(B) The contractor does not directly or indirectly provide services to individuals with developmental disabilities, except advocacy services.

(C) The contractor has knowledge of the service system, entitlements, and service rights of persons receiving services from regional centers and in state hospitals.

(D) The contractor can demonstrate the capability of coordinating services with the protection and advocacy agency specified in Division 4.7 (commencing with Section 4900) and the area boards.

(E) The contractor has not provided any services, except advocacy services, to, or been employed by, any regional center or the Association of Regional Center Agencies during the two-year period prior to the effective date of the contract.

(c) For the purposes of this section, the Legislature further finds and declares that because of a potential conflict of interest or the appearance of a conflict of interest, the goals and purposes of the regional center

clients' rights advocacy services, the state hospitals, and the services of the Office of Human Rights, cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system, nor can the services be provided through the department's contracts with regional centers. Accordingly, contracts into which the department enters pursuant to this section are permitted and authorized by paragraphs (3) and (5) of subdivision (b) of Section 19130 of the Government Code.

(d) The contractor shall do all of the following:

(1) Provide clients' rights advocacy services to persons with developmental disabilities who are consumers of regional centers and to individuals who reside in the state developmental centers and hospitals, including ensuring the rights of persons with developmental disabilities, and assisting persons with developmental disabilities in pursuing administrative and legal remedies.

(2) Investigate and take action as appropriate and necessary to resolve complaints from, or concerning persons with, developmental disabilities residing in licensed health and community care facilities regarding abuse, and unreasonable denial, or punitive withholding, of rights guaranteed under this division.

(3) Provide consultation, technical assistance, supervision and training, and support services for clients' rights advocates that were previously the responsibility of the Office of Human Rights.

(4) Coordinate the provision of clients' rights advocacy services in consultation with the department, stakeholder organizations, and persons with developmental disabilities and their families representing California's multicultural diversity.

(5) Provide at least two self-advocacy trainings for consumers and family members.

(e) In order to ensure that individuals with developmental disabilities have access to high quality advocacy services, the contractor shall establish a grievance procedure and shall advise persons receiving services under the contract of the availability of other advocacy services, including the services provided by the protection and advocacy agency specified in Division 4.7 (commencing with Section 4900) and the area boards.

(f) The department shall contract on a multiyear basis for a contract term of up to five years, subject to the annual appropriation of funds by the Legislature.

(g) This section shall not prohibit the department and the regional centers from advocating for the rights, including the right to generic services, of persons with developmental disabilities.

SEC. 46. Section 4512 of the Welfare and Institutions Code is amended to read:

4512. As used in this division:

(a) ''Developmental disability'' means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

(b) ''Services and supports for persons with developmental disabilities'' means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental

disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

(c) Notwithstanding subdivisions (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended ''developmental disability'' and ''services for persons with developmental disabilities'' means the terms as defined in the federal act to the extent required by federal law.

(d) ''Consumer'' means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) ''Natural supports'' means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

(f) ''Circle of support'' means a committed group of community members, who may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. A circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) ''Facilitation'' means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an individual, such as assistance with communications, that will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices that effect his or her life.

(h) ''Family support services'' means services and supports that are provided to a child with developmental disabilities or his or her family and that contribute to the ability of the family to reside together.

(i) ''Voucher'' means any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization that enables the consumer or family member to choose his or her own service provider.

(j) ''Planning team'' means the individual with developmental disabilities, the parents or legally appointed guardian of a minor

consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to Section 4590 and subdivision (e) of Section 4705.

(k) ''Stakeholder organizations'' means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

(*l*) ''Substantial disability'' means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

SEC. 47. Section 4620.2 is added to the Welfare and Institutions Code, to read:

4620.2. (a) The State Department of Developmental Services, after consultation with stakeholder groups, shall develop a system of enrollment fees, copayments, or both, to be assessed against the parents of each child between the ages of three and 17 years who lives in the parent's home and receives services purchased through a regional center. This system shall be submitted to the Legislature on or before April 1, 2004, immediately prior to the fiscal year in which the system is to be implemented, and as a part of the Governor's proposed 2004–05 budget or subsequent legislation.

(b) The department, after consultation with stakeholder groups, shall submit a detailed plan for implementing a parental copayment system for children receiving services purchased through a regional center. This plan shall be submitted to the Legislature by April 1, 2004.

(c) The plan submitted on or before April 1, 2004, pursuant to subdivision (b), and any resources requested in the 2004–05 Governor's

Budget and related authority may be subsequently modified during the legislative review process.

(d) The parental copayment system shall only be applicable to families that have adjusted gross family incomes of over 200 percent of the federal poverty level and that have a child who meets all of the following criteria:

(1) The child is receiving services purchased through a regional center.

(2) The child is living at home.

(3) The child is not otherwise eligible to receive services provided under the Medi-Cal program.

(4) The child is at least three years of age and not more than 17 years of age.

(e) The department's plan shall address, at a minimum all of the following components for the development of a parental copayment system:

(1) Description of the families and children affected, including those families with more than one child as described under subdivision (d).

(2) Privacy issues and potential safeguards regarding the families' income, the children's regional center clinical records, and related matters.

(3) Schedule of parental copayments and any other related assessments, and criteria or service thresholds for which these copayments and assessments are based.

(4) The options for a sliding scale for the schedule of parental copayments based on family income and family size.

(5) Proposed limits on parental cost sharing.

(6) An exemption process for families who are experiencing financial hardships and may need deferral or waiver of any copayments or assessments.

(7) An appeal process for families who may dispute the level of copayment or assessments for which they are billed.

(8) The specific methods and processes to be used by the department, regional centers, or other responsible party, for the collection of all parental copayments and assessments.

(9) Any potentials for the disruption of services to applicable regional center consumers due to the implementation of a parental copayment system.

(10) The estimated amount of revenues to be collected and any applicable assumptions made for making this determination.

(11) Any estimate related to a slowing of the trend in the growth for regional center services due to the implementation of a parental copayment system.

(12) A comparison to how the State Department of Health Services and other state agencies utilize personal information to manage the delivery of benefits and assessment of copayments.

(13) A recommendation on whether the parental copayment system should be centralized at the department or decentralized in the regional centers and the basis for this recommendation.

(14) The estimated cost for implementing a parental copayment system, including any costs associated with consultant contracts, state personnel, revenue collection, computer system processing, regional center operations, or any other cost factor that would need to be included in order to capture all estimated costs for implementation.

(15) The timeframe for which the parental copayment system is to be implemented.

(f) (1) In order for the department to develop a detailed plan for the implementation of a parental copayment system, the department shall collect information from selected families. In order to be cost efficient and prudent regarding the collection of information, the department may conduct a survey of only those families known to have children not eligible for the Medi-Cal program. The survey instrument may only be used for the sole purpose of obtaining information that is deemed necessary for the development of a parental copayment system, including the following:

(A) A family's annual adjusted gross family income.

(B) The number of family members dependent on that income.

(C) The number of children who meet the criteria specified in subdivision (d).

(2) Results of the survey in the aggregate shall be provided to the Legislature as part of the department's plan as required by subdivision (a).

SEC. 48. Section 4631.5 of the Welfare and Institutions Code is amended to read:

4631.5. (a) The Legislature finds and declares both of the following:

(1) The state is facing a fiscal crisis that will require an unallocated reduction in the 2003–04 fiscal year for regional centers' purchase of service budgets of ten million dollars ($10,000,000).

(2) Even when the state faces an unprecedented fiscal crisis, the services and supports set forth in the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)) shall continue to be provided to individuals with developmental disabilities in accordance with state and federal statutes, regulations, and case law, including Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384.

(b) It is the intent of the Legislature that actions taken pursuant to this section shall not eliminate an individual's eligibility, adversely affect an individual's health and safety, or interfere with an individual's rights as described in Section 4502.

(c) In order to ensure that services to eligible consumers are available throughout the fiscal year, regional centers shall administer their contracts within the level of funding appropriated by the annual Budget Act.

(d) Within 30 days of the enactment of the annual Budget Act, and after consultation with stakeholder organizations, the department shall determine the amount of unallocated reduction that each regional center shall make in its purchase-of-service budget and shall provide each regional center with guidelines, technical assistance, and a variety of options for reducing operations and purchase of service costs.

(e) Within 60 days of the enactment of the annual Budget Act, each regional center shall develop and submit a plan to the department describing in detail how it intends to absorb the unallocated reduction and achieve savings necessary to provide services to eligible consumers throughout the fiscal year within the limitations of the funds allocated. Prior to adopting the plan, each regional center shall hold a public hearing in order to receive comment on the plan. The regional center shall provide notice to the community at least 10 days in advance of the public hearing. The regional center shall summarize and respond to the public testimony in its plan.

(f) A regional center shall implement components of its plans upon approval of the department. Within 30 days of receipt of the plan, the department shall review and approve, or require modification of, portions of the regional center's plan.

(g) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 49. Section 4640.6 of the Welfare and Institutions Code is amended to read:

4640.6. (a) In approving regional center contracts, the department shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority.

(b) Contracts between the department and regional centers shall require that regional centers implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency response system shall be operational 24 hours per day, 365 days per year.

(c) Contracts between the department and regional centers shall require regional centers to have service coordinator-to-consumer ratios, as follows:

(1) An average service coordinator-to-consumer ratio of 1 to 62 for all consumers who have not moved from the developmental centers to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.

(2) An average service coordinator-to-consumer ratio of 1 to 45 for all consumers who have moved from a developmental center to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 59 consumers for more than 60 days.

(3) Commencing January 1, 2004, to June 30, 2007, inclusive, the following coordinator-to-consumer ratios shall apply:

(A) All consumers three years of age and younger and for consumers enrolled on the Home and Community-based Services Waiver for persons with developmental disabilities, an average service coordinator-to-consumer ratio of 1 to 62.

(B) All consumers who have moved from a developmental center to the community since April 14, 1993, and have lived continuously in the community for at least 12 months, an average service coordinator-to-consumer ratio of 1 to 62.

(C) All consumers who have not moved from the developmental centers to the community since April 14, 1993, and who are not described in subparagraph (A), an average service coordinator-to-consumer ratio of 1 to 66.

(4) For purposes of paragraph (3), service coordinators may have a mixed caseload of consumers three years of age and younger, consumers enrolled on the Home and Community-based Services Waiver program for persons with developmental disabilities, and other consumers if the overall average caseload is weighted proportionately to ensure that overall regional center average service coordinator-to-consumer ratios as specified in paragraph (3) are met. For purposes of paragraph (3), in no case shall a service coordinator have an assigned caseload in excess of 84 for more than 60 days.

(d) For purposes of this section, ''service coordinator'' means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities.

(e) In order to ensure that caseload ratios are maintained pursuant to this section, each regional center shall provide service coordinator caseload data to the department, annually for each fiscal year. The data

shall be submitted in the format, including the content, prescribed by the department. Within 30 days of receipt of data submitted pursuant to this subdivision, the department shall make a summary of the data available to the public upon request. The department shall verify the accuracy of the data when conducting regional center fiscal audits. Data submitted by regional centers pursuant to this subdivision shall:

(1) Only include data on service coordinator positions as defined in subdivision (d). Regional centers shall identify the number of positions that perform service coordinator duties on less than a full-time basis. Staffing ratios reported pursuant to this subdivision shall reflect the appropriate proportionality of these staff to consumers served.

(2) Be reported separately for service coordinators whose caseload includes any of the following:

(A) Consumers who are three years of age and older and who have not moved from the developmental center to the community since April 14, 1993.

(B) Consumers who have moved from a developmental center to the community since April 14, 1993.

(C) Consumers who are younger than three years of age.

(D) Consumers enrolled in the Home and Community-based Services Waiver program.

(3) Not include positions that are vacant for more than 60 days or new positions established within 60 days of the reporting month that are still vacant.

(f) The department shall provide technical assistance and require a plan of correction for any regional center that, for two consecutive reporting periods, fails to maintain service coordinator caseload ratios required by this section or otherwise demonstrates an inability to maintain appropriate staffing patterns pursuant to this section. Plans of correction shall be developed following input from the local area board, local organizations representing consumers, family members, regional center employees, including recognized labor organizations, and service providers, and other interested parties.

(g) Contracts between the department and regional center shall require the regional center to have, or contract for, all of the following areas:

(1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.

(2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.

(3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.

(4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.

(5) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.

(6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinating the regional center quality assurance efforts.

(7) Each regional center shall employ at least one consumer advocate who is a person with developmental disabilities.

(8) Other staffing arrangements related to the delivery of services that the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

(h) Any regional center proposing a staffing arrangement that substantially deviates from the requirements of this section shall request a waiver from the department. Prior to granting a waiver, the department shall require a detailed staffing proposal, including, but not limited to, how the proposed staffing arrangement will benefit consumers and families served, and shall demonstrate clear and convincing support for the proposed staffing arrangement from constituencies served and impacted, that include, but are not limited to, consumers, families, providers, advocates, and recognized labor organizations. In addition, the regional center shall submit to the department any written opposition to the proposal from organizations or individuals, including, but not limited to, consumers, families, providers, and advocates, including recognized labor organizations. The department may grant waivers to regional centers that sufficiently demonstrate that the proposed staffing arrangement is in the best interest of consumers and families served, complies with the requirements of this chapter, and does not violate any contractual requirements. A waiver shall be approved by the department for up to 12 months, at which time a regional center may submit a new request pursuant to this subdivision.

(i) The requirements of subdivisions (c), (f), and (h) shall not apply when a regional center is required to develop an expenditure plan pursuant to Section 4791, and when the expenditure plan addresses the specific impact of the budget reduction on staffing requirements and the expenditure plan is approved by the department.

(j) (1) Any contract between the department and a regional center entered into on and after January 1, 2003, shall require that all employment contracts entered into with regional center staff or contractors be available to the public for review, upon request. For purposes of this subdivision, an employment contract or portion thereof may not be deemed confidential nor unavailable for public review.

(2) Notwithstanding paragraph (1), the social security number of the contracting party may not be disclosed.

(3) The term of the employment contract between the regional center and an employee or contractor shall not exceed the term of the state's contract with the regional center.

SEC. 50. Section 4643 of the Welfare and Institutions Code is amended to read:

4643. (a) If assessment is needed, prior to July 1, 2004, the assessment shall be performed within 120 days following initial intake. Assessment shall be performed as soon as possible and in no event more than 60 days following initial intake where any delay would expose the client to unnecessary risk to his or her health and safety or to significant further delay in mental or physical development, or the client would be at imminent risk of placement in a more restrictive environment. Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b). On and after July 1, 2004, the assessment shall be performed within 60 days following intake and if unusual circumstances prevent the completion of assessment within 60 days following intake, this assessment period may be extended by one 30-day period with the advance written approval of the department.

(b) In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

SEC. 51. Section 4648.4 is added to the Welfare and Institutions Code, to read:

4648.4. (a) The Legislature finds and declares that the state faces a fiscal crisis requiring that unprecedented measures be taken to reduce General Fund expenditures.

(b) Notwithstanding any other provision of law or regulation, during the 2003–04 fiscal year, no regional center may pay any provider of the following services or supports a rate that is greater than the rate that is

in effect on or after June 30, 2003, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2003, or the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization:

(1) Supported living services.
(2) Transportation, including travel reimbursement.
(3) Socialization training programs.
(4) Behavior intervention training.
(5) Community integration training programs.
(6) Community activities support services.
(7) Mobile day programs.
(8) Creative art programs.
(9) Supplemental day services program supports.
(10) Adaptive skills trainers.
(11) Independent living specialists.

SEC. 52. Section 4681.5 is added to the Welfare and Institutions Code, to read:

4681.5. (a) The Legislature finds and declares that the state faces a fiscal crisis requiring that unprecedented measures be taken to reduce General Fund expenditures.

(b) Notwithstanding any other provision of law or regulation, during the 2003–04 fiscal year, no regional center may approve any service level for a residential service provider, as defined in Section 56005 of Title 17 of the California Code of Regulations, if the approval would result in an increase in the rate to be paid to the provider that is greater than the rate that is in effect on or after June 30, 2003, unless the regional center demonstrates to the department that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization.

SEC. 53. Section 4685.5 of the Welfare and Institutions Code is amended to read:

4685.5. (a) Notwithstanding any other provision of law, commencing January 1, 1999, the department shall conduct a pilot project under which funds shall be allocated for local self-determination pilot programs that will enhance the ability of a consumer and his or her family to control the decisions and resources required to meet all or some of the objectives in his or her individual program plan.

(b) Local self-determination pilot programs funded pursuant to this section may include, but not be limited to, all of the following:

(1) Programs that provide for consumer and family control over which services best meet their needs and the objectives in the individual program plan.

(2) Programs that provide allowances or subsidies to consumers and their families.

(3) Programs providing for the use of debit cards.

(4) Programs that provide for the utilization of parent vendors, direct pay options, individual budgets for the procurement of services and supports, alternative case management, and vouchers.

(5) Wraparound programs.

(c) The department shall allow the continuation of the existing pilot project in five regional center catchment areas and shall expand the pilot project to other regional center catchment areas only when consistent with federal approval of a self-determination waiver. The department may approve additional regional center proposals to offer self-determination or self-directed services to consumers that meet criteria established by the department and that demonstrate purchase-of-services savings are achieved in the aggregate and have no impact on the General Fund.

(d) Funds allocated to implement this section may be used for administrative and evaluation costs. Purchase-of-services costs shall be based on the estimated annual service costs associated with each participating consumer and family. Each proposal shall include a budget outlining administrative, service, and evaluation components.

(e) Pilot projects shall be conducted in the following regional center catchment areas:

(1) Tri-Counties Regional Center.

(2) Eastern Los Angeles Regional Center.

(3) Redwood Coast Regional Center.

(4) Kern Regional Center.

(5) San Diego Regional Center.

(f) Each pilot operating area receiving funding under this section shall demonstrate joint regional center and area board support for the local self-determination pilot program, and shall establish a local advisory committee, appointed jointly by the regional center and area board, made up of consumers, family members, advocates, and community leaders and that shall reflect the multicultural diversity and geographic profile of the catchment area. The local advisory committee shall review the development and ongoing progress of the local self-determination pilot program and may make ongoing recommendations for improvement to the regional center.

SEC. 54. Section 4691.6 is added to the Welfare and Institutions Code, to read:

4691.6. (a) The Legislature finds and declares that the state faces a fiscal crisis requiring that unprecedented measures be taken to reduce General Fund expenditures.

(b) Notwithstanding any other provision of law or regulation, during the 2003–04 fiscal year, the department may not establish any permanent payment rate for a community-based day program or in-home respite service agency provider that has a temporary payment rate in effect on June 30, 2003, if the permanent payment rate would be greater than the temporary payment rate in effect on or after June 30, 2003, unless the regional center demonstrates to the department that the permanent payment rate is necessary to protect the consumers' health or safety.

(c) Notwithstanding any other provision of law or regulation, during the 2003–04 fiscal year, neither the department nor any regional center may approve any program design modification or revendorization for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2003, unless the regional center demonstrates that the program design modification or revendorization is necessary to protect the consumers' health or safety and the department has granted prior written authorization.

(d) Notwithstanding any other provision of law or regulation, during the 2003–04 fiscal year, the department may not approve an anticipated rate adjusted for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2003, unless the regional center demonstrates that the anticipated rate adjustment is necessary to protect the consumers' health or safety.

SEC. 55. Section 4781.5 of the Welfare and Institutions Code is amended to read:

4781.5. For the 2002–03 and 2003–04 fiscal years only, a regional center may not expend any purchase of service funds for the startup of any new program unless the expenditure is necessary to protect the consumer's health or safety or because of other extraordinary circumstances, and the department has granted prior written authorization for the expenditure. This provision shall not apply to any of the following:

(a) The purchase of services funds allocated as part of the department's community placement plan process.

(b) Expenditures for the startup of new programs made pursuant to a contract entered into before July 1, 2002.

SEC. 56. Section 5775 of the Welfare and Institutions Code is amended to read:

5775. (a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement managed mental health care for Medi-Cal beneficiaries through fee-for-service or capitated rate contracts with mental health plans, including individual counties, counties acting jointly, any qualified individual or

organization, or a nongovernmental entity. A contract may be exclusive and may be awarded on a geographic basis.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of mental health services. The agreement may encompass all or any portion of the mental health services provided pursuant to this part. This agreement shall not relieve the individual counties of financial responsibility for providing these services. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall offer to contract with each county for the delivery of mental health services to that county's Medi-Cal beneficiary population prior to offering to contract with any other entity, upon terms at least as favorable as any offered to a noncounty contract provider. If a county elects not to contract with the department, does not renew its contract, or does not meet the minimum standards set by the department, the department may elect to contract with any other governmental or nongovernmental entity for the delivery of mental health services in that county and may administer the delivery of mental health services until a contract for a mental health plan is implemented. The county may not subsequently contract to provide mental health services under this part unless the department elects to contract with the county.

(d) If a county does not contract with the department to provide mental health services, the county shall transfer the responsibility for community Medi-Cal reimbursable mental health services and the anticipated county matching funds needed for community Medi-Cal mental health services in that county to the department. The amount of the anticipated county matching funds shall be determined by the department in consultation with the county, and shall be adjusted annually. The amount transferred shall be based on historical cost, adjusted for changes in the number of Medi-Cal beneficiaries and other relevant factors. The anticipated county matching funds shall be used by the department to contract with another entity for mental health services, and shall not be expended for any other purpose but the provision of those services and related administrative costs. The county shall continue to deliver non-Medi-Cal reimbursable mental health services in accordance with this division, and subject to subdivision (i) of Section 5777.

(e) Whenever the department determines that a mental health plan has failed to comply with this part or any regulations adopted pursuant to this part that implement this part, the department may impose sanctions, including, but not limited to, fines, penalties, the withholding of payments, special requirements, probationary or corrective actions, or any other actions deemed necessary to prompt and ensure contract and performance compliance. If fines are imposed by the department, they

may be withheld from the state matching funds provided to a mental health plan for Medi-Cal mental health services.

(f) Notwithstanding any other provision of law, emergency regulations adopted pursuant to Section 14680 to implement the second phase of mental health managed care as provided in this part shall remain in effect until July 1, 2004, or until the regulations are made permanent, whichever occurs first, and shall not be subject to subdivision (g) of Section 11346.1 of the Government Code until that time.

(g) The department may adopt emergency regulations necessary to implement Part 438 (commencing with Section 438.1) of Subpart A of Subchapter C of Chapter IV of Title 42 of the Code of Federal Regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations to implement this part, that are filed with the Office of Administrative Law within one year of the date on which the act that amended this subdivision in 2003 took effect, 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 remain in effect for no more than 180 days.

SEC. 56.5. Section 14005.81 of the Welfare and Institutions Code is amended to read:

14005.81. (a) Effective October 1, 1998, in addition to the two six-month periods of transitional Medi-Cal benefits provided in Section 14005.8, the state shall fund and provide one additional 12-month period of transitional Medi-Cal to persons age 19 years and older who have received 12 months of transitional Medi-Cal under Section 14005.8 and who continue to meet the requirements applicable to the additional six-month extension period provided for in Section 14005.8, except that once a beneficiary has been determined eligible for an additional 12 months of Medi-Cal benefits under this section, the beneficiary shall not be required to submit the status reports imposed by federal law. The benefits provided under this section shall commence on the day following the last day of receipt of benefits under Section 14005.8.

(b) In the case of an alien who has received 12 months of transitional Medi-Cal under Section 14005.8, the benefits provided under this section shall be limited to those benefits that would be available to that person under Section 14005.8.

(c) It is the intent of the Legislature that the department seek a mechanism for securing federal financial participation in connection with pregnancy-related benefits provided under this section.

(d) The benefits described in this section shall become unavailable on October 1, 2003. Individuals who are receiving benefits under this section on September 30, 2003, shall be given notice and the eligibility of that person shall be redetermined. The department shall implement

this subdivision by means of all-county letters or similar instructions without the need for adoption of regulations.

(e) This section shall become inoperative on October 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. 57. Section 14011.7 of the Welfare and Institutions Code is amended to read:

14011.7. (a) To the extent allowed under federal law and only if federal financial participation is available, the department shall exercise the option provided in Section 1396r-1a of Title 42 of the United States Code and the Managed Risk Medical Insurance Board shall exercise the option provided in Section 1397gg(e)(1)(D) of Title 42 of the United States Code to implement a program for preenrollment of children into the Medi-Cal program or the Healthy Families Program. Upon the exercise of both of the federal options described in this subdivision, the department shall implement and administer a program of preenrollment of children into the Medi-Cal program or the Healthy Families Program.

(b) (1) Before July 1, 2003, the department shall develop an electronic application to serve as the application for preenrollment into the Medi-Cal program or the Healthy Families Program and to also serve as an application for the Child Health and Disability Prevention (CHDP) program, to the extent allowed under federal law.

(2) The department may, at its option, also use the electronic application developed pursuant to paragraph (1), as a means to enroll newborns into the Medi-Cal program as is authorized under Section 1396a(e)(4) of Title 42 of the United States Code.

(c) (1) The department may designate, as necessary, those CHDP program providers described in paragraphs (1) to (5), inclusive, of subdivision (g) of Section 124030 of the Health and Safety Code as qualified entities who are authorized to determine eligibility for the CHDP program and for preenrollment into either the Medi-Cal program or the Healthy Families Program as authorized under this section.

(2) The CHDP provider shall assist the parent or guardian of the child seeking eligibility for the CHDP program and for preenrollment into the Medi-Cal program or the Healthy Families Program in completing the electronic application.

(d) The electronic application developed pursuant to subdivision (b) may only be filed through the CHDP program when the child is in need of CHDP program services in accordance with the periodicity schedule used by the CHDP program.

(e) (1) The electronic application developed pursuant to subdivision (b) shall request all information necessary for a CHDP provider to make an immediate determination as to whether a child meets the eligibility

requirements for CHDP and for preenrollment into either the Medi-Cal program or the Healthy Families Program pursuant to the federal options described in Section 1396r-1a or 1397gg(e)(1)(D) of Title 42 of the United States Code.

(2) (A) If the electronic application indicates that the child is seeking eligibility for either no cost full-scope Medi-Cal benefits or enrollment in the Healthy Families Program, the department shall mail to the child's parent or guardian a followup application for Medi-Cal program eligibility or enrollment in the Healthy Families Program. The parent or guardian of the child shall be advised to complete and submit to the appropriate entity the followup application.

(B) The followup application, at a minimum, shall include all notices and forms necessary for both a Medi-Cal program and a Healthy Families Program eligibility determination under state and federal law, including, but not limited to, any information and documentation that is required for the joint application package described in Section 14011.1.

(C) The date of application for the Medi-Cal program or the Healthy Families Program is the date the completed followup application is submitted with the appropriate entity by the parent or guardian.

(3) Upon making a determination pursuant to paragraph (1) that a child is eligible, the CHDP provider shall inform the child's parent or guardian of both of the following:

(A) That the child has been determined to be eligible for services under the CHDP program and, if applicable, eligible for preenrollment into either the Medi-Cal program or the Healthy Families Program.

(B) That if the child has been determined to be eligible for preenrollment into either the Medi-Cal program or the Healthy Families Program, the period of preenrollment eligibility will end on the last day of the month following the month in which the determination of preenrollment eligibility is made, unless the parent or guardian completes and returns to the appropriate entity the followup application described in paragraph (2) on or before that date.

(4) If the followup application described in paragraph (2) is submitted on or before the last day of the month following the month in which a determination is made that the child is eligible for preenrollment into either the Medi-Cal program or the Healthy Families Program, the period of preenrollment eligibility shall continue until the completion of the determination process for the applicable program or programs.

(f) The scope and delivery of benefits provided to a child who is preenrolled for the Healthy Families Program pursuant to this section shall be identical to the scope and delivery of benefits received by a child who is preenrolled for the Medi-Cal program pursuant to this section.

(g) The department and the Managed Risk Medical Insurance Board shall seek approval of any amendments to the state plan, necessary to

implement this section, for purposes of funding under Title XIX (42 U.S.C. 1396 et seq.) and Title XXI (42 U.S.C. 1397aa et seq.) of the Social Security Act. Notwithstanding any other provision of law and only when all necessary federal approvals have been obtained, this section shall be implemented only to the extent federal financial participation is available.

(h) Upon the implementation of this section, this section shall control in the event of a conflict with any provision of Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code governing the Child Health and Disability Prevention program.

(i) To implement this section, the department may contract with public or private entities, or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary, only if services provided under the program are specifically identified and reimbursed in a manner that appropriately claims federal financial reimbursement. Contracts, including the Medi-Cal fiscal intermediary contract for the Child Health and Disability Prevention Program, including any contract amendment, any system change pursuant to a change order, and any project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Chapter 7 (commencing with Section 11700) of Part 1 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, and any policies, procedures, or regulations authorized by these laws.

(j) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of all-county letters or similar instructions, without taking any further regulatory action. Thereafter, the department shall adopt regulations, as necessary, to implement this section in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) Notwithstanding subdivision (g), in no event shall this section be implemented before April 1, 2003.

SEC. 58. Section 14019.3 of the Welfare and Institutions Code is amended to read:

14019.3. (a) A beneficiary or any person on behalf of a beneficiary who has paid for medically necessary health care services, otherwise covered by the Medi-Cal program, received by the beneficiary shall be entitled to a return from a provider or directly from the department of any part of the payment that meets all of the following:

(1) Was rendered during the 90-day period prior to application for, his or her Medi-Cal card, or after application for but prior to the issuance of,

his or her Medi-Cal card, for which the card authorizes payment under Section 14018 or 14019, or was charged to the beneficiary as excess copayment during the period after issuance of his or her Medi-Cal card.

(2) Is not payable by a third party under contractual or other legal entitlement.

(3) Was not used to satisfy his or her paid or obligated liability for health care services or to establish eligibility.

(b) To the extent permitted by federal law, whether or not a facility actually evicts a beneficiary, a beneficiary who may validly be evicted pursuant to Section 1439.7 of the Health and Safety Code, and who has received and paid for health care services otherwise covered by the Medi-Cal program shall not be entitled to the return from a provider of any part of the payment for which service was rendered during any period prior to the date upon which knowledge is acquired by a provider of the application of a beneficiary for Medi-Cal or the date of application for Medi-Cal, whichever is later.

(c) Upon presentation of the Medi-Cal card or other proof of eligibility, a provider shall submit a Medi-Cal claim for reimbursement, subject to the rules and regulations of the Medi-Cal program.

(d) Notwithstanding subdivision (c), payment received from the state in accordance with Medi-Cal fee structures shall constitute payment in full, except that a provider, after making a full refund to the department of any Medi-Cal payments received for services, may recover all provider fees to the extent that any other contractual entitlement, including, but not limited to, a private group or indemnification insurance program, is obligated to pay the charges for the care provided a beneficiary.

(e) A provider shall return any and all payments made by a beneficiary, or any person on behalf of a beneficiary, other than a third party obligated to pay charges by reason of a beneficiary's other contractual or legal entitlement for Medi-Cal program covered services upon receipt of Medi-Cal payment.

(f) To the extent permitted by federal law, the department shall waive overpayments made to a pharmacy provider that would otherwise be reimbursable to the department for prescription drugs returned to a pharmacy provider from a nursing facility upon discontinuation of the drug therapy or death of a beneficiary.

(g) The department shall ensure payment to a beneficiary from a provider. A provider shall be notified in writing by the department when a beneficiary has submitted a claim to the department for reimbursement of services provided during the periods specified in paragraph (1) of subdivision (a). If a provider is not currently enrolled in the Medi-Cal program, the department shall assist in that enrollment. Enrollment in

the Medi-Cal program may be made retroactive to the date the service was rendered.

(h) If a provider fails or refuses to reimburse a beneficiary for services provided during the periods specified in paragraph (1) of subdivision (a), within 90 days of receipt by the department of a written request by a beneficiary or a representative of a beneficiary, the department may take enforcement action that may include, but shall not be limited to, any or all of the following:

(1) Withholding of future provider payments.

(2) Suspension of a provider from participation in the Medi-Cal program.

(3) Recoupment of funds from a provider.

(i) If a provider fails or refuses to reimburse a beneficiary within 90 days after receipt by the department of a written request from a beneficiary or a representative of a beneficiary, the department shall directly reimburse a beneficiary for medically necessary health care expenses incurred during the periods specified in paragraph (1) of subdivision (a). The department shall reimburse a beneficiary only to the extent that federal financial participation is available and only when the claim meets all of the following criteria:

(1) The service was a covered benefit under the Medi-Cal program.

(2) The provider was an enrolled Medi-Cal provider at the time the service was rendered.

(3) The service was ordered by a health care provider, within the scope of his or her practice.

(4) The beneficiary is eligible for reimbursement, as specified in subdivision (a).

(5) The reimbursement shall be the amount paid by the beneficiary, not to exceed the rate established for that service under the Medi-Cal program.

(j) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, this section may be implemented with a provider bulletin or similar notification, without any further regulatory action.

SEC. 59. Section 14044 is added to the Welfare and Institutions Code, to read:

14044. (a) The department may limit, for 18 months or less, the American Medical Association's Current Procedural Terminology Fourth Edition (CPT-4) codes, the National Drug Codes (NDC), the Healthcare Common Procedure Coding System (HCPCS) codes, or codes established under Title II of the Health Insurance Portability & Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.) for which any provider may bill, or for which reimbursement to any person or entity may be made by, the Medi-Cal program or other health care programs

administered by the department if either of the following conditions exist:

(1) The department determines, by audit or other investigation, that excessive services or billings, or abuse, has occurred.

(2) The Medical Board of California or other licensing authority or a court of competent jurisdiction limits a licensee's practice of medicine or the rendering of health care, and the limitation precludes the licensee from performing services that could otherwise be reimbursed by the Medi-Cal program or other health care programs administered by the department.

(b) The department may impose a limitation pursuant to subdivision (a) for one or more codes or any combination of codes after giving the provider notice of the proposed limitation and, if applicable, the opportunity to appeal pursuant to subdivision (c).

(c) (1) A provider who receives notice of a proposed limitation based on paragraph (1) of subdivision (a) shall have 45 days from the date of notice to appeal the limitation by providing to the department reliable evidence that excessive services or billings, or abuse, did not occur.

(2) The department shall review the evidence and issue a decision within 45 days of receipt of the evidence.

(d) If a limitation is imposed pursuant to paragraph (1) of subdivision (a), it shall take effect on the 46th day after notice of the proposed limitation was given or, if the limitation is timely appealed, 15 days after the department gives the provider notice of its decision to impose the limitation. If a limitation is imposed pursuant to paragraph (2) of subdivision (a), it shall take effect 15 days after notice of the proposed limitation was given.

(e) If the department's limitation could interfere with the provider's or other prescriber's ability to provide health care services to a beneficiary, the burden to transfer a patient's care to another qualified person shall remain the responsibility of the licensee.

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

(1) ''Abuse'' has the same meaning as defined in Section 14043.1.

(2) ''Administered by the department'' means administered by the department or its agents or contractors.

(3) ''Excessive services or billings'' means an amount that is above normal within the provider or health care community based on the data available to the department from any source, including the department.

(4) ''Licensee'' means a person licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(5) ''Other prescriber'' means that person who is not the primary or attending physician for a patient who is a beneficiary of the Medi-Cal program or other health care program administered by the department, and that person causes the department, or its agents or contractors, to

provide reimbursement for a drug, device, medical service, or supply to the beneficiary.

(6) ''Provider'' has the same meaning as defined in Section 14043.1.

SEC. 60. Section 14087.101 is added to the Welfare and Institutions Code, to read:

14087.101. For administrative costs incurred after January 1, 2004, the director may recover any administrative costs incurred by a health plan authorized by this article deemed excessive pursuant to Section 1300.78 of Title 28 of the California Code of Regulations. Health plans that compensate their subcontractors on a capitated basis shall comply with Section 1300.78 of Title 28 of the California Code of Regulations, regarding administrative costs, considering the combined administrative cost for the Medi-Cal business of the health plan and its capitated subcontractors, that are Knox-Keene licensed health care service plans. The recovery of excess administrative cost shall be made in accordance with Sections 14087.103 and 14087.105.

SEC. 61. Section 14087.103 is added to the Welfare and Institutions Code, to read:

14087.103. The department shall notify the health plan of the director's decision to seek recovery of excess administrative costs pursuant to Section 14087.101 at least 30 days prior to initiating the recovery process. The department may recover excess administrative costs immediately after the 30-day notification period, if the health plan does not file an appeal. A health plan may dispute or appeal the director's decision in accordance with the disputes section of the health plan's contract with the department for services under this article. If a health plan elects to dispute or appeal the director's decision, the director may recover any administrative costs deemed excessive, but only after the health plan has had the opportunity to exhaust all appeal procedures provided for in the disputes section of the health plan's contract with the department.

SEC. 62. Section 14087.105 is added to the Welfare and Institutions Code, to read:

14087.105. When it has been determined that the director may recover any administrative costs deemed excessive pursuant to Section 14087.103, the director may recover any excess administrative costs through an offset against any amount currently due to the health plan under this chapter. The director may also recover any administrative costs deemed excessive by means of a repayment agreement executed between that health plan and the director, and by any other means available at law.

SEC. 62.4. Section 14105.06 is added to the Welfare and Institutions Code, to read:

14105.06. (a) Notwithstanding Section 14105 and any other provision of law, the Medi-Cal reimbursement rates in effect on August 1, 2003, shall remain in effect through July 31, 2005, for the following providers:

(1) Freestanding nursing facilities licensed as any of the following:

(A) A skilled nursing facility pursuant to subdivision (c) of Section 1250 of the Health and Safety Code.

(B) An intermediate care facility pursuant to subdivision (d) of Section 1250 of the Health and Safety Code.

(C) An intermediate care facility for the developmentally disabled pursuant to subdivision (e), (g), or (h) of Section 1250 of the Health and Safety Code.

(2) A skilled nursing facility that is a distinct part of a general acute care hospital. For purposes of this paragraph, ''distinct part'' shall have the same meaning as defined in Section 72041 of Title 22 of the California Code of Regulations.

(3) A subacute care program, as described in Section 14132.25 or subacute care unit, as described in Sections 51215.5 and 51215.8 of Title 22 of the California Code of Regulations.

(4) An adult day health care center.

(b) (1) The director may adopt regulations as are necessary to implement subdivision (a). These regulations shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of this section, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

(2) As an alternative to paragraph (1), and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article by means of a provider bulletin, or similar instructions, without taking regulatory action.

(c) The director shall implement subdivision (a) in a manner that is consistent with federal medicaid law and regulations. The director shall seek any necessary federal approvals for the implementation of this section. This section shall be implemented only to the extent that federal approval is obtained.

SEC. 62.5. Section 14105.19 is added to the Welfare and Institutions Code, to read:

14105.19. (a) Due to the significant state budget deficit projected for the 2003–04 fiscal year, and in order to implement changes in the level of funding for health care services, the Director of Health Services shall reduce provider payments as specified in this section.

(b) (1) Payments shall be reduced by 5 percent for Medi-Cal program services for dates of service on and after January 1, 2004.

(2) Payments shall be reduced by 5 percent for non-Medi-Cal programs described in Section 14105.18, for dates of service on and after January 1, 2004.

(3) The payments made to managed health care plans shall be reduced by the actuarial equivalent amount of 5 percent at the time of the plan's next rate determination.

(4) Reductions to payments for durable medical equipment shall be made at the discretion of the director. If any reduction is made pursuant to this paragraph, the reduction may not exceed 5 percent.

(c) The services listed below shall be exempt from the payment reductions specified in subdivision (b):

(1) Acute hospital inpatient services.

(2) Federally qualified health clinic services.

(3) Rural health clinic services.

(4) Outpatient services billed by a hospital.

(5) Payments to state hospitals or developmental centers.

(6) Payments to long-term care facilities as defined by the department, including, but not limited to, freestanding nursing facilities, distinct-part nursing facilities, intermediate care facilities for developmentally disabled individuals, subacute care units of skilled nursing facilities, rural swing beds, ventilator weaning services, special treatment program services, adult day health care centers, and hospice room and board services.

(7) Clinical laboratory or laboratory services as defined in Section 51137.2 of Title 22 of the California Code of Regulations.

(8) Contract services as designated by the Director of Health Services pursuant to subdivision (e).

(9) Supplemental reimbursement provided pursuant to Sections 14105.27, 14105.95, and 14105.96.

(d) Subject to the exception for services listed in subdivision (c), the payment reductions required by subdivision (b) shall apply to the services rendered by any provider who may be authorized to bill for the service, including, but not limited to, physicians, podiatrists, nurse practitioners, certified nurse midwives, nurse anesthetists, and organized outpatient clinics.

(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of provider bulletin, or similar instruction, without taking regulatory action.

(f) The department shall promptly seek all necessary federal approvals in order to implement this section, including necessary amendments to the state plan.

(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.

SEC. 63. Section 14105.21 is added to the Welfare and Institutions Code, to read:

14105.21. (a) An assistive device and sickroom supply dealer may not bill the Medi-Cal program for prosthetic and orthotic appliances.

(b) A pharmacy may not bill the Medi-Cal program for prosthetic or orthotic appliances, unless the pharmacy is certified by the National Community Pharmacists Association and only for prosthetic and orthotic appliances that have been identified pursuant to subdivision (c) or otherwise approved by the department.

(c) The department shall establish a list of covered services and maximum allowable reimbursement rates, subject to Section 14107.7, for prosthetic and orthotic appliances, and the list shall be published in provider manuals.

(d) Reimbursement for prosthetic and orthotic appliances, as defined in Section 51160 of Title 22 of the California Code of Regulations, may not exceed 80 percent of the lowest maximum allowance for California established by the federal Medicare program for the same or similar services.

(e) The department shall repeal Section 51515 of Title 22 of the California Code of Regulations, as it read on the effective date of the act adding this section.

(f) The department may implement this section by provider manual or bulletin. Notwithstanding the provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, actions under this section shall not be subject to the rulemaking provisions of the Administrative Procedure Act or to the review and approval of the Office of Administrative Law.

SEC. 64. Section 14105.22 is added to the Welfare and Institutions Code, to read:

14105.22. Reimbursement for clinical laboratory or laboratory services, as defined in Section 51137.2 of Title 22 of the California Code of Regulations, may not exceed 80 percent of the lowest maximum allowance established by the federal Medicare program for the same or similar services.

SEC. 65. Section 14105.37 of the Welfare and Institutions Code is amended to read:

14105.37. (a) The department shall notify each manufacturer of drugs in therapeutic categories selected pursuant to Section 14105.33 of the provisions of Sections 14105.31 to 14105.42, inclusive.

(b) If, within 30 days of notification, a manufacturer does not enter into negotiations for a contract pursuant to those sections, the department may suspend or delete from the list of contract drugs, or refuse to consider for addition, drugs of that manufacturer in the selected therapeutic categories.

(c) If, after 120 days from the initial notification, a contract is not executed for a drug currently on the list of contract drugs, the department may suspend or delete the drug from the list of contract drugs.

(d) If, within 120 days from the initial notification, a contract is executed for a drug currently on the list of contract drugs, the department shall retain the drug on the list of contract drugs.

(e) If, within 120 days from the date of the initial notification, a contract is executed for a drug not currently on the list of contract drugs, the department shall add the drug to the list of contract drugs.

(f) The department shall terminate all negotiations 120 days after the initial notification.

(g) The department may suspend or delete any drug from the list of contract drugs at the expiration of the contract term or when the contract between the department and the manufacturer of that drug is terminated.

(h) In the absence of a contract, the department may suspend or delete any drug from the list of contract drugs.

(i) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 shall be subject to prior authorization, as if that drug were not on the list of contract drugs.

(j) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 may be deleted from the list of contract drugs in accordance with Section 14105.38.

SEC. 66. Section 14105.395 is added to the Welfare and Institutions Code, to read:

14105.395. (a) The department may implement utilization controls through the establishment of guidelines, protocols, algorithms, or criteria for drugs, medical supplies, durable medical equipment, and enteral formulae. The department shall publish the guidelines, protocols, algorithms, or criteria in the pharmacy and medical provider manuals.

(b) The department shall issue providers written notice of changes pursuant to subdivision (a) at least 30 days prior to implementation.

(c) Changes made pursuant to this section are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law. The department shall consult with interested parties and appropriate

stakeholders in implementing this section with respect to all of the following:

(1) Notifying the provider representatives of the proposed change.

(2) Scheduling at least one meeting to discuss the change.

(3) Allowing for written input regarding the change.

(4) Providing advance notice on the implementation and effective date of the change.

SEC. 67. Section 14105.48 is added to the Welfare and Institutions Code, to read:

14105.48. (a) The department shall establish a list of covered services and maximum allowable reimbursement rates for durable medical equipment as defined in Section 51160 of Title 22 of the California Code of Regulations and the list shall be published in provider manuals. The list shall specify utilization controls to be applied to each type of durable medical equipment.

(b) Reimbursement for durable medical equipment, except wheelchairs and wheelchair accessories, shall be the lesser of (1) the amount billed pursuant to Section 51008.1 of Title 22 of the California Code of Regulations, or (2) an amount that does not exceed 80 percent of the lowest maximum allowance for California established by the federal Medicare program for the same or similar item or service, or (3) the guaranteed acquisition cost negotiated by means of the contracting process provided for pursuant to Section 14105.3 plus a percentage markup to be established by the department.

(c) Reimbursement for wheelchairs and wheelchair accessories shall be the lesser of (1) the amount billed pursuant to Section 51008.1 of Title 22 of the California Code of Regulations, or (2) an amount that does not exceed 100 percent of the lowest maximum allowance for California established by the federal Medicare program for the same or similar item or service, or (3) the guaranteed acquisition cost negotiated by means of the contracting process provided for pursuant to Section 14105.3 plus a percentage markup to be established by the department.

(d) Reimbursement for all durable medical equipment billed to the Medi-Cal program utilizing codes with no specified maximum allowable rate shall be the lesser of (1) the amount billed pursuant to Section 51008.1 of Title 22 of the California Code of Regulations, or (2) the guaranteed acquisition cost negotiated by means of the contracting process provided for pursuant to Section 14105.3 plus a percentage markup to be established by the department, or (3) the actual acquisition cost plus a markup to be established by the department, or (4) 80 percent of the manufacturer's suggested retail purchase price, or (5) a price established through targeted product-specific cost containment provisions developed with providers.

(e) Reimbursement for all durable medical equipment supplies and accessories billed to the Medi-Cal program shall be the lesser of (1) the amount billed pursuant to Section 51008.1 of Title 22 of the California Code of Regulations, or (2) the acquisition cost plus a 23 percent markup.

(f) Any regulation in Division 3 of Title 22 of the California Code of Regulations that contains provisions for reimbursement rates for durable medical equipment shall be amended or repealed effective for dates of service on or after the date of the act adding this section.

(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, actions under this section shall not be subject to the Administrative Procedure Act or to the review and approval of the Office of Administrative Law.

(h) The department shall consult with interested parties and appropriate stakeholders in implementing this section with respect to all of the following:

(1) Notifying the provider representatives of the proposed change.

(2) Scheduling at least one meeting to discuss the change.

(3) Allowing for written input regarding the change.

(4) Providing advance notice on the implementation and effective date of the change.

SEC. 67.4. Section 14105.49 is added to the Welfare and Institutions Code, to read:

14105.49. (a) (1) The department shall establish a list of hearing aids and hearing aid accessories and determine the maximum allowable product cost for each hearing aid product provided as a benefit under the Medi-Cal program.

(2) The list established pursuant to paragraph (1) shall be published in provider manuals. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code), actions of the department under this section shall not be subject to the Administrative Procedure Act or to the review and approval of the Office of Administrative Law.

(b) The maximum reimbursement rate for hearing aids and hearing aid accessories may not exceed the lesser of the following:

(1) The billed amount.

(2) The cost of the item, plus a percentage markup as determined by the department.

(3) The rate established by the department's contracting program.

SEC. 67.5. Section 14105.51 is added to the Welfare and Institutions Code, to read:

14105.51. (a) The department shall establish ''capped rental'' reimbursement for specific items of durable medical equipment. Items

in this category shall be reimbursed on a monthly rental basis not to exceed a period of continuous use of 10 months. After 10 months of rental have been paid, the provider shall continue to provide the item without charge, except for maintenance and servicing fees, until the medical necessity ends or Medi-Cal coverage ceases. Monthly reimbursement for the rental of these specific items of durable medical equipment may not exceed 80 percent of the lowest maximum allowance for California established by the federal Medicare program for the same or similar item or service.

(b) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, actions under subdivision (a) shall not be subject to the rulemaking provisions of the Administrative Procedure Act or to the review and approval of the Office of Administrative Law.

(c) The department shall consult with interested parties and appropriate stakeholders in determining which items will be subject to capped rental, including doing all of the following:

(1) Notifying provider representatives of the items that will be subject to capped rental.

(2) Scheduling at least one meeting to discuss the items.

(3) Allowing for written input regarding the items.

(4) Providing advance notice of the effective date on and after which the items will be subject to capped rental.

SEC. 68. Section 14105.86 is added to the Welfare and Institutions Code, to read:

14105.86. (a) For the purposes of this section, the following definitions apply:

(1) (A) ''Average selling price'' means the average unit price charged by the manufacturer to wholesalers for drugs distributed to the retail pharmacy class of trade, including sales to wholesalers, pharmacies, physician offices, home health care providers, nursing homes, pharmacy benefit managers, and distributors.

(B) ''Average selling price'' excludes direct sales to hospitals, health maintenance organizations, and wholesalers or distributors when the drug is relabeled under the wholesaler's or distributor's national drug code number. It also excludes prices charged to the Indian Health Service, the Department of Veterans Affairs, a state veteran's home receiving funds under Subchapter V (commencing with Section 1741) of Title 38 of the United States Code, the Department of Defense, the Public Health Service, or a covered entity described in Section 340B(a)(4) of the United States Public Health Service Act, any price charged under the federal Supply Schedule of the General Services Administration, any prices used under a state pharmaceutical assistance

program, or any depot prices and single award contract prices, as defined by the secretary of any agency of the state or federal government.

(2) ''Blood factors'' means plasma protein therapies and their recombinant analogs. Blood factors include, but are not limited to, all of the following:

(A) Coagulation factors, including:

(i) Factor VIII, nonrecombinant.

(ii) Factor VIII, porcine.

(iii) Factor VIII, recombinant.

(iv) Factor IX, nonrecombinant.

(v) Factor IX, complex.

(vi) Factor IX, recombinant.

(vii) Antithrombin III.

(viii) Anti-inhibitor factor.

(ix) Von Willebrand factor.

(B) Immune Globulin Intravenous.

(C) Alpha-1 Proteinase Inhibitor.

(b) The reimbursement for blood factors shall be by national drug code number and shall not exceed 120 percent of the average selling price of the preceding quarter.

(c) The average selling price for blood factors of manufacturers or distributors that do not report an average selling price pursuant to subdivision (a) shall be identical to the average manufacturer's price that the manufacturer or distributor reports to the federal United States Centers for Medicare and Medicaid Services. The reporting of an average selling price that does not meet the requirement of this subdivision shall result in that blood factor no longer being considered a covered benefit. This reporting shall be done on the national drug code level.

(d) The average selling price shall be based on the criteria in subdivision (a) and reported to the department on a quarterly basis.

(e) Changes made to the list of covered blood factors under this or any other section shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

SEC. 68.5. Section 14110.65 of the Welfare and Institutions Code is amended to read:

14110.65. (a) (1) The department shall, upon federal approval of a federal Medicaid State Plan amendment authorizing federal financial participation, provide a supplemental rate adjustment to the Medi-Cal reimbursement rate for specific nursing facilities, intermediate care

facilities/developmentally disabled, intermediate care facilities/developmentally disabled-habilitative, intermediate care facilities/developmentally disabled-nursing, and pediatric subacute units that have a collectively bargained contract or a comparable, legally binding, written commitment to increase salaries, wages, or benefits for nonmanagerial, nonadministrative, noncontract staff. It is the intent of this section to make this supplemental rate adjustment available to both facilities with collective bargaining agreements and facilities without collective bargaining agreements that meet the requirements of this section. The supplemental rate adjustment shall be sufficient to fund the Medi-Cal portion of each facility's commitment that exceeds the labor cost adjustment for the covered employees that is already included in the Medi-Cal base reimbursement rate. Starting on the date of federal approval of the Medicaid State Plan amendment and at the start of each rate year thereafter, the supplemental rate adjustments made pursuant to this section shall occur for the commitments that increase salaries, wages, or benefits during the rate year as compared to the salaries, wages, or benefits paid in the preceding year. These supplemental rate adjustments shall be subject to certification of the availability of funds by the Department of Finance on May 15 of each year for the following fiscal year, and subject to the extent funds are appropriated for this purpose in the annual Budget Act. Authorization for the supplemental rate adjustments shall terminate on the date of implementation by the department of a Medi-Cal reimbursement system that uses facility-specific rates for nonhospital-based nursing facilities covered by this section.

(2) For a specific facility to be eligible for the supplemental rate adjustment, the facility shall submit the following to the department:

(A) Proof of a legally binding, written commitment to increase the salaries, wages, or benefits of existing and newly hired employees, excluding managers, administrators, and contract employees, during the rate year.

(B) Proof of the existence of a method of enforcement of the commitment, such as arbitration, that is available to the employees or their representative, and all of the following apply.

(i) It is expeditious.

(ii) It uses a neutral decisionmaker.

(iii) It is economical for the employees.

(C) Proof that the specific facility has provided written notice of the terms of the commitment and the availability of the enforcement mechanism to the relevant employees or their recognized representatives.

(3) For purposes of this section, a supplemental rate adjustment shall equal the Medi-Cal portion of the total amount of any increase in

salaries, wages, and benefits provided in the enforceable written agreement minus any increase provided to that facility during that rate year provided in the standardized rate methodology (Medi-Cal base reimbursement rate) for labor related costs attributable to the employees covered by the commitment. Any supplemental rate adjustment made pursuant to this section shall only cover the period of the nonexpired, enforceable, written agreement. The department shall adjust the methodology for determining costs in the future rate determinations.

(4) Any supplemental rate adjustment for any facility under this section shall be no more than the greater of either of the following:

(A) Eight percent of that portion of the facility's per diem labor costs, prior to the rate year, attributable to employees covered by the commitment.

(B) Eight percent of the facility's peer group's per diem labor costs multiplied by the percentage of the facility's per diem labor costs attributable to employees covered by the commitment.

(5) The department shall terminate the adjustment for the specific facility if it finds the binding written commitment has expired and does not otherwise remain enforceable.

(6) The department may inspect relevant payroll and personnel records of facilities receiving funds pursuant to this section in order to ensure that the salary, wage, and benefit increases provided for in this section have been implemented. In addition to the remedies provided in subdivision (b), the department may retroactively recover funds provided to a facility for labor costs incurred after expiration of the commitment or due to the failure of the facility to comply with the commitment.

(7) An employees enforcement or attempted enforcement of the written commitment pursuant to paragraph (2) of subdivision (a) shall not constitute a basis for adverse action against that employee.

(b) The department shall provide instructions on facility requirements by November 1, 2001, or at least 60 days before implementation of this section, whichever is earlier. In developing these instructions, the department shall consult with provider and employee representatives. Audit, exit conference, and other review protocol for determining facility compliance with this section shall be developed by the department after consulting with provider and employee representatives. Any facility that is paid under the supplemental rate adjustment provided for in this section that the director finds has not provided the salary, wage, and benefit increases provided for shall be liable for the amount of funds paid to the facility by this section but not distributed to employees for salary, wage, and benefit increases, plus a penalty equal to 10 percent of the funds not so distributed. Recoupment of funds from any facility that disagrees with the findings of the director

specific to this section and has filed a request for hearing pursuant to Section 14171, shall be deferred until the request for hearing is either rejected or the director's final administrative decision is rendered. Interest shall be applied to any recoupment amount at the interest rate and timeframes specified in subdivision (h) of Section 14171. The facility shall be subject to Section 14107.

(c) This section shall be operative on the effective date of the act that added subdivision (d).

(d) (1) Solely for the period commencing February 1, 2002, to July 31, 2004, inclusive, the department shall pay any supplemental rate adjustment pursuant to subdivision (a) to the extent that a facility submits a rate adjustment request to the department within the period of time specified in this subdivision, and where the department approves the supplemental rate adjustment for the particular facility. Rate adjustment requests shall be postmarked no later than 90 days after the department mails the instructions described in subdivision (b) to the facilities.

(2) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may promulgate the instructions described in subdivision (b) by means of a letter, notice, provider bulletin, or other similar communication, without taking regulatory action.

(3) Notwithstanding any other provision of law, amounts appropriated for purposes of this section in the Budget Act of 2003, may be expended for supplemental rate adjustments relating to periods in the 2002–03 fiscal year.

(e) This section shall become inoperative on August 1, 2004, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 69. Section 14124.79 of the Welfare and Institutions Code is amended to read:

14124.79. In the event that the beneficiary, his guardian, conservator, personal representative, estate or survivors or any of them brings an action against the third person who may be liable for the injury, notice of institution of legal proceedings, notice of settlement and all other notices required by this code shall be given to the director in Sacramento except in cases where the director specifies that notice shall be given to the Attorney General. All such notices shall be given by insurance carriers, as described in Section 14124.70, having liability for the beneficiary's claim, and by the attorney retained to assert the beneficiary's claim, or by the injured party beneficiary, his guardian, conservator, personal representative, estate or survivors, if no attorney is retained.

SEC. 70. Section 14124.795 is added to the Welfare and Institutions Code, to read:

14124.795. It is the intent of the Legislature to comply with federal law requiring that when a beneficiary has other available health coverage or insurance, the Medi-Cal program shall be the payer of last resort. Notwithstanding any other provision of law, any carrier described in Section 14124.70, including automobile, casualty, property, and malpractice insurers, shall enter into an agreement with the department to permit and assist the matching of the department's Medi-Cal eligibility file against the carrier's claim files, utilizing, if necessary, social security numbers as common identifiers for the purpose of determining whether Medi-Cal benefits were provided to a beneficiary because of an injury for which another person is liable, or for which a carrier is liable in accordance with the provisions of any policy of insurance. The carrier shall maintain a centralized file of claimants' names, mailing addresses, and social security numbers or dates of birth. This information shall be made available to the department upon the department's reasonable request. The agreement described in this section shall include financial arrangements for reimbursing carriers for necessary costs incurred in furnishing requested information.

SEC. 70.5. Section 14126.02 of the Welfare and Institutions Code is amended to read:

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

(b) (1) The department shall implement a facility-specific rate-setting system by August 1, 2005, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, which shall include hospital-based nursing facilities.

(2) The department shall examine several alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities to include, but not be limited to, consideration of the following:

(A) Classification of residents based on the resource utilization group system or other appropriate acuity classification system.

(B) Facility specific case mix factors.

(C) Direct care labor based factors.

(D) Geographic or regional differences in the cost of operating facilities and providing resident care.

(E) Facility-specific cost based rate models used in other states.

(c) The department shall submit to the Legislature a status report on the implementation of this section on April 1, 2002, April 1, 2003, and April 1, 2004.

(d) The alternatives for a new system described in paragraph (2) of subdivision (b) shall be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

(e) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The rate-setting system specified in subdivision (b) shall be developed with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 71. Section 14132.27 is added to the Welfare and Institutions Code, to read:

14132.27. (a) (1) The department shall apply for a waiver of federal law pursuant to Section 1396n of Title 42 of the United States Code to test the efficacy of providing a disease management benefit to beneficiaries under the Medi-Cal program. A disease management benefit shall include, but not be limited to, the use of evidence-based practice guidelines, supporting adherence to care plans, and providing patient education, monitoring, and healthy lifestyle changes.

(2) The waiver developed pursuant to this section shall be known as the Disease Management Waiver. The department shall submit any necessary waiver applications or modifications to the Medicaid State Plan to the federal Centers for Medicare and Medicaid Services to implement the Disease Management Waiver, and shall implement the waiver only to the extent federal financial participation is available.

(b) The Disease Management Waiver shall be designed to provide eligible individuals with a range of services that enable them to remain in the least restrictive and most homelike environment while receiving the medical care necessary to protect their health and well-being. Services provided pursuant to this waiver program shall include only those not otherwise available under the state plan, and may include, but

are not limited to, medication management, coordination with a primary care provider, use of evidence-based practice guidelines, supporting adherence to a plan of care, patient education, communication and collaboration among providers, and process and outcome measures. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waiver.

(c) Eligibility for the Disease Management Waiver shall be limited to those persons who are eligible for the Medi-Cal program as aged, blind, and disabled persons or those persons over 21 years of age who are not enrolled in a Medi-Cal managed care plan, or eligible for the federal Medicare program, and who are determined by the department to be at risk of, or diagnosed with, select chronic diseases, including, but not limited to, advanced atherosclerotic disease syndromes, congestive heart failure, and diabetes. Eligibility shall be based on the individual's medical diagnosis and prognosis, and other criteria, as specified in the waiver.

(d) The Disease Management Waiver shall test the effectiveness of providing a Medi-Cal disease management benefit. The department shall evaluate the effectiveness of the Disease Management Waiver.

(1) The evaluation shall include, but not be limited to, participant satisfaction, health and safety, the quality of life of the participant receiving the disease management benefit, and demonstration of the cost neutrality of the Disease Management Waiver as specified in federal guidelines.

(2) The evaluation shall estimate the projected savings, if any, in the budgets of state and local governments if the Disease Management Waiver was expanded statewide.

(3) The evaluation shall be submitted to the appropriate policy and fiscal committees of the Legislature on or before January 1, 2008.

(e) The department shall limit the number of participants in the Disease Management Waiver during the initial three years of its operation to a number that will be statistically significant for purposes of the waiver evaluation and that meets any requirements of the federal government, including a request to waive statewide implementation requirements for the waiver during the initial years of evaluation.

(f) In undertaking this Disease Management Waiver, the director may enter into contracts for the purpose of directly providing Disease Management Waiver services.

(g) The department shall seek all federal waivers necessary to allow for federal financial participation under this section.

(h) The Disease Management Waiver shall be developed and implemented only to the extent that funds are appropriated or otherwise available for that purpose.

(i) The department shall not implement this section if any of the following apply:

(1) The department's application for federal funds under the Disease Management Waiver is not accepted.

(2) Federal funding for the waiver ceases to be available.

SEC. 71.3. Section 14132.88 of the Welfare and Institutions Code is amended to read:

14132.88. (a) Notwithstanding subdivision (h) of Section 14132 and to the extent funds are made available in the annual Budget Act for this purpose, the following are covered benefits for beneficiaries 21 years of age or older under this chapter:

(1) One dental prophylaxis cleaning per year.

(2) One initial dental examination by a dentist.

(b) The following are covered benefits for beneficiaries under 21 years of age under this chapter:

(1) Two dental prophylaxis cleanings per year.

(2) Two periodic dental examinations per year.

(c) For persons 21 years of age or older, laboratory-processed crowns on posterior teeth are not a covered benefit except when a posterior tooth is necessary as an abutment for any fixed or removable prosthesis.

(d) Any prefabricated crown made from ADA-approved materials may be used on posterior teeth and may be reimbursed as a stainless steel crown.

(e) The department shall reduce the rate of subgingival curettage and root planing by 41 percent for all beneficiaries except those residing in a skilled nursing facility or an intermediate care facility for the developmentally disabled. Notwithstanding Section 14105 and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this subdivision by means of a provider bulletin or similar instruction, without taking regulatory action.

(f) (1) The department shall require pretreatment radiograph documentation on posttreatment claims to establish the medical necessity for dental restorations. The pretreatment documentation required under this subdivision is intended to reduce fraudulent claims for unnecessary dental fillings. In order to avoid any undue barriers to accessing dental care, the department shall stipulate that the pretreatment radiograph documentation for posttreatment claims will be required only when there are four or more dental fillings being completed in any 12-month period.

(2) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this subdivision by means of a provider bulletin or similar instruction, without taking regulatory action.

SEC. 71.5. Section 14154 of the Welfare and Institutions Code is amended to read:

14154. (a) The department shall establish and maintain a plan whereby costs for county administration of the determination of eligibility for benefits under this chapter will be effectively controlled within the amounts annually appropriated for that administration. The plan, to be known as the County Administrative Cost Control Plan, shall establish standards and performance criteria, including workload, productivity, and support services standards, to which counties shall adhere. The plan shall include standards for controlling eligibility determination costs that are incurred by performing eligibility determinations at county hospitals, or that are incurred due to the outstationing of any other eligibility function. Except as provided in Section 14154.15, reimbursement to a county for outstationed eligibility functions shall be based solely on productivity standards applied to that county's welfare department office. The plan shall be part of a single state plan, jointly developed by the department and the State Department of Social Services, in conjunction with the counties, for administrative cost control for the California Work Opportunity and Responsibility to Kids (CalWORKs), Food Stamp, and Medical Assistance (Medi-Cal) programs. Allocations shall be made to each county and shall be limited by and determined based upon the County Administrative Cost Control Plan. In administering the plan to control county administrative costs, the department shall not allocate state funds to cover county cost overruns that result from county failure to meet requirements of the plan. The department and the State Department of Social Services shall budget, administer, and allocate state funds for county administration in a uniform and consistent manner.

(b) Nothing in this section, Section 15204.5, or Section 18906 shall be construed so as to limit the administrative or budgetary responsibilities of the department in a manner that would violate Section 14100.1, and thereby jeopardize federal financial participation under the Medi-Cal program.

(c) The department is responsible for the Medi-Cal program in accordance with state and federal law. A county shall determine Medi-Cal eligibility in accordance with state and federal law. If in the course of its duties the department becomes aware of accuracy problems in any county, the department shall, within available resources, provide training and technical assistance as appropriate. Nothing in this section shall be interpreted to eliminate any remedy otherwise available to the department to enforce accurate county administration of the program. In administering the Medi-Cal eligibility process, each county shall meet the following performance standards each fiscal year:

(1) Complete eligibility determinations as follows:

(A) Ninety percent of the general applications without applicant errors and are complete shall be completed within 45 days.

(B) Ninety percent of the applications for Medi-Cal based on disability shall be completed within 90 days, excluding delays by the state.

(2) (A) The department shall establish best-practice guidelines for expedited enrollment of newborns into the Medi-Cal program, preferably with the goal of enrolling newborns within 10 days after the county is informed of the birth. The department, in consultation with counties and other stakeholders, shall work to develop a process for expediting enrollment for all newborns, including those born to mothers receiving CalWORKs assistance.

(B) Upon the development and implementation of the best-practice guidelines and expedited processes, the department and the counties may develop an expedited enrollment timeframe for newborns that is separate from the standards for all other applications, to the extent that the timeframe is consistent with these guidelines and processes.

(C) Notwithstanding the rulemaking procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of all-county letters or similar instructions, without further regulatory action.

(3) Perform timely annual redeterminations, as follows:

(A) Ninety percent of the annual redetermination forms shall be mailed to the recipient by the anniversary date.

(B) Ninety percent of the annual redeterminations shall be completed within 60 days of the recipient's annual redetermination date for those redeterminations based on forms that are complete and have been returned to the county by the recipient in a timely manner.

(C) Ninety percent of those annual redeterminations where the redetermination form has not been returned to the county by the recipient shall be completed by sending a notice of action to the recipient within 45 days after the date the form was due to the county.

(d) The department shall develop procedures in collaboration with the counties and stakeholder groups for determining county review cycles, sampling methodology and procedures, and data reporting.

(e) On January 1 of each year, each applicable county, as determined by the department, shall report to the department on the county's results in meeting the performance standards specified in this section. The report shall be subject to verification by the department. County reports shall be provided to the public upon written request.

(f) If the department finds that a county is not in compliance with one or more of the standards set forth in this section, the county shall, within 60 days, submit a corrective action plan to the department for approval.

The corrective action plan shall, at a minimum, include steps that the county shall take to improve its performance on the standard of standards with which the county is out of compliance. The plan shall establish interim benchmarks for improvement that shall be expected to be met by the county in order to avoid a sanction.

(g) If a county does not meet the performance standards for completing eligibility determinations and redeterminations as specified in this section, the department may, at its sole discretion, reduce the allocation of funds to that county in the following year by 2 percent. Any funds so reduced may be restored by the department if, in the determination of the department, sufficient improvement has been made by the county in meeting the performance standards during the year for which the funds were reduced. If the county continues not to meet the performance standards, the department may reduce the allocation by an additional 2 percent for each year thereafter in which sufficient improvement has not been made to meet the performance standards.

SEC. 72. Section 14159 is added to the Welfare and Institutions Code, to read:

14159. Commencing with the 2004–05 fiscal year, expenditures for Medi-Cal services and fiscal intermediary and county administration costs included in the department's budget shall be charged against the appropriation for the fiscal year in which the billing is paid. Commencing July 1, 2004, all 2002–03 fiscal year and prior accrued obligations of the Health Care Deposit Fund shall become obligations of the 2004–05 fiscal year and all moneys available from the 2002–03 fiscal year and prior appropriations shall be reappropriated to the 2004–05 fiscal year for that purpose.

SEC. 73. Article 5.5 (commencing with Section 14464.5) is added to Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5.5. Quality Improvement Fee for Medi-Cal Managed Care Plans

14464.5. (a) For purposes of this article, the following definitions apply:

(1) ''Capitation payment'' means the monthly amount paid by the state to a designated Medi-Cal managed care plan in exchange for contracted health care services procured by means of the Medi-Cal managed care contracts set forth in paragraph (3).

(2) ''Capitation rate'' means the per member per month rate used to calculate the capitation payments.

(3) ''Medi-Cal managed care plan'' means any Medi-Cal managed care plan contracting with the department to provide services to enrolled

Medi-Cal beneficiaries pursuant to Chapter 7 (commencing with Section 14000), this chapter, or Chapter 8.75 (commencing with Section 14590), and that is also an organization that meets the criteria to contract for services in Section 1396b(m) of Title 42 of the United States Code.

(b) The department may impose, on an annual basis, a quality improvement fee on the capitation payments paid to Medi-Cal managed care plans for enrolled Medi-Cal beneficiaries. The quality improvement fee shall be paid to the state monthly and shall be a percentage as determined pursuant to paragraph (1) multiplied by each Medi-Cal managed care plan's capitation payments. The quality improvement fee shall be subject to all of the following provisions:

(1) The department shall determine the quality improvement percentage, not to exceed 6 percent of the capitation payments and shall notify the Medi-Cal managed care plans of that determination.

(2) The quality improvement fee shall be paid to the state within 15 calendar days following notification by the department of the amount due.

(3) The quality improvement fee shall be deposited in the General Fund.

(4) If the Medi-Cal managed care plan does not timely pay the quality improvement fee, or any part thereof, the department may offset the amount of the fee that is unpaid against any amounts due from the state to the Medi-Cal managed care plan. Notwithstanding any such offset, the methodology for determining the fee as set forth in this subdivision shall be followed.

(5) The department shall make retrospective adjustments as necessary to the amounts calculated pursuant to this subdivision in order to assure that the Medi-Cal managed care plan's aggregate quality improvement fee for any particular state fiscal year does not exceed 6 percent of the aggregate annual capitation payments paid to the Medi-Cal managed care plan for that year.

(c) (1) The department shall implement this section in a manner that complies with federal requirements. If the department is unable to comply with the federal requirements for federal matching funds under this section or is unable to use the 2002–03 fiscal year level of support for federal matching dollars other than for a change in covered benefits or covered populations required under the state's Medi-Cal contract with health care service plans, the quality improvement fee shall no longer be assessed or collected.

(2) In all fiscal years governed by this section, Medi-Cal capitation rates shall not be reduced as a direct result of the quality improvement fee assessed under this section. This subdivision does not apply to a change in Medi-Cal capitation rates caused by a change in actuarial factors, including covered benefits, covered populations, or Medi-Cal

provider reimbursement, under the state's Medi-Cal contract with health care service plans.

(d) The director, or his or her designee, shall administer this section.

(e) The director may adopt regulations as are necessary to implement this section. These regulations shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this section, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. The regulations shall include, but not be limited to, any regulations necessary for either of the following purposes:

(1) The administration of this section, including the proper imposition and collection of the quality improvement fees and associated penalties.

(2) The development of any forms necessary to calculate, notify, collect, and distribute the quality improvement fees.

(f) As an alternative to subdivision (e), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this section by means of a provider bulletin, contract amendment, policy letter, or other similar instructions, without taking regulatory action.

(g) This section shall not apply to either of the following:

(1) State supported services contracts separately entered into with Medi-Cal managed care plans to cover only those services that are expressly set forth in those contracts, are paid for solely with state funds, and are unavailable for federal financial participation.

(2) Payments derived from intergovernmental transfers and associated federal financial participation.

(h) Any limitation on rates or payments to the Medi-Cal managed care plan based on Medi-Cal fee-for-service costs shall be increased to include any capitation rate increase related to the quality improvement fee in subdivision (b).

(i) To the extent necessary to comply with federal requirements pursuant to paragraph (2) of subdivision (c), the director may deviate from the provisions of this section with respect to either or both of the following:

(1) The methodology for calculating or imposing the quality improvement fee pursuant to subdivision (b).

(2) The exclusions specified in subdivision (g).

(j) Notwithstanding any other provision of this section, the department may not impose a quality improvement fee on any payment

to be made to Medi-Cal managed care plans, other than the capitated payments as defined in paragraph (1) of subdivision (a).

(k) The department shall commence collecting the quality improvement fees pursuant to subdivision (b) no sooner than January 1, 2004.

SEC. 74. Section 14684.1 is added to the Welfare and Institutions Code, to read:

14684.1. (a) The State Department of Mental Health shall establish a process for second level treatment authorization request appeals to review and resolve disputes between mental health plans and hospitals.

(b) When the department establishes an appeals process, the department shall comply with all of the following:

(1) The department shall review appeals initiated by hospitals and render decisions on appeals based on findings that are the result of a review of supporting documents submitted by mental health plans and hospitals.

(2) If the department upholds a mental health plan denial of payment of a hospital claim, a review fee shall be assessed on the provider.

(3) If the State Department of Mental Health reverses a mental health plan denial of payment of a hospital claim, a review fee shall be assessed on the mental health plan.

(4) If the department decision regarding a mental health plan denial of payment upholds the claim in part and reverses the claim in part, the department shall prorate the review fee between the parties accordingly.

(c) The amount of the review fees shall be calculated and adjusted annually. The methodology and calculation used to determine the fee amounts shall result in an aggregate fee amount that, in conjunction with any other outside source of funding for this function, may not exceed the aggregate annual costs of providing second level treatment authorization request reviews.

(d) Fees collected by the department shall be retained by the department and used to offset administrative and personnel services costs associated with the appeals process.

(e) The department may use the fees collected, in conjunction with other available appropriate funding for this function, to contract for the performance of the appeals process function.

SEC. 75. Section 16809 of the Welfare and Institutions Code, as amended by Section 90 of Chapter 1161 of the Statutes of 2002, is amended to read:

16809. (a) (1) The board of supervisors of a county that contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, by adopting a resolution to that effect, may elect to participate in the County Medical Services

Program. The County Medical Services Program shall have responsibilities for specified health services to county residents certified eligible for those services by the county.

(2) If the County Medical Services Program Governing Board contracts with the department to administer the County Medical Services Program, that contract shall include, but need not be limited to, all of the following:

(A) Provisions for the payment to participating counties for making eligibility determinations based on the formula used by the County Medical Services Program for the 1993–94 fiscal year.

(B) Provisions for payment of expenses of the County Medical Services Program Governing Board.

(C) Provisions relating to the flow of funds from counties' vehicle license fees, sales taxes, and participation fees and the procedures to be followed if a county does not pay those funds to the program.

(D) Those provisions, as applicable, contained in the 1993–94 fiscal year contract with counties under the County Medical Services Program.

(3) The contract between the department and the County Medical Services Program Governing Board shall require that the County Medical Services Program Governing Board shall reimburse three million five hundred thousand dollars ($3,500,000) for the state costs of providing administrative support to the County Medical Services Program. The department may decline to implement decisions made by the governing board that would require a greater level of administrative support than that for the 1993–94 fiscal year. The department may implement decisions upon compensation by the governing board to cover that increased level of support.

(4) The contract between the department and the County Medical Services Program Governing Board may include provisions for the administration of a pharmacy benefit program and, pursuant to these provisions, the department may negotiate, on behalf of the County Medical Services Program, rebates from manufacturers that agree to participate. The governing board shall reimburse the department for staff costs associated with this paragraph.

(5) The department shall administer the County Medical Services Program pursuant to the provisions of the 1993–94 fiscal year contract with the counties and regulations relating to the administration of the program until the County Medical Services Program Governing Board executes a contract for the administration of the County Medical Services Program and adopts regulations for that purpose.

(6) The department shall not be liable for any costs related to decisions of the County Medical Services Program Governing Board that are in excess of those set forth in the contract between the department and the County Medical Services Program Governing Board.

(b) Each county intending to participate in the County Medical Services Program pursuant to this section shall submit to the Governing Board of the County Medical Services Program a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year in which the county will participate in the County Medical Services Program.

(c) A county participating in the County Medical Services Program pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) (1) The County Medical Services Program Account is established in the County Health Services Fund. The County Medical Services Program Account is continuously appropriated, notwithstanding Section 13340 of the Government Code, without regard to fiscal years. The following amounts may be deposited in the account:

(A) Any interest earned upon money deposited in the account.

(B) Moneys provided by participating counties or appropriated by the Legislature to the account.

(C) Moneys loaned pursuant to subdivision (q).

(2) The methods and procedures used to deposit funds into the account shall be consistent with the methods used by the program during the 1993–94 fiscal year.

(e) Moneys in the program account shall be used by the department, pursuant to its contract with the County Medical Services Program Governing Board, to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j) and to pay for the expense of the governing board as set forth in the contract between the board and the department. In addition, moneys in this account may be used to reimburse the department for state costs pursuant to paragraph (3) of subdivision (a).

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, County Medical Services Program Governing Board expenses, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) A separate County Medical Services Program Reserve Account is established in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to participate in the County Medical Services Program under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees as determined by the County Medical Services Program Governing Board pursuant to subdivision (i). Nothing in this section shall preclude the CMSP Governing Board from establishing other reserves.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (q) shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay participation fees as established by the County Medical Services Program Governing Board and their jurisdictional risk amount in a method that is consistent with that established in the 1993–94 fiscal year.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the CMSP Governing Board.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) (i) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual

growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, 2002–03, and 2003–04 fiscal years. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus the additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, 2002–03, and 2003–04 fiscal years. In the 1994–95 fiscal year, the amount of the state risk shall be twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, in addition to the cost of administrative support pursuant to paragraph (3) of subdivision (a).

(ii) For the 1999–2000, 2000–01, 2001–02, 2002–03, and 2003–04 fiscal years, the state shall not be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus any additional cost increases for the 1999–2000, 2000–01, 2001–02, 2002–03, and 2003–04 fiscal years.

(C) The CMSP Governing Board, after consultation with the department, shall establish uniform eligibility criteria and benefits for the County Medical Services Program.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113

Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa	3,062,967
Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified by the County Medical Services Program Governing Board as participation fees.

(A)

Jurisdiction	Amount
Lake	$1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the CMSP Governing Board before a county is permitted to participate in the County Medical Services Program.

(4) For the 1994–95 and 1995–96 fiscal years, the specific amounts and method of apportioning risk to each participating county may be adjusted by the CMSP Governing Board.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts of the department pursuant to this section shall have no force or effect unless they are approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) Third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 may be pursued.

(n) Under the program provided for in this section, the department may reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department may collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) Regulations adopted by the department pursuant to this section shall remain operative and shall be used to operate the County Medical Services Program until a contract with the County Medical Services Program Governing Board is executed and regulations, as appropriate, are adopted by the County Medical Services Program Governing Board. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, those regulations

adopted under the County Medical Services Program shall become inoperative until January 1, 1998, except those regulations that the department, in consultation with the County Medical Services Program Governing Board, determines are needed to continue to administer the County Medical Services Program. The department shall notify the Office of Administrative Law as to those regulations the department will continue to use in the implementation of the County Medical Services Program.

(s) Moneys appropriated from the General Fund to meet the state risk as set forth in subparagraph (B) of paragraph (1) of subdivision (j) shall not be available for those counties electing to disenroll from the County Medical Services Program.

(t) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2008, deletes or extends that date.

SEC. 75.5. Section 13 of Chapter 9 of the Statutes of the First Extraordinary Session of 2003 is repealed.

SEC. 76. (a) Of the amount appropriated in Item 4260-111-0001 of the Budget Act of 2003 from the Cigarette and Tobacco Products Surtax Fund, twenty-four million eight hundred three thousand dollars ($24,803,000) shall be allocated in accordance with subdivision (b) for the 2003–04 fiscal year from the following accounts:

(1) Nine million fifteen thousand dollars ($9,015,000) from the Hospital Services Account.

(2) Two million three hundred twenty-eight thousand dollars ($2,328,000) from the Physician Services Account.

(3) Thirteen million four hundred sixty thousand dollars ($13,460,000) from the Unallocated Account.

(b) The funds specified in subdivision (a) shall be allocated proportionately as follows:

(1) Twenty-two million three hundred twenty-four thousand dollars ($22,324,000) shall be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP), Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two million four hundred seventy-nine thousand dollars ($2,479,000) shall be administered and allocated through the rural health services program, Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(c) Funds allocated by this section from the Physician Services Account and the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for the reimbursement of uncompensated emergency services, as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred to the

Physician Services Account in the county Emergency Medical Services Fund established pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code.

(d) Funds allocated by this section from the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for reimbursement of uncompensated emergency services, as defined in Section 16953 of the Welfare and Institutions Code, provided in general acute care hospitals providing basic, comprehensive, or standby emergency services. Reimbursement for emergency services shall be consistent with Section 16952 of the Welfare and Institutions Code.

SEC. 77. (a) The State Department of Health Services may not implement limits on laboratory services provided by more than one laboratory, as provided for in the Budget Act of 2003 until, at a minimum, an Internet and telephone process are available for applicable providers to access the laboratory service reservation system.

(b) The Legislature finds and declares both of the following:

(1) The laboratory service reservation system will allow laboratories, prior to performing a lab procedure, the opportunity to verify that service limits have not been reached for that procedure and for that Medi-Cal beneficiary.

(2) It is the intent of the State Department of Health Services to have the laboratory service reservation system accessible through a point of service device process within 9 to 12 months after the enactment of this act.

SEC. 78. The State Department of Health Services shall require contractors and grantees under the Office of Family Planning, Male Involvement Program, and Information and Education Program, to establish and implement, commencing in the 2003–04 fiscal year, a clinical services linkage to the Family PACT program. This linkage shall include, but not be limited to, planning and development of a referral process of participants in these programs to ensure access of family planning and other reproductive health care services. This clinical services linkage shall commence in the 2003–04 state fiscal year and operate thereafter.

SEC. 79. The State Department of Health Services may adopt emergency regulations to implement the applicable provisions of this act in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or general welfare. Initial emergency regulations and the first readoption of those regulations shall

be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those 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 each shall remain in effect for no more than 180 days.

SEC. 80. The Managed Risk Medical Insurance Board may adopt emergency regulations to implement provisions of this act repealing Section 12698.10 of, adding Section 12693.765 to, and amending Sections 12693.43, 12693.70, 12693.73, 12695.06, 12698.05, and 12698.30 of, the Insurance Code. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding the 120-day limitation in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this subdivision shall be repealed 180 days after the effective date of the regulations, unless the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 80.5. The Legislature finds and declares that the state faces a fiscal crisis that requires unprecedented measures to be taken to reduce General Fund expenditures. Notwithstanding any other provision of law or regulation, the Medi-Cal reimbursement rates in effect for the 2003–04 fiscal year for hospitals, not under contract with the California Medical Assistance Commission, providing inpatient services to Medi-Cal recipients shall remain the same for the entire 2004–05 fiscal year. It is the intent of the Legislature that the California Medical Assistance Commission freeze all Medi-Cal reimbursement rates paid to hospitals for inpatient services at their 2003–04 contract rate, or at a lower level, whichever is applicable based on contract negotiations.

SEC. 81. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7

(commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 82. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 231

An act to amend Section 10754 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 10754 of the Revenue and Taxation Code is amended to read:

10754. (a) Notwithstanding any other provision of law, the total amount of the vehicle license fee otherwise required with respect to a vehicle shall be offset in accordance with those provisions set forth below that are operative pursuant to subdivision (b):

(1) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to 25 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(2) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to 35 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(3) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to $67^1/_2$ percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction in funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(D) (i) The Controller shall, no later than August 15, 2006, transfer from the General Fund to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund amounts equal to those moneys that are otherwise required, pursuant to subparagraph (B), to be transferred into that account, that are not so transferred into that account during the 2003–04 fiscal year as a result of the operation of subparagraph (C). The transferred moneys shall be allocated from the account in the manner as otherwise specified by law for the allocation of moneys from that account.

(ii) The Controller, with the approval of the Department of Finance, may advance from the Motor Vehicle License Fee Account in the Transportation Tax Fund to any county or city that entity's share of the vehicle license fee revenues transferred under clause (i), if that entity demonstrates that it will experience a hardship if the advance is not made. For purposes of this clause, those circumstances demonstrating that a county or city will experience a ''hardship,'' include, but are not limited to, the following:

(I) A county or city that has pledged its share of vehicle license fee revenues as security for any indebtedness that, as a result of the delay of the disbursement, will compromise its ability to repay that indebtedness.

(II) A county's or city's share of vehicle license fee revenues, as determined by the Controller, exceeds 37 percent of that entity's general revenue. In the case of a county, the Controller shall make the required calculation of that entity's general revenue based on information derived from the State of California Counties Annual Report for the 2000–01 fiscal year. In the case of a city, the Controller shall make the required calculation based on information derived from the State of California Cities Annual Report for the 2000–01 fiscal year.

(III) A city that is newly incorporated that is entitled to the allocations of vehicle license fee revenues authorized by Section 11005.3.

(iii) Any funds advanced pursuant to a finding of hardship pursuant to clause (ii) shall be disbursed on the 10th day of the calendar month following findings of hardship. The total aggregate amount transferred based on findings of hardship pursuant to clause (ii) may not exceed forty million dollars ($40,000,000).

(iv) For purposes of Section 15 of Article XI of the California Constitution, the transfers required to be made by this subparagraph shall constitute successor taxes that are otherwise required to be allocated to counties and cities, and as successor taxes, the obligation to make those transfers as required by this subparagraph may not be extinguished nor disregarded in any manner that adversely affects the security of, or the ability of, a county or city to pay the principal and interest on any debts or obligations that were funded or secured by that city's or county's allocated share of motor vehicle license fee revenues.

(b) The offset provisions set forth in subdivision (a) shall be operative as provided by the following:

(1) Paragraph (1) of subdivision (a) shall be operative for vehicle license fees with a final due date in the calendar year beginning on January 1, 1999.

(2) Paragraph (2) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after January 1, 2000, and before July 1, 2001.

(3) Paragraph (3) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after July 1, 2001.

(c) (1) For purposes of this section, ''department'' means the Department of Motor Vehicles with respect to a vehicle license fee offset for a vehicle subject to registration under the Vehicle Code, and the Department of Housing and Community Development with respect to a vehicle license fee offset for a manufactured home, mobilehome, or commercial coach described in Section 18115 of the Health and Safety Code.

(2) For purposes of this section, the ''final due date'' for a license fee is the last date upon which that fee may be paid without being delinquent.

CHAPTER 232

An act relating to the payment of claims against the state, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. (a) The sum of one million two hundred eighty-eight thousand three hundred seventy-two dollars and sixty-seven cents ($1,288,372.67) is hereby appropriated from the various funds, as

specified in subdivision (b), to the Executive Officer of the California Victim Compensation and Government Claims Board for the payment of claims accepted by the board in accordance with the schedule set forth in subdivision (b). Those payments shall be made from the funds and accounts identified in that schedule. In the case of Budget Act item schedules identified in the schedule set forth in subdivision (b), those payments shall be made from the funds appropriated in the item schedule.

(b) Pursuant to subdivision (a), claims accepted by the California Victim Compensation and Government Claims Board shall be paid in accordance with the following schedule:

Total for Fund: Alcohol Beverage Control Fund (3036)	$1,190.50
Total for Fund: Assembly Operating Fund (0125)	$594.78
Total for Fund: California Residential Earthquake Recovery Fund (0285)	$34.14
Total for Fund: Compensation Insurance Fund (0512)	$260.00
Total for Fund: Corporation Tax Fund (0084)	$9,248.44
Total for Fund: Employment Development Contingent Fund (0185)	$12,879.47
Total for Fund: Estate Tax Fund (0085)	$791.78
Total for Fund: Federal Trust Fund (0890)	$198.07
Total for Fund: General Fund (0001)	$226,771.00
Total for Fund: Health Care Deposit Fund (0912)	$5,293.83
Total for Fund: Item 0820–001–0001, Budget Act of 2003	$67.20
Total for Fund: Item 0845–001–0217(1), Budget Act of 2003	$5,620.00
Total for Fund: Item 0860–001–0001(1), Budget Act of 2003	$19,186.86
Total for Fund: Item 0860–001–0001(2), Budget Act of 2003	$967.17
Total for Fund: Item 1111–002–0421(1), Budget Act of 2003	$3,306.14
Total for Fund: Item 1230–001–0735(1), Budget Act of 2003	$1,339.29

Total for Fund: Item 1730–001–0001(1), Budget Act of 2003	$5,007.70
Total for Fund: Item 1760–001–0022, Budget Act of 2003	$7,228.48
Total for Fund: Item 1760–001–0666, Budget Act of 2003	$3,005.59
Total for Fund: Item 2240–001–0001(1), Budget Act of 2003	$331.54
Total for Fund: Item 2240–001–0648, Budget Act of 2002	$278.00
Total for Fund: Item 2660–001–0042(2), Budget Act of 2002	$319.01
Total for Fund: Item 2660–001–0042(2), Budget Act of 2003	$14,878.66
Total for Fund: Item 2660–101–0042(1), Budget Act of 2002	$308.38
Total for Fund: Item 2720–001–0044(1), Budget Act of 2002	$7,532.00
Total for Fund: Item 2720–301–0044(1), Budget Act of 2003	$85.00
Total for Fund: Item 2740–001–0044(1), Budget Act of 2003	$4,215.97
Total for Fund: Item 2740–001–0044(6), Budget Act of 2003	$160.88
Total for Fund: Item 2920–001–0001(2), Budget Act of 2002	$7,957.68
Total for Fund: Item 3340–001–0001(1), Budget Act of 2003	$6,371.83
Total for Fund: Item 3540–001–0001(1), Budget Act of 2003	$3,720.00
Total for Fund: Item 3600–001–0001(1), Budget Act of 2003	$973.00
Total for Fund: Item 3600–001–0001(4), Budget Act of 2003	$298.08
Total for Fund: Item 3600–001–0001(6), Budget Act of 2003	$417.00
Total for Fund: Item 3790–001–0001(1), Budget Act of 2003	$756.00
Total for Fund: Item 3790–001–0392, Budget Act of 2003	$6,981.95

Total for Fund: Item 3860–001–0001(5), Budget Act of 2003	$508.00
Total for Fund: Item 4200–001–0001(1), Budget Act of 2003	$12,747.66
Total for Fund: Item 4260–001–0001(1), Budget Act of 2002	$6,496.95
Total for Fund: Item 4260–001–0001(1), Budget Act of 2003	$139.00
Total for Fund: Item 4260–001–0001(2), Budget Act of 2003	$2,684.00
Total for Fund: Item 4260–001–0098(2), Budget Act of 2003	$127.00
Total for Fund: Item 4260–001–0231(1), Budget Act of 2003	$7,703.49
Total for Fund: Item 4300–001–0001, Budget Act of 2002	$974.89
Total for Fund: Item 4300–003–0001(1), Budget Act of 2003	$4,879.05
Total for Fund: Item 4300–101–0001(2), Budget Act of 2002	$5,147.09
Total for Fund: Item 4440–011–0001(2), Budget Act of 2003	$1,045.14
Total for Fund: Item 5160–001–0001(1), Budget Act of 2002	$746.00
Total for Fund: Item 5160–001–0001(1), Budget Act of 2003	$28,340.11
Total for Fund: Item 5180–001–0001, Budget Act of 2003	$364.10
Total for Fund: Item 5180–001–0001(2), Budget Act of 2003	$2,702.44
Total for Fund: Item 5180–001–0001(3), Budget Act of 2003	$221.00
Total for Fund: Item 5180–001–0890, Budget Act of 2003	$1,938.13
Total for Fund: Item 5240–001–0001(1), Budget Act of 2002	$5,882.43
Total for Fund: Item 5240–001–0001(1), Budget Act of 2003	$160,878.17
Total for Fund: Item 5240–001–0001(2), Budget Act of 2003	$23,439.43

Total for Fund: Item 5240–001–0001(3), Budget Act of 2003	$288.00
Total for Fund: Item 5240–001–0001(4), Budget Act of 2003	$6,533.36
Total for Fund: Item 5450–001–0001(1), Budget Act of 2003	$8,676.06
Total for Fund: Item 5460–001–0001(1), Budget Act of 2003	$6,355.29
Total for Fund: Item 6110–001–0001, Budget Act of 2003	$267,949.33
Total for Fund: Item 6110–001–0001(2), Budget Act of 2003	$408.34
Total for Fund: Item 6610–001–0001(1), Budget Act of 2003	$66.06
Total for Fund: Item 6870–001–0001(2), Budget Act of 2003	$650.20
Total for Fund: Item 7100–001–0870(2), Budget Act of 2003	$397.01
Total for Fund: Item 7100–011–0185, Budget Act of 2003	$6,461.54
Total for Fund: Item 7350–001–0001(3), Budget Act of 2003	$1,516.00
Total for Fund: Item 8380–001–0001(6), Budget Act of 2003	$310.00
Total for Fund: Item 8940–001–0001(1), Budget Act of 2002	$2,588.60
Total for Fund: Item 8940–001–0001(1), Budget Act of 2003	$1,121.56
Total for Fund: Item 8940–503–0001, Budget Act of 2003	$78.40
Total for Fund: Item 8960–011–0001, Budget Act of 2000	$574.97
Total for Fund: Item 8960–011–0001(1), Budget Act of 2003	$325.00
Total for Fund: Litigation Deposit Fund (0920)	$24.36
Total for Fund: Motor Vehicle Account, State Transportation Fund (0044)	$45,773.62
Total for Fund: Payroll Revolving Fund, State (0675)	$13,816.79

Total for Fund: Public Employees' Health Care Fund (0822)	$885.50
Total for Fund: Public Employees Retirement Fund (0830)	$38.47
Total for Fund: Residential Earthquake Recovery Fund, CA (0285)	$335.71
Total for Fund: Retail Sales Tax Fund (0094)	$21,723.00
Total for Fund: Special Deposit Fund (0942)	$2,055.00
Total for Fund: State Payroll Revolving Fund (0675)	$293.23
Total for Fund: State School Site Utilization Fund (0956)	$21,157.00
Total for Fund: Tax Relief and Refund Account (0027)	$237,272.73
Total for Fund: Unemployment Administration Fund (0870)	$2,859.45
Total for Fund: Unemployment Compensation Disability Fund (0588)	$5,262.76
Total for Fund: Unemployment Fund (0871)	$4,674.00
Total for Fund: Welfare Advance Fund (0696)	$2,361.83

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

In order to pay claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 233

An act to amend Sections 3400 and 10129 of the Public Contract Code, relating to public contracting.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 3400 of the Public Contract Code is amended to read:

3400. (a) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words ''or equal'' so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of ''an equal'' item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(b) Subdivision (a) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product's suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) In order to obtain a necessary item that is only available from one source.

(4) (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.

(B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

SEC. 2. Section 10129 of the Public Contract Code is amended to read:

10129. (a) Notwithstanding Section 3400, no agency of the state charged with the letting of contracts for the construction, alteration, or repair of public works may draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words ''or equal'' so that bidders may furnish any equal material, product, thing, or service. In applying this section, the awarding authority shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of ''an equal'' item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(b) Subdivision (a) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product's suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) In order to obtain a necessary item that is only available from one source.

(4) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

SEC. 3. The amendments made by this act to subdivision (b) of Sections 3400 and 10129 of the Public Contract Code are intended to codify, and not to change the application of, existing California case law.

CHAPTER 234

An act to amend Section 2069 of the Business and Professions Code, relating to medical assistants.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 2069 of the Business and Professions Code is amended to read:

2069. (a) (1) Notwithstanding any other provision of law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or a licensed podiatrist. A medical assistant may also perform all these tasks and services in a clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code upon the specific authorization of a physician assistant, a nurse practitioner, or a nurse-midwife.

(2) The supervising physician and surgeon at a clinic described in paragraph (1) may, at his or her discretion, in consultation with the nurse practitioner, nurse-midwife, or physician assistant provide written instructions to be followed by a medical assistant in the performance of tasks or supportive services. These written instructions may provide that the supervisory function for the medical assistant for these tasks or supportive services may be delegated to the nurse practitioner, nurse-midwife, or physician assistant within the standardized procedures or protocol, and that tasks may be performed when the supervising physician and surgeon is not onsite, so long as the following apply:

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

(B) The physician assistant is functioning pursuant to regulated services defined in Section 3502 and is approved to do so by the supervising physician or surgeon.

(b) As used in this section and Sections 2070 and 2071, the following definitions shall apply:

(1) ''Medical assistant'' means a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services in compliance with this section and Section 2070 for a licensed physician and surgeon or a licensed podiatrist, or group thereof, for a medical or podiatry corporation, for a physician assistant, a nurse practitioner, or a nurse-midwife as provided in subdivision (a), or for a health care service plan, who is at least 18 years of age, and who has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Division of Licensing. The medical assistant shall be issued a certificate by the training institution or

instructor indicating satisfactory completion of the required training. A copy of the certificate shall be retained as a record by each employer of the medical assistant.

(2) ''Specific authorization'' means a specific written order prepared by the supervising physician and surgeon or the supervising podiatrist, or the physician assistant, the nurse practitioner, or the nurse-midwife as provided in subdivision (a), authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record, or a standing order prepared by the supervising physician and surgeon or the supervising podiatrist, or the physician assistant, the nurse practitioner, or the nurse-midwife as provided in subdivision (a), authorizing the procedures to be performed, the duration of which shall be consistent with accepted medical practice. A notation of the standing order shall be placed on the patient's medical record.

(3) ''Supervision'' means the supervision of procedures authorized by this section by the following practitioners, within the scope of their respective practices, who shall be physically present in the treatment facility during the performance of those procedures:

(A) A licensed physician and surgeon.

(B) A licensed podiatrist.

(C) A physician assistant, nurse practitioner, or nurse-midwife as provided in subdivision (a).

(4) ''Technical supportive services'' means simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a licensed physician and surgeon or a licensed podiatrist, or a physician assistant, a nurse practitioner, or a nurse-midwife as provided in subdivision (a).

(c) Nothing in this section shall be construed as authorizing the licensure of medical assistants. Nothing in this section shall be construed as authorizing the administration of local anesthetic agents by a medical assistant. Nothing in this section shall be construed as authorizing the division to adopt any regulations that violate the prohibitions on diagnosis or treatment in Section 2052.

(d) Notwithstanding any other provision of law, a medical assistant may not be employed for inpatient care in a licensed general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(e) Nothing in this section shall be construed as authorizing a medical assistant to perform any clinical laboratory test or examination for which he or she is not authorized by Chapter 3 (commencing with Section 1206.5). Nothing in this section shall be construed as authorizing a nurse practitioner, nurse-midwife, or physician assistant to be a laboratory director of a clinical laboratory, as those terms are defined in paragraph

(7) of subdivision (a) of Section 1206 and subdivision (a) of Section 1209.

CHAPTER 235

An act to amend Sections 9102, 9304, 9309, 9321, 9408, and 9521 of the Commercial Code, to amend Section 12194 of the Government Code, and to amend Section 5907 of the Vehicle Code, relating to commercial law.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 9102 of the Commercial Code is amended to read:

9102. (a) In this division:

(1) ''Accession'' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) ''Account,'' except as used in ''account for,'' means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) ''Account debtor'' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) ''Accounting,'' except as used in ''accounting for,'' means a record that is all of the following:

(A) Authenticated by a secured party.

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record.

(C) Identifying the components of the obligations in reasonable detail.

(5) ''Agricultural lien'' means an interest in farm products that meets all of the following conditions:

(A) It secures payment or performance of an obligation for either of the following:

(i) Goods or services furnished in connection with a debtor's farming operation.

(ii) Rent on real property leased by a debtor in connection with its farming operation.

(B) It is created by statute in favor of a person that does either of the following:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation.

(ii) Leased real property to a debtor in connection with the debtor's farming operation.

(C) Its effectiveness does not depend on the person's possession of the personal property.

(6) ''As-extracted collateral'' means either of the following:

(A) Oil, gas, or other minerals that are subject to a security interest that does both of the following:

(i) Is created by a debtor having an interest in the minerals before extraction.

(ii) Attaches to the minerals as extracted.

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) ''Authenticate'' means to do either of the following:

(A) To sign.

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) ''Bank'' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) ''Cash proceeds'' means proceeds that are money, checks, deposit accounts, or the like.

(10) ''Certificate of title'' means a certificate of title with respect to which a statute provides for the security interest in question to be

indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) ''Chattel paper'' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, ''monetary obligation'' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) ''Collateral'' means the property subject to a security interest or agricultural lien. The term includes all of the following:

(A) Proceeds to which a security interest attaches.

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold.

(C) Goods that are the subject of a consignment.

(13) ''Commercial tort claim'' means a claim arising in tort with respect to which either of the following conditions is satisfied:

(A) The claimant is an organization.

(B) The claimant is an individual and both of the following conditions are satisfied regarding the claim:

(i) It arose in the course of the claimant's business or profession.

(ii) It does not include damages arising out of personal injury to or the death of an individual.

(14) ''Commodity account'' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) ''Commodity contract'' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is either of the following:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws.

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) ''Commodity customer'' means a person for which a commodity intermediary carries a commodity contract on its books.

(17) ''Commodity intermediary'' means a person that is either of the following:

(A) Is registered as a futures commission merchant under federal commodities law.

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) ''Communicate'' means to do any of the following:

(A) To send a written or other tangible record.

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record.

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) ''Consignee'' means a merchant to which goods are delivered in a consignment.

(20) ''Consignment'' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and all of the following conditions are satisfied:

(A) The merchant satisfies all of the following conditions:

(i) He or she deals in goods of that kind under a name other than the name of the person making delivery.

(ii) He or she is not an auctioneer.

(iii) He or she is not generally known by its creditors to be substantially engaged in selling the goods of others.

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery.

(C) The goods are not consumer goods immediately before delivery.

(D) The transaction does not create a security interest that secures an obligation.

(21) ''Consignor'' means a person that delivers goods to a consignee in a consignment.

(22) ''Consumer debtor'' means a debtor in a consumer transaction.

(23) ''Consumer goods'' means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) ''Consumer-goods transaction'' means a consumer transaction in which both of the following conditions are satisfied:

(A) An individual incurs an obligation primarily for personal, family, or household purposes.

(B) A security interest in consumer goods secures the obligation.

(25) ''Consumer obligor'' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) ''Consumer transaction'' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) ''Continuation statement'' means an amendment of a financing statement which does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) ''Debtor'' means any of the following:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes.

(C) A consignee.

(29) ''Deposit account'' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) ''Document'' means a document of title or a receipt of the type described in subdivision (2) of Section 7201.

(31) ''Electronic chattel paper'' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) ''Encumbrance'' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) ''Equipment'' means goods other than inventory, farm products, or consumer goods.

(34) ''Farm products'' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

(A) Crops grown, growing, or to be grown, including both of the following:

(i) Crops produced on trees, vines, and bushes.

(ii) Aquatic goods produced in aquacultural operations.

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.

(C) Supplies used or produced in a farming operation.

(D) Products of crops or livestock in their unmanufactured states.

(35) ''Farming operation'' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) ''File number'' means the number assigned to an initial financing statement pursuant to subdivision (a) of Section 9519.

(37) ''Filing office'' means an office designated in Section 9501 as the place to file a financing statement.

(38) ''Filing-office rule'' means a rule adopted pursuant to Section 9526.

(39) ''Financing statement'' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) ''Fixture filing'' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subdivisions (a) and (b) of Section 9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) ''Fixtures'' means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) ''General intangible'' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) ''Good faith'' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) ''Goods'' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) ''Governmental unit'' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the

United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) ''Health care insurance receivable'' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

(47) ''Instrument'' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) ''Inventory'' means goods, other than farm products, which are any of the following:

(A) Leased by a person as lessor.

(B) Held by a person for sale or lease or to be furnished under a contract of service.

(C) Furnished by a person under a contract of service.

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) ''Investment property'' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) ''Jurisdiction of organization,'' with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) ''Letter-of-credit right'' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) (A) ''Lien creditor'' means any of the following:

(i) A creditor that has acquired a lien on the property involved by attachment, levy, or the like.

(ii) An assignee for benefit of creditors from the time of assignment.

(iii) A trustee in bankruptcy from the date of the filing of the petition.

(iv) A receiver in equity from the time of appointment.

(B) ''Lien creditor'' does not include a creditor who by filing a notice with the Secretary of State has acquired only an attachment or judgment lien on personal property, or both.

(53) ''Manufactured home'' means a structure, transportable in one or more sections, which, in the traveling mode, is eight body-feet or more in width or 40 body-feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) ''Manufactured home transaction'' means a secured transaction that satisfies either of the following:

(A) It creates a purchase money security interest in a manufactured home, other than a manufactured home held as inventory.

(B) It is a secured transaction in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) ''Mortgage'' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) ''New debtor'' means a person that becomes bound as debtor under subdivision (d) of Section 9203 by a security agreement previously entered into by another person.

(57) ''New value'' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) ''Noncash proceeds'' means proceeds other than cash proceeds.

(59) ''Obligor'' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) ''Original debtor,'' except as used in subdivision (c) of Section 9310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subdivision (d) of Section 9203.

(61) ''Payment intangible'' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) ''Person related to,'' with respect to an individual, means any of the following:

(A) The spouse of the individual.

(B) A brother, brother-in-law, sister, or sister-in-law of the individual.

(C) An ancestor or lineal descendant of the individual or the individual's spouse.

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) ''Person related to,'' with respect to an organization, means any of the following:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization.

(B) An officer or director of, or a person performing similar functions with respect to, the organization.

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A).

(D) The spouse of an individual described in subparagraph (A), (B), or (C).

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) ''Proceeds,'' except as used in subdivision (b) of Section 9609, means any of the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) ''Promissory note'' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) ''Proposal'' means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9620, 9621, and 9622.

(67) ''Public finance transaction'' means a secured transaction in connection with which all of the following conditions are satisfied:

(A) Debt securities are issued.

(B) All or a portion of the securities issued have an initial stated maturity of at least 20 years.

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) ''Pursuant to commitment,'' with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) ''Record,'' except as used in ''for record,'' ''of record,'' ''record or legal title,'' and ''record owner,'' means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) ''Registered organization'' means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) ''Secondary obligor'' means an obligor to the extent that either of the following conditions are satisfied:

(A) The obligor's obligation is secondary.

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) ''Secured party'' means any of the following:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.

(B) A person that holds an agricultural lien.

(C) A consignor.

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.

(F) A person that holds a security interest arising under Section 2401, 2505, 4210, or 5118, or under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.

(73) ''Security agreement'' means an agreement that creates or provides for a security interest.

(74) ''Send,'' in connection with a record or notification, means to do either of the following:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances.

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) ''Software'' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) ''State'' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) ''Supporting obligation'' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(78) ''Tangible chattel paper'' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) ''Termination statement'' means an amendment of a financing statement that does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) ''Transmitting utility'' means a person primarily engaged in the business of any of the following:

(A) Operating a railroad, subway, street railway, or trolley bus.

(B) Transmitting communications electrically, electromagnetically, or by light.

(C) Transmitting goods by pipeline or sewer.

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other divisions apply to this division:

''Applicant''	Section 5102.
''Beneficiary''	Section 5102.
''Broker''	Section 8102.
''Certificated security''	Section 8102.
''Check''	Section 3104.
''Clearing corporation''	Section 8102.
''Contract for sale''	Section 2106.

''Customer''	Section 4104.
''Entitlement holder''	Section 8102.
''Financial asset''	Section 8102.
''Holder in due course''	Section 3302.
''Issuer'' (with respect to a letter of credit or letter–of–credit right)	Section 5102.
''Issuer'' (with respect to a security)	Section 8201.
''Lease''	Section 10103.
''Lease agreement''	Section 10103.
''Lease contract''	Section 10103.
''Leasehold interest''	Section 10103.
''Lessee''	Section 10103.
''Lessee in ordinary course of business''	Section 10103.
''Lessor''	Section 10103.
''Lessor's residual interest''	Section 10103.
''Letter of credit''	Section 5102.
''Merchant''	Section 2104.
''Negotiable instrument''	Section 3104.
''Nominated person''	Section 5102.
''Note''	Section 3104.
''Proceeds of a letter of credit''	Section 5114.
''Prove''	Section 3103.
''Sale''	Section 2106.
''Securities account''	Section 8501.
''Securities intermediary''	Section 8102.
''Security''	Section 8102.
''Security certificate''	Section 8102.
''Security entitlement''	Section 8102.
''Uncertificated security''	Section 8102.

(c) Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 2. Section 9304 of the Commercial Code is amended to read:

9304. (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this chapter:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the

bank's jurisdiction for purposes of this chapter, this division, or this code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

SEC. 3. Section 9309 of the Commercial Code is amended to read:

9309. The following security interests are perfected when they attach:

(1) A purchase money security interest in consumer goods, except as otherwise provided in subdivision (b) of Section 9311 with respect to consumer goods that are subject to a statute or treaty described in subdivision (a) of Section 9311.

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles.

(3) A sale of a payment intangible.

(4) A sale of a promissory note.

(5) A security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services.

(6) A security interest arising under Section 2401 or 2505, under subdivision (3) of Section 2711, or under subdivision (5) of Section 10508, until the debtor obtains possession of the collateral.

(7) A security interest of a collecting bank arising under Section 4210.

(8) A security interest of an issuer or nominated person arising under Section 5118.

(9) A security interest arising in the delivery of a financial asset under subdivision (c) of Section 9206.

(10) A security interest in investment property created by a broker or securities intermediary.

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary.

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

(14) A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

SEC. 4. Section 9321 of the Commercial Code is amended to read:

9321. (a) In this section, ''licensee in ordinary course of business'' means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(d) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 5. Section 9321 of the Commercial Code is amended to read:

9321. (a) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(b) This section shall become operative on January 1, 2007.

SEC. 6. Section 9408 of the Commercial Code is amended to read:

9408. (a) Except as otherwise provided in subdivision (b), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subdivision (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or the creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subdivision (c) would be effective under law other than this division but is ineffective under subdivision (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible is subject to all of the following rules:

(1) It is not enforceable against the person obligated on the promissory note or the account debtor.

(2) It does not impose a duty or obligation on the person obligated on the promissory note or the account debtor.

(3) It does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

(4) It does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials

furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible.

(5) It does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor.

(6) It does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

(e) Subdivision (c) does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a claim or right to receive compensation for injuries or sickness as described in paragraph (1) or (2) of subdivision (a) of Section 104 of Title 26 of the United States Code, as amended, or a claim or right to receive benefits under a special needs trust as described in paragraph (4) of subdivision (d) of Section 1396p of Title 42 of the United States Code, as amended, to the extent that subdivision (c) is inconsistent with those laws.

SEC. 7. Section 9521 of the Commercial Code is amended to read:

9521. (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format or in the following form and format but lacking a space identified for the disclosure of the social security number of an individual except for a reason set forth in subdivision (b) of Section 9516:

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

1d. TAX ID #. SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
				☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (2a or 2b) – do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID #. SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ A.G. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2 [ADDITIONAL FEE]

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one name (11a or 11b) – do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11d. TAX ID #. SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
				☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME – insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured Home Transaction — effective 30 years

☐ Filed in connection with a Public Finance Transaction — effective 30 years

NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98)

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format or in the following form and format but lacking a space identified for the disclosure of the social security number of an individual except for a reason set forth in subdivision (b) of Section 9516:

[redacted]

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.
Also check one of the following three boxes and provide appropriate information in item 6 and/or 7.

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name: Give record name to be deleted in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

7d. TAX ID #. SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
				☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

10. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/98)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

SEC. 8. Section 12194 of the Government Code is amended to read:

12194. The fees for filing liens pursuant to the Code of Civil Procedure and for filing financing statements and other Uniform Commercial Code filings are the following:

(a) Ten dollars ($10) if the record is communicated in writing and consists of one or two pages.

(b) Twenty dollars ($20) if the record is communicated in writing and consists of more than two pages.

(c) Five dollars ($5) if the record is communicated by another medium authorized by a rule adopted by the office of the Secretary of State.

(d) Two dollars ($2) if the record is a state tax lien certificate of release.

The Secretary of State shall collect a special handling fee for filing records in the manner provided in Section 12182.

Financing statements and other Uniform Commercial Code filings shall be submitted on national standard forms as approved by the office of the Secretary of State or on those national forms but lacking a space identified for the disclosure of the social security number of an individual.

SEC. 9. Section 5907 of the Vehicle Code is amended to read:

5907. A secured party who holds a security interest in a registered vehicle that constitutes inventory as defined in the Uniform Commercial Code, who has possession of the certificate of ownership issued for that vehicle, if the certificate of ownership has been issued, need not make application for a transfer of registration and the Uniform Commercial Code shall exclusively control the validity and perfection of that security interest. This section does not apply to the extent that subdivisions (a) to (c), inclusive, of Section 9311 of the Uniform Commercial Code apply to a security interest, because the transaction is not described in subdivision (d) of Section 9311 of that code.

CHAPTER 236

An act to amend Section 52941 of the Food and Agricultural Code, relating to agriculture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 52941 of the Food and Agricultural Code is amended to read:

52941. (a) Any person who has cottonseed delinted for planting purposes under this chapter, shall annually pay to the secretary an assessment in an amount not to exceed six dollars ($6) per hundredweight on the undelinted weight of the cottonseed.

(b) Cottonseed delinters, by June 15th of each year, shall provide the secretary with the name and address of each person having cottonseed delinted and the undelinted weight of their cottonseed.

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 sufficient funds to protect California's cotton industry, it is necessary for this act to take effect immediately as an urgency statute.

CHAPTER 237

An act to amend Section 37700 of the Education Code, relating to schooldays, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

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

(a) The Reeds Creek Elementary School District is faced with unique challenges, including its small pupil population, modest budget, large territory, and rural location.

(b) The district serves an area of 385 square miles and has a widely dispersed population of 140 pupils.

(c) Implementing transportation services for the pupil population is unusually difficult when travel time reaches 120 minutes each way.

(d) Forty-eight percent of the pupil population is eligible for free or reduced-price meals, and the region served by the district is economically limited.

(e) The restrictions imposed on the district by its small pupil population, modest budget, and large territory, combined with severe

fiscal difficulties confronting state and local government, leave the district with few options for coping with diminishing resources.

(f) The option to operate one or more schools on a four-day school week will enable the district to sustain existing programs without reducing the amount of instructional time provided to its pupils.

SEC. 2. Section 37700 of the Education Code is amended to read:

37700. (a) Notwithstanding any other law, the Pacific Unified School District, the Leggett Valley Unified School District, and the Reeds Creek Elementary School District may operate one or more schools in their respective districts on a four-day school week, if the district complies with the instructional time requirements specified in Section 37701 and the other requirements of this chapter.

(b) If a school district operates one or more schools on a four-day week pursuant to this section and the program for the school year provides less than the 180 days of instruction required under Section 46200, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year by the amount the school district would have received for the increase received pursuant to subdivision (a) of Section 46200, as adjusted in fiscal years subsequent to the 1984–85 fiscal year. If a school district operates one or more schools on a four-day school week pursuant to this section and the program provides less than the minimum instructional minutes required under Section 46201, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year in which the reduction occurs by the amount the school district would have received for the increase in the 1987–88 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (6) of subdivision (b) of Section 42238, as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

(c) A school district with an exclusive bargaining representative may operate a school on a four-day school week pursuant to this section only if the district and the representative of each bargaining unit of district employees mutually agree to that operation in a memorandum of understanding.

SEC. 3. The Legislature finds and declares that due to the unique circumstances regarding the Reeds Creek Elementary School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in this act is necessarily applicable only to the Reeds Creek Elementary School District.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the Reeds Creek Elementary School District to operate one or more schools in the district on a four-day school week at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 238

An act to add Section 1054.10 to the Penal Code, relating to discovery, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. Section 1054.10 is added to the Penal Code, to read:

1054.10. (a) Except as provided in subdivision (b), no attorney may disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else copies of child pornography evidence, unless specifically permitted to do so by the court after a hearing and a showing of good cause.

(b) Notwithstanding subdivision (a), an attorney may disclose or permit to be disclosed copies of child pornography evidence to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this material by an attorney shall be informed by the attorney that further dissemination of the material, except as provided by this section, is prohibited.

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

In order to ensure the proper handling of evidence of child pornography, it is necessary that this bill go into effect immediately.

CHAPTER 239

An act to add and repeal Section 367.3 of the Public Utilities Code, relating to energy resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with Secretary of State August 11, 2003.]

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

SECTION 1. 367.3 is added to the Public Utilities Code, to read:

367.3. (a) For purposes of this section, a ''qualifying direct transaction customer'' means any customer that meets each of the following requirements:

(1) The customer entered into a direct transaction with an electric service provider for electric service for a plant or facility in California, by executing a contract prior to January 1, 2000, that extended service through at least February 1, 2001.

(2) The plant or facility was, after February 1, 2001, involuntarily returned to the electrical corporation for electrical service, as a result of the electric service provider terminating electrical service under the direct transaction contract.

(3) The plant or facility entered into a new direct transaction with an electric service provider for the plant or facility's electric service and a direct access service request (DASR) was submitted within 90 days from the date the plant or facility's most recent direct transaction contract was involuntarily terminated.

(4) The plant or facility continuously participated in an interruptible or curtailable service program.

(5) The plant or facility had an average total cost for all aspects of electric service, as a percentage of sales, in excess of 8 percent, for the five years beginning January 1, 1996, and continuing to December 31, 2000.

(6) The plant or facility had an average net profit margin as a percentage of sales of greater than 2 percent, for the five years beginning January 1, 1996, and continuing to December 31, 2000.

(7) The average total electric service cost as a percentage of sales, exceeded the average net profit margin as a percentage of sales for the plant or facility, for the five years beginning January 1, 1996, and continuing to December 31, 2000.

(8) The customer submits an application to the commission pursuant to this section within seven days of the operative date of the act adding this section, accompanied by a declaration from an officer, director, or owner stating that unless relieved of the expense of the direct access cost responsibility surcharge, the plant or facility that purchases electric service under the direct transaction contract, faces certain and imminent closure.

(b) If the commission finds it is in the public interest and there is no feasible alternative, the commission may defer or waive the collection of a portion of the cost responsibility surcharge otherwise applicable to a qualifying direct transaction customer, to the extent necessary to mitigate the conditions described in paragraph (8) of subdivision (a).

That deferral or waiver may not result in any shifting of costs to bundled service customers, either immediately or over time, or delay the full and timely recovery of costs from direct access customers as a group.

(c) The commission shall issue a decision on an application submitted pursuant to this section on or before September 4, 2003. Notwithstanding subdivisions (d) and (g) of Section 311, the commission may issue its decision in less than 30 days following filing and service of the proposed decision.

(d) The commission shall require an electrical corporation to defer collection of a portion of the cost responsibility surcharge otherwise applicable to a qualifying direct transaction customer while an application submitted pursuant to this section is pending before the commission and, if the application is granted, until the deferral or waiver is operative.

(e) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

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

In order to ensure that the public's best interest is served, and to preserve numerous jobs at facilities that face certain and imminent closure due to the high cost of electricity as a result of being involuntarily returned to bundled electric service during the energy crisis, it is necessary that this act take effect immediately.

CHAPTER 240

An act to amend Section 11361 of the Government Code, to amend Section 713 of the Fish and Game Code, to Sections 2699.5, 2705, 2705.5, 2706, 2709.1, 3109, 3110, 3111, 3236.5, 3343, 3358, 3719, 3724.6, 3754.5, 3770, 3776, 5006.1, 5627, 6217, and 34000 of, and to add Sections 2200.5 and 5015.6 to, the Public Resources Code, to add Sections 79505.5, 79505.6, 79506.7, 79522, 79532, 79534, 79540.1, 79547, 79547.2, 79555, 79560.5, 79561.5, 79562.5, 79564.1, and 79590 to, and to add Chapter 10.5 (commencing with Section 79575) to Division 26.5 of, the Water Code, relating to public resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 13, 2003. Filed with Secretary of State August 13, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

In order to protect the intent of the voters in approving the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code), it is necessary and desirable that, to the maximum extent possible, the following principles apply to the implementation of that act:

(a) Guidelines developed for grant and loan programs pursuant to that act shall encourage integrated, multiple-benefit projects.

(b) Preference shall be given to funding safe drinking water and water quality projects that serve disadvantaged communities.

(c) Programs shall support projects that improve local and regional water supply reliability.

(d) For projects that affect water quality, preference shall be given to those projects that contribute expeditiously and measurably to the long-term attainment and maintenance of water quality standards.

(e) For projects that affect water quality, preference shall be given to funding projects that will eliminate or significantly reduce pollution into impaired waters and sensitive habitat areas, including areas of special biological significance.

(f) Projects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including, but not limited to, the surface water ambient monitoring program carried out by the State Water Resources Control Board.

(g) Groundwater projects and projects that affect groundwater shall include groundwater monitoring requirements consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76 (commencing with Section 10780) of Division 6 of the Water Code).

SEC. 2. Section 11361 of the Government Code is amended to read:

11361. This chapter does not apply to the adoption or revision of regulations, guidelines, or criteria to implement the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act) (Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code), 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 of the Public Resources Code), or the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code). The adoption or revision of regulations, guidelines, or criteria, if necessary to implement those respective acts, shall instead be

accomplished by means of a public process reasonably calculated to give those persons interested in their adoption or revision an opportunity to be heard.

SEC. 3. Section 713 of the Fish and Game Code is amended to read:

713. (a) The changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce, shall be used as the index to determine an annual rate of increase or decrease in the fees for licenses, stamps, permits, tags, or other entitlements issued by the department.

(b) The department shall determine the change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce, for the quarter ending March 31 of the current year compared to the quarter ending March 31 of the previous year. The relative amount of the change shall be multiplied by the current fee for each license, stamp, permit, tag, or other entitlement issued by the department.

The product shall be rounded to the nearest twenty-five cents ($0.25), and the resulting amount shall be added to the fee for the current year. The resulting amount shall be the fee for the license year beginning on or after January 1 of the next succeeding calendar year for the license, stamp, permit, tag, or other entitlement that is adjusted under this section.

(c) Notwithstanding any other provision of law, the department may recalculate the current fees charged for each license, stamp, permit, tag, or other entitlement issued by the department, to determine that all appropriate indexing has been included in the current fees. This section shall apply to all licenses, stamps, permits, tags, or other entitlements, that have not been increased each year since the base year of the 1985–86 fiscal year.

(d) The calculations provided for in this section shall be reported to the Legislature with the Governor's Budget Bill.

(e) The Legislature finds that all revenues generated by fees for licenses, stamps, permits, tags, and other entitlements, computed under this section and used for the purposes for which they were imposed, are not subject to Article XIII B of the California Constitution.

(f) The department shall, at least every five years, analyze all fees for licenses, stamps, permits, tags, and other entitlements issued by it to ensure the appropriate fee amount is charged. Where appropriate, the department shall recommend to the Legislature or the commission that fees established by the commission or the Legislature be adjusted to ensure that those fees are appropriate.

SEC. 4. Section 2200.5 is added to the Public Resources Code, to read:

2200.5. For the purposes of this chapter, ''lead agency'' means the city, county, San Francisco Bay Conservation and Development Commission, or the board that has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to Chapter 9 (commencing with Section 2710).

SEC. 5. Section 2699.5 of the Public Resources Code is amended to read:

2699.5. (a) There is hereby created the Seismic Hazards Identification Fund, as a special fund in the State Treasury.

(b) Upon appropriation by the Legislature, the moneys in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund shall be allocated to the division for purposes of this chapter and Chapter 8 (commencing with Section 2700).

(c) On and after July 1, 2004, the Seismic Hazards Identification Fund shall be known as the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund.

SEC. 6. Section 2705 of the Public Resources Code is amended to read:

2705. (a) Counties and cities shall collect a fee from each applicant for a building permit. Each fee shall be equal to a specific amount of the proposed building construction for which the building permit is issued as determined by the local building officials. The fee amount shall be assessed in the following way:

(1) Group R occupancies, as defined in the 1985 Uniform Building Code and adopted in Part 2 (commencing with Section 2-101) of Title 24 of the California Code of Regulations, one to three stories in height, except hotels and motels, shall be assessed at the rate of ten dollars ($10) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(2) All other buildings shall be assessed at the rate of twenty-one dollars ($21) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(3) The fee shall be the amount assessed under paragraph (1) or (2), depending on building type, or fifty cents ($0.50), whichever is the higher.

(b) (1) In lieu of the requirements of subdivision (a), a county or city may elect to include a rate of ten dollars ($10) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, in its basic building permit fee for any Group R occupancy defined in paragraph (1) of subdivision (a), and a rate of twenty-one dollars ($21) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, for all other building types. A county or city electing to collect the fee pursuant to this subdivision need not segregate the fees in a fund separate from any fund into which basic building permit fees are deposited.

(2) ''Building,'' for the purpose of this chapter, is any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

(c) (1) A city or county may retain up to 5 percent of the total amount it collects under subdivision (a) or (b) for data utilization, for seismic education incorporating data interpretations from data of the strong-motion instrumentation program and the seismic hazards mapping program, and, in accordance with paragraph (2), for improving the preparation for damage assessment after strong seismic motion events.

(2) A city or county may use any funds retained pursuant to this subdivision to improve the preparation for damage assessment in its jurisdiction only after it provides the Department of Conservation with information indicating to the department that data utilization and seismic education activities have been adequately funded.

(d) Funds collected pursuant to subdivision (a) and (b), less the amount retained pursuant to subdivision (c), shall be deposited in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, as created by Section 2699.5.

SEC. 7. Section 2705.5 of the Public Resources Code is amended to read:

2705.5. The Division of Mines and Geology shall advise counties and cities as to that portion of the total fees allocated to the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, so that this information may be provided to building permit applicants.

SEC. 8. Section 2706 of the Public Resources Code is amended to read:

2706. Funds collected pursuant to subdivision (a) and (b) of Section 2705, less the amount retained pursuant to subdivision (c) of Section 2705, shall be deposited in the State Treasury in the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund, as created by Section 2699.5, to be used exclusively for the purposes of this chapter and Chapter 7.8 (commencing with Section 2690).

SEC. 9. Section 2709.1 of the Public Resources Code is amended to read:

2709.1. (a) No strong-motion instrumentation shall be installed pursuant to this chapter in the structural types identified in subdivision (b) unless funds proportionate to the construction value as called for under Section 2705 are received from organizations or entities representing these structural types, or the instrumentation is specifically called for by the Seismic Safety Commission in urgency situations.

(b) The structural types subject to this section include all of the following:

(1) Hospitals.

(2) Dams.
(3) Bridges.
(4) Schools.
(5) Powerplants.

(c) The Strong-Motion Instrumentation and Seismic Hazards Mapping Fund may accept funds from sources other than the permit fees identified in this chapter. The priority of installations performed under this chapter shall be determined by the Seismic Safety Commission.

SEC. 10. Section 3109 of the Public Resources Code is amended to read:

3109. The supervisor may publish any publications, reports, maps, or other printed matter relating to oil and gas, for which there may be public demand. If these publications, reports, maps, or other printed matter are sold, they shall be sold at cost, and the proceeds shall be deposited to the credit of the Oil, Gas, and Geothermal Administrative Fund.

SEC. 11. Section 3110 of the Public Resources Code is amended to read:

3110. All money paid to the Treasurer pursuant to Article 7 (commencing with Section 3400) shall be deposited to the credit of the Oil, Gas, and Geothermal Administrative Fund, which is hereby established in the State Treasury, for expenditure as provided in Section 3401.

SEC. 12. Section 3111 of the Public Resources Code is amended to read:

3111. (a) All money received in repayment of repair work done as provided in this chapter shall be returned and credited to the Oil, Gas, and Geothermal Administrative Fund for expenditure as provided in Section 3401.

(b) All miscellaneous revenues from oil and gas wells and from real and personal property acquired by the supervisor in the course of carrying out this chapter shall be credited to the Oil, Gas, and Geothermal Administrative Fund for expenditure as provided in Section 3401.

SEC. 13. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) Any person who violates this chapter or any regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation. Acts of God, and acts of vandalism beyond the reasonable control of the operator, shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been committed by the person charged, following notice to the person and an opportunity to be heard. The notice shall be served by personal service

or certified mail, and shall inform the alleged violator of the date, time, and place of the hearing, the activity that is alleged to be a violation, the statute or regulation violated, and the hearing and judicial review procedures. The notice shall be provided at least 30 days before the hearing. The hearing shall be held before the supervisor or the supervisor's designee in Sacramento or in the district in which the violation occurred. The hearing is not required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, (3) the pervasiveness of the violation, and (4) the number of prior violations by the same violator.

(b) Notwithstanding this chapter, an order of the supervisor imposing a civil penalty shall not be reviewable pursuant to Article 6 (commencing with Section 3350). A person upon whom a civil penalty is imposed by a final order of the supervisor may obtain judicial review of that final order by seeking a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of that final order. When the order of the supervisor has become final, and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well operations that are the subject of the civil penalty order is discontinued until the violation has been remedied to the satisfaction of the supervisor, and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

SEC. 14. Section 3343 of the Public Resources Code is amended to read:

3343. (a) Any person who willfully violates any provision of this article or any rule, regulation or order of the supervisor, shall be subject to a penalty of one thousand dollars ($1,000) for each act of violation and for each day that the violation continues.

(b) The penalty provided in this section shall be recoverable by suit filed by the Attorney General in the name and on behalf of the supervisor in the superior court of the State of California for the county in which the defendant resides, or in which any defendant resides, if there is more than one defendant, or in the superior court of any county in which the violation occurred. The payment of the penalty shall not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation. The penalty, when

recovered, shall be paid to the State Treasurer and shall be deposited to the credit of the Oil, Gas, and Geothermal Administrative Fund.

(c) Any person knowingly aiding or abetting any other person in the violation of any provision of this article, or any rule, regulation or order of the supervisor shall be subject to the same penalty as that prescribed by this section for the violation by the other person.

SEC. 15. Section 3358 of the Public Resources Code is amended to read:

3358. Witnesses shall be entitled to receive the fees and mileage fixed by law in civil causes, payable from the Oil, Gas, and Geothermal Administrative Fund.

SEC. 16. Section 3719 of the Public Resources Code is amended to read:

3719. The supervisor shall publish any publications, reports, maps, statistical data or other printed matter relating to geothermal resources, for which there may be public demand. If these publications, reports, maps, statistical data or other printed matter are sold, they shall be sold at cost, and the proceeds shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

SEC. 17. Section 3724.6 of the Public Resources Code is amended to read:

3724.6. The permit application fees established in Sections 3724 and 3724.1 shall be made payable by the operator to the Department of Conservation, and the annual well fee established in accordance with Section 3724.5 shall be made payable to the Treasurer. The proceeds from the permit applications and the annual well fees shall be deposited in the Oil, Gas, and Geothermal Administrative Fund, and shall be available for appropriation exclusively for the supervision of geothermal resource wells.

SEC. 18. Section 3754.5 of the Public Resources Code is amended to read:

3754.5. (a) Any person who violates this chapter or any regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation. Acts of God, and acts of vandalism beyond the reasonable control of the operator, shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been committed by the person charged, following notice to the person and an opportunity to be heard. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of civil liability pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the

persistence of the violation, and (3) the number of prior violations by the same violator.

(b) An order of the supervisor imposing a civil penalty shall be reviewable pursuant to Sections 3762 to 3771, inclusive. When the order of the supervisor has become final or has been upheld following exhaustion of the applicable review procedures, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

SEC. 19. Section 3770 of the Public Resources Code is amended to read:

3770. Witnesses shall be entitled to receive the fees and mileage fixed by law in civil causes, payable from the Oil, Gas, and Geothermal Administrative Fund.

SEC. 20. Section 3776 of the Public Resources Code is amended to read:

3776. Payment of the penalties and charges, or the amount of the judgment recovered in the action, shall be made to the State Treasurer, and shall be returned and credited to the Oil, Gas, and Geothermal Administrative Fund.

SEC. 21. Section 5006.1 of the Public Resources Code is amended to read:

5006.1. (a) (1) Prior to submitting a proposal pursuant to subdivision (f) of Section 5006, for an appropriation for the acquisition of real property in excess of five million dollars ($5,000,000) in value for any state park system project, the department shall hold a public hearing within the county in which the proposed project is located at which interested members of the public may comment on the proposed project. Notice of the hearing shall be published at least twice in a newspaper of general circulation within that county.

(2) (A) The department shall provide written notice of its intent to acquire the real property to the city or county, or both, having jurisdiction over the property, to the members of the Legislature who are the chair and vice chair of the joint legislative budget committee, the chair of the budget subcommittee in each house having jurisdiction over resources, the chair in each house of the appropriate legislative policy committee, and the legislators within whose district the property proposed for acquisition is located, as early as possible in the acquisition process, but not less than 90 days from the date of acquisition. Within 30 days of receiving written notice of the proposed acquisition, a member of the city council or board of supervisors of the respective city or county, or a Member of the Legislature who has been notified pursuant to this subparagraph, may request that the department hold a public hearing

regarding the acquisition of the property, if the acquisition is between five hundred thousand dollars ($500,000) and five million dollars ($5,000,000).

(B) The written notice of intent shall describe any potential impact that the acquisition may have on the department's efforts to provide park and recreational opportunities.

(b) With respect to real property in excess of five million dollars ($5,000,000) that is not proposed to be acquired pursuant to subdivision (f) of Section 5006, the department shall hold a public hearing within the county in which the real property is located, at which interested members of the public may comment on the proposed acquisition. Notice of the hearing shall be published at least twice in a newspaper of general circulation within the county. The department shall provide written notice of its intent to acquire the real property to the city or county, or both, having jurisdiction over the property, as early as possible in the acquisition process.

(c) This section does not apply to any real property to be acquired by grant, gift, devise, or bequest.

SEC. 22. Section 5015.6 is added to the Public Resources Code, to read:

5015.6. In recognition of the late Ed Z'berg's many contributions to the growth and improvement of the state park system, Sugar Pine Point State Park is hereby designated and shall be known as the Ed Z'berg Sugar Pine Point State Park.

SEC. 23. Section 5627 of the Public Resources Code is amended to read:

5627. (a) Grant moneys received pursuant to this chapter shall be expended for high priority projects that satisfy the most urgent park and recreation needs, with emphasis on unmet needs in the most heavily populated and most economically disadvantaged areas within each jurisdiction.

(b) Grants received pursuant to this chapter shall be expended only for acquisition, development, or both, except that not more than 30 percent of the amount received by a city, county, or district in an annual period may be utilized for special major maintenance projects, provided the projects are related to land acquired or developed, or both, in whole or in part, with state moneys under this chapter, or for innovative recreation programs, or for both.

(c) Grants to cities, counties, and districts pursuant to this chapter shall be on the basis of 70 percent state money and 30 percent local matching money, not less than one-third of which shall be from private or nonstate sources of funds, for the project. Grants for acquisition shall be matched only by money or property donated to be part of the acquisition project. Grants for development may be matched by

monetary contributions or, if nonmonetary contributions, as provided in regulations and standards which shall be established by the director after a public hearing. The component of local matching money consisting of funds from private or nonstate sources may, at the option of the grant recipient, be calculated as a percentage of the total amount granted in that fiscal year to a grant recipient, rather than on a project-by-project basis.

(d) The component of local matching money from private or nonstate sources required by subdivision (c) may be in the form of and include, but is not limited to, the following: cash donations, gifts of real property, equipment, and consumable supplies, volunteer services, free or reduced-cost use of lands, facilities, or equipment, and bequests and earnings from wills, estates, and trusts. Funds from nonstate sources that qualify for the purposes of subdivision (c) are funds from the federal government and local public agencies other than the grant recipient. Real property, cash, or other assets required to be transferred to a public agency pursuant to Section 66477 of the Government Code or any other provision of law may not qualify as funds from a private or nonstate source; however, they shall qualify as the monetary or nonmonetary contribution required to be furnished by the grant recipient pursuant to subdivision (c).

(e) The grant recipient shall certify to the department that there is available, or will become available prior to the encumbrance of any state funds for any work on the project for which application for a grant has been made, matching money from private or nonstate sources. Certification of the source and amount of nonstate funds shall be set forth in the application for a grant submitted to the department. However, in recognition of the fact that raising private funds frequently requires an initial evidence of matching public funds, the certification of the source and amount of the private funds shall be made by the applicant at least 30 days prior to actual release of state funds.

(f) Local matching money may not be required with respect to an applicant that has urgent unmet needs for recreational lands or facilities, and lacks the financial resources to acquire or develop recreational lands or facilities, as determined pursuant to a formula set forth in regulations adopted by the director after a public hearing. In addition, with respect to applications for grants submitted for areas where private financial resources are of limited availability or submitted for projects or programs that are not of a type likely to attract private funds, the director shall, if the project conforms to regulations adopted by the department, waive the requirement that at least one-third of local matching money be from private sources. The regulations shall establish criteria and procedures for the waiver. These criteria may provide for consideration of the average per capita income, unemployment rate, crime rate, and

recent history of plant or business closures in the area of the applicant's jurisdiction where the grant will be expended.

(g) Notwithstanding subdivisions (c), (d), (e), and (f), funds from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Chapter 1.696 (commencing with Section 5096.600)) that are or have been appropriated on or before June 30, 2004, for the purposes of this chapter do not require local matching money.

SEC. 24. Section 6217 of the Public Resources Code, as amended by Section 18 of Chapter 876 of the Statutes of 1998, is amended to read:

6217. (a) With the exception of revenue derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and Sections 8551 to 8558, inclusive, and Section 6404 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit all revenue, money, and remittances received by the commission under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, in the General Fund. Out of those funds deposited in the General Fund, sufficient moneys shall be made available each fiscal year for the following purposes:

(1) Payment of refunds, authorized by the commission, out of appropriations made for that purpose.

(2) Payment of expenditures of the commission as provided in the annual Budget Act.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, out of appropriations made for that purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to Section 6875, out of appropriations made for that purpose.

(b) This section shall become operative on July 1, 2006.

SEC. 25. Section 34000 of the Public Resources Code is amended to read:

34000. Money deposited in the Bosco-Keene Renewable Resources Investment Fund created by former Section 7150.6 of the Fish and Game Code may be encumbered, pursuant to appropriation by the Legislature, only for the following purposes:

(a) Salmon and steelhead hatchery expansion and fish habitat improvement.

(b) Forest resource improvement projects pursuant to the California Forest Improvement Act of 1978.

(c) Urban forestry projects pursuant to the California Urban Forestry Act of 1978.

(d) Agricultural soil drainage programs which will retard desertification and protect agricultural productivity.

(e) Support of technical assistance programs which will prevent soil erosion.

(f) Agricultural, industrial, and urban water conservation programs.

(g) Wildland fire prevention programs pursuant to the Wildland Fire Protection and Resources Management Act of 1978, Article 1 (commencing with Section 4461) and Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4.

(h) Coastal resource enhancement projects pursuant to Chapter 6 (commencing with Section 31251) of Division 21.

(i) Regulation and oversight of surface mining activities pursuant to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2).

SEC. 26. Section 79505.5 is added to the Water Code, to read:

79505.5. As used in this division, the following terms shall have the following meanings:

(a) ''Disadvantaged community'' means a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

(b) ''Matching funds'' means funds made available by nonstate sources, which may include, but are not limited to, donated services from nonstate sources.

SEC. 27. Section 79505.6 is added to the Water Code, to read:

79505.6. (a) (1) By March 15, 2004, each state agency disbursing grants or loans pursuant to this division shall develop project solicitation and evaluation guidelines. The guidelines may include a limitation on the size of grants or loans to be awarded.

(2) Prior to disbursing grants, each state agency shall conduct two public meetings to consider public comments prior to finalizing the guidelines. Each state agency shall publish the draft solicitation and evaluation guidelines on its Internet Web site at least 30 days before the public meetings. One meeting shall be conducted at a location in northern California and one meeting shall be conducted at a location in southern California. Upon adoption, each state agency shall transmit copies of the guidelines to the fiscal committees and the appropriate policy committees of the Legislature. To the extent feasible, each state agency shall provide outreach to disadvantaged communities to promote access and participation in those meetings.

(3) (A) Subject to subparagraph (B), the guidelines may include a requirement for matching funds.

(B) A state agency may not require matching funds for the purposes of awarding a grant financed by this division to assist a disadvantaged community, except as follows:

(i) For the purposes of awarding a grant pursuant to subdivision (a) of Section 79545, the department shall impose matching fund requirements in accordance with subdivision (a) of Section 79545.

(ii) For the purposes of awarding a grant subject to Section 79564, the board shall impose matching fund requirements in accordance with subdivision (b) of Section 79564.

(b) Notwithstanding subdivision (a), a state agency, in lieu of adopting guidelines pursuant to subdivision (a), may use guidelines existing on January 1, 2004, to the extent those guidelines conform to the applicable requirements of this division.

SEC. 28. Section 79506.7 is added to the Water Code, to read:

79506.7. State agencies that are authorized to award loans or grants financed by this division shall provide technical assistance with regard to the preparation of the applications for those loans or grants in a manner that, among other things, addresses the needs of economically disadvantaged communities.

SEC. 29. Section 79522 is added to the Water Code, to read:

79522. (a) Funds made available pursuant to Section 79520 shall be appropriated to the State Department of Health Services to carry out this chapter consistent with the requirements and for the purposes specified in Section 79520.

(b) In the development of priorities for expenditure of the funds appropriated for the purposes of this section, the State Department of Health Services shall consult with the Office of Emergency Services, the state Office of Homeland Security and local water agencies to develop criteria for the department's programs.

(c) Funds allocated pursuant to this section shall not be available for grants that reimburse project costs incurred prior to the adoption of criteria for the grants provided in this section.

(d) No grant funds may be awarded to supplant funding for the routine responsibilities or obligations of any state, local, or regional drinking water system.

SEC. 30. Section 79532 is added to the Water Code, to read:

79532. (a) Funds made available pursuant to subdivision (b) of Section 79530 shall be administered in accordance with this section.

(b) (1) Grant funds appropriated for the purposes of subdivision (b) of Section 79530 shall be awarded on a competitive basis.

(2) The department shall consolidate the application process required to implement the grant program described in this section.

(c) For the purposes of this chapter, ''Southern California water agencies'' means water agencies whose service area is entirely or partly in one or more of the following counties: San Diego, Imperial, Riverside, Orange, Los Angeles, San Bernardino, Santa Barbara, or Ventura.

(d) Grants may be awarded to Southern California water agencies for eligible projects undertaken by one or more Southern California water agencies and other entities.

(e) A project funded by a grant made pursuant to subdivision (b) of Section 79530 shall meet both of the following requirements:

(1) The project will assist the grantee to meet safe drinking water standards.

(2) The project will assist in meeting the state's commitment to reduce Colorado River water use to 4.4 million acre-feet per year.

(f) In the development of criteria for the grants awarded pursuant to this section, the State Department of Health Services shall consult with the Office of Environmental Health Hazard Assessment for the purposes of developing a program that gives priority to projects that reduce public and environmental exposure to contaminants that pose the most significant health risks, and that will bring water systems into compliance with safe drinking water standards. These include, but are not limited to, projects that address public exposure to contaminants for which safe drinking water standards have been established, including arsenic, disinfection byproducts and uranium. Projects to address emerging contaminants, including perchlorate, chromium 6, and endocrine disrupters shall also be given priority.

SEC. 31. Section 79534 is added to the Water Code, to read:

79534. (a) Funds made available pursuant to paragraph (1), (2), (3), (4), or (5) of subdivision (a) of Section 79530, and not for the purposes of subdivision (b) of that section, shall be administered in accordance with this section.

(b) (1) Grants shall be awarded in accordance with subdivision (a) of Section 79530 on a statewide competitive basis.

(2) A project that is eligible for funding for the purposes of subdivision (b) of Section 79530 is not eligible for a grant subject to this section.

(c) For the purposes of this chapter, ''small community'' means a municipality with a population of 3,300 persons or fewer, or 1,000 connections or fewer.

(d) The State Department of Health Services shall consolidate the application process required to implement the grant program described in this section.

(e) In the development of criteria for the grants awarded under this section, the State Department of Health Services shall consult with the Office of Environmental Health Hazard Assessment for the purpose of developing a program that gives priority to projects that pose the most significant health risks, and that will bring water systems into compliance with safe drinking water standards. These include, but are not limited to, projects that address public exposure to contaminants for

which safe drinking water standards have been established, including arsenic, disinfection byproducts and uranium. Projects to address emerging contaminants, including perchlorate, chromium 6, and endocrine disrupters shall also be given priority.

(f) Grants awarded pursuant to this section may not exceed ten million dollars ($10,000,000) for any one project.

SEC. 32. Section 79540.1 is added to the Water Code, to read:

79540.1. (a) Grants shall be awarded in accordance with Section 79540 on a statewide competitive basis.

(b) To the extent funds appropriated pursuant to Section 79540 are expended for the purposes of programs established under Division 20.4 (commencing with Section 30901) of the Public Resources Code, those funds shall comply with the requirements of that division.

SEC. 33. Section 79547 is added to the Water Code, to read:

79547. (a) Funds made available pursuant to Section 79545 shall be administered in accordance with this section.

(b) Grants shall be awarded in accordance with Section 79545 on a statewide competitive basis.

SEC. 34. Section 79547.2 is added to the Water Code, to read:

79547.2. (a) For the purposes of implementing subdivision (a) of Section 79545, eligible projects shall be selected based on demonstrated need for new or alternative water supplies, project readiness, and the degree to which the project avoids or mitigates adverse environmental impacts. Preference shall be given to eligible projects that incorporate ecosystem restoration and water quality benefits.

(b) A grant made pursuant to subdivision (a) of Section 79545 may not exceed five million dollars ($5,000,000).

(c) For the purposes of this section, ''desalination project'' includes construction, planning, engineering, design, environmental assessments, or related work necessary for the construction of a desalination facility, or the construction of a pilot or demonstration facility.

SEC. 35. Section 79555 is added to the Water Code, to read:

79555. (a) For the 2004–05 fiscal year, and each fiscal year thereafter, not less than 50 percent of the funds made available pursuant to subdivision (d) of Section 79550 for acquisition of water for the CALFED environmental water account shall be expended for long-term water purchase contracts, permanent water rights, and associated costs.

(b) The California Bay-Delta Authority shall report annually to the Legislature on the state's efforts in acquiring long-term purchase contracts and permanent water rights in accordance with this section.

SEC. 36. Section 79560.5 is added to the Water Code, to read:

79560.5. For the purposes of carrying out this chapter, the department and the board shall jointly develop project solicitation and

evaluation guidelines. Before developing the solicitation and evaluation guidelines, the department and the board shall jointly conduct a public meeting to receive public comments on the scope, procedures, and content of the guidelines. Considering the public comments, the department and the board shall jointly develop solicitation and evaluation guidelines that are consistent with law and state programs and policies. The department and the board shall post the solicitation and evaluation guidelines on their respective Internet Web sites.

SEC. 37. Section 79561.5 is added to the Water Code, to read:

79561.5. (a) Notwithstanding any other provision of law, of the funds appropriated to the department for the purposes of Section 79560 and 79560.1, the department shall allocate the sum of not less than twenty million dollars ($20,000,000) to competitive grants for groundwater management and recharge projects. The department shall not allocate funds pursuant to this section unless it determines that the allocation is consistent with this division, as approved by the voters at the November 5, 2002, statewide general election.

(b) It is the intent of the Legislature that these funds be used to enhance water supply in rapidly growing areas of this state with limited access to imported water supplies.

(c) Not more than 50 percent of the grants pursuant to this section shall be for projects in northern California. For projects in southern California, the department shall give preference to projects outside the service area of the Metropolitan Water District of Southern California that are infill projects within one mile of established residential and commercial development.

(d) As used in this section, the term ''rapidly growing areas'' means counties located in southern California where the county population increased by 2.4 percent or more between January 1, 2002, and January 1, 2003.

SEC. 38. Section 79562.5 is added to the Water Code, to read:

79562.5. (a) For the purposes of carrying out Section 79560, the department shall award grants to eligible projects consistent with an adopted integrated regional water management plan.

(b) For purposes of subdivision (a), the department shall establish standards for integrated regional water management plans. At a minimum, these plans shall address the major water related objectives and conflicts of the watersheds in the region covered by the plan, including water supply, groundwater management, ecosystem restoration, and water quality elements, and may include other elements consistent with this chapter.

(c) The department may waive the requirement for consistency with an adopted integrated regional water management plan until January 1, 2007, if the applicant is engaged in the development of an integrated

regional water management plan and indicates, within its grant application, how the project fits into achieving the integrated regional water management plan objectives.

(d) The department may waive the matching fund requirement for disadvantaged communities.

(e) For groundwater management and recharge projects and for projects with potential groundwater impacts, the board and the department shall give preference to eligible projects in areas subject to a groundwater management plan that meets the requirements of Section 10753.7, or that includes the development of a groundwater management plan as a project component.

(f) The maximum award for any single grant pursuant to this section may not exceed fifty million dollars ($50,000,000).

(g) The department shall require that eligible projects include a nonstate contribution.

(h) For the purposes of implementing Section 79563, and to the extent funds are expended for the purposes of Section 30947 of the Public Resources Code, those funds shall comply with the requirements of that section.

SEC. 39. Section 79564.1 is added to the Water Code, to read:

79564.1. (a) Of the funds made available by Section 79560, not less than 40 percent shall be available for eligible projects in northern California and not less than 40 percent be available for eligible projects in southern California, subject to a determination by the administering agency that each project meets all of the requirements of this chapter.

(b) For the purposes of this section, ''southern California'' means the Counties of San Diego, Imperial, Riverside, Orange, Los Angeles, Santa Barbara, San Bernardino, and Ventura.

(c) For the purposes of this section, ''northern California'' means all California counties except those identified in subdivision (b).

SEC. 40. Chapter 10.5 (commencing with Section 79575) is added to Division 26.5 of the Water Code, to read:

CHAPTER 10.5. REPORTING

79575. Not later than January 1, 2005, and on or before January 1 of each year thereafter, each state agency expending funds pursuant to this division for projects, grants, or loans shall report to the Legislature on the recipient and amount of each project, grant, or loan awarded under this division during the previous fiscal year. The information shall include the total amount awarded, categorized by project, grant, or loan, the geographic distribution of projects, grants, or loans awarded under this division, and the intended public and environmental benefit that the awards provide. The information shall also include data on the balances

of funds available under this division for expenditures and grants in that fiscal year and future fiscal years.

SEC. 41. Section 79590 is added to the Water Code, to read:

79590. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded under this division. Actual costs incurred in connection with administering programs authorized under the categories specified in this division shall be paid by the funds authorized for those purposes by this division.

SEC. 42. All funds in the Strong-Motion Instrumentation Special Fund shall be transferred to the Strong-Motion Instrumentation and Seismic Hazards Mapping Fund. Those funds are subject to all encumbrances on the funds made prior to July 1, 2004, and to all legal restrictions on their use other than by state statute.

SEC. 43. It is the intent of the Legislature that Sections 2699.5, 2705, 2705.5, 2706, and 2709.1, of the Public Resources Code, as those sections read immediately prior to the effective date of this act, shall continue to be effective and operative until July 1, 2004, at which time those sections as amended by this act shall become operative.

SEC. 44. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the Budget Act of 2003, it is necessary that this act take effect immediately.

CHAPTER 241

An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

[Approved by Governor August 27, 2003. Filed with Secretary of State August 28, 2003.]

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

SECTION 1. Division 1.2 (commencing with Section 4050) is added to the Financial Code, to read:

DIVISION 1.2. CALIFORNIA FINANCIAL INFORMATION PRIVACY ACT

4050. This division shall be known and may be cited as the California Financial Information Privacy Act.

4051. (a) The Legislature intends for financial institutions to provide their consumers notice and meaningful choice about how consumers' nonpublic personal information is shared or sold by their financial institutions.

(b) It is the intent of the Legislature in enacting the California Financial Information Privacy Act to afford persons greater privacy protections than those provided in Public Law 106-102, the federal Gramm-Leach-Bliley Act, and that this division be interpreted to be consistent with that purpose.

4051.5. (a) The Legislature finds and declares all of the following:

(1) The California Constitution protects the privacy of California citizens from unwarranted intrusions into their private and personal lives.

(2) Federal banking legislation, known as the Gramm-Leach-Bliley Act, which breaks down restrictions on affiliation among different types of financial institutions, increases the likelihood that the personal financial information of California residents will be widely shared among, between, and within companies.

(3) The policies intended to protect financial privacy imposed by the Gramm-Leach-Bliley Act are inadequate to meet the privacy concerns of California residents.

(4) Because of the limitations of these federal policies, the Gramm-Leach-Bliley Act explicitly permits states to enact privacy protections that are stronger than those provided in federal law.

(b) It is the intent of the Legislature in enacting this division:

(1) To ensure that Californians have the ability to control the disclosure of what the Gramm-Leach-Bliley Act calls nonpublic personal information.

(2) To achieve that control for California consumers by requiring that financial institutions that want to share information with third parties and unrelated companies seek and acquire the affirmative consent of California consumers prior to sharing the information.

(3) To further achieve that control for California consumers by providing consumers with the ability to prevent the sharing of financial information among affiliated companies through a simple opt-out mechanism via a clear and understandable notice provided to the consumer.

(4) To provide, to the maximum extent possible, consistent with the purposes cited above, a level playing field among types and sizes of

businesses consistent with the objective of providing consumers control over their nonpublic personal information, including providing that those financial institutions with limited affiliate relationships may enter into agreements with other financial institutions as provided in this division, and providing that the different business models of differing financial institutions are treated in ways that provide consistent consumer control over information-sharing practices.

(5) To adopt to the maximum extent feasible, consistent with the purposes cited above, definitions consistent with federal law, so that in particular there is no change in the ability of businesses to carry out normal processes of commerce for transactions voluntarily entered into by consumers.

4052. For the purposes of this division:

(a) ''Nonpublic personal information'' means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution. Nonpublic personal information does not include publicly available information that the financial institution has a reasonable basis to believe is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made by federal, state, or local law. Nonpublic personal information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any nonpublic personal information.

(b) ''Personally identifiable financial information'' means information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer. Personally identifiable financial information includes all of the following:

(1) Information a consumer provides to a financial institution on an application to obtain a loan, credit card, or other financial product or service.

(2) Account balance information, payment history, overdraft history, and credit or debit card purchase information.

(3) The fact that an individual is or has been a consumer of a financial institution or has obtained a financial product or service from a financial institution.

(4) Any information about a financial institution's consumer if it is disclosed in a manner that indicates that the individual is or has been the financial institution's consumer.

(5) Any information that a consumer provides to a financial institution or that a financial institution or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(6) Any personally identifiable financial information collected through an Internet cookie or an information collecting device from a Web server.

(7) Information from a consumer report.

(c) ''Financial institution'' means any institution the business of which is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code and doing business in this state. An institution that is not significantly engaged in financial activities is not a financial institution. The term ''financial institution'' does not include any institution that is primarily engaged in providing hardware, software, or interactive services, provided that it does not act as a debt collector, as defined in 15 U.S.C. Sec. 1692a, or engage in activities for which the institution is required to acquire a charter, license, or registration from a state or federal governmental banking, insurance, or securities agency. The term ''financial institution'' does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.), provided that the entity does not sell or transfer nonpublic personal information to an affiliate or a nonaffiliated third party. The term ''financial institution'' does not include institutions chartered by Congress specifically to engage in a proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer, as long as those institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party. The term ''financial institution'' does not include any provider of professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional ethics and applicable law from voluntarily disclosing confidential client information without the consent of the client. The term ''financial institution'' does not include any person licensed as a dealer under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code that enters into contracts for the installment sale or lease of motor vehicles pursuant to the requirements of Chapter 2B

(commencing with Section 2981) or 2D (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil Code and assigns substantially all of those contracts to financial institutions within 30 days.

(d) ''Affiliate'' means any entity that controls, is controlled by, or is under common control with, another entity, but does not include a joint employee of the entity and the affiliate. A franchisor, including any affiliate thereof, shall be deemed an affiliate of the franchisee for purposes of this division.

(e) ''Nonaffiliated third party'' means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of that institution and a third party.

(f) ''Consumer'' means an individual resident of this state, or that individual's legal representative, who obtains or has obtained from a financial institution a financial product or service to be used primarily for personal, family, or household purposes. For purposes of this division, an individual resident of this state is someone whose last known mailing address, other than an Armed Forces Post Office or Fleet Post Office address, as shown in the records of the financial institution, is located in this state. For purposes of this division, an individual is not a consumer of a financial institution solely because he or she is (1) a participant or beneficiary of an employee benefit plan that a financial institution administers or sponsors, or for which the financial institution acts as a trustee, insurer, or fiduciary, (2) covered under a group or blanket insurance policy or group annuity contract issued by the financial institution, (3) a beneficiary in a workers' compensation plan, (4) a beneficiary of a trust for which the financial institution is a trustee, or (5) a person who has designated the financial institution as trustee for a trust, provided that the financial institution provides all required notices and rights required by this division to the plan sponsor, group or blanket insurance policyholder, or group annuity contractholder.

(g) ''Control'' means (1) ownership or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, acting through one or more persons, (2) control in any manner over the election of a majority of the directors, or of individuals exercising similar functions, or (3) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. However, for purposes of the application of the definition of control as it relates to credit unions, a credit union has a controlling influence over the management or policies of a credit union service organization (CUSO), as that term is defined by state or federal law or regulation, if the CUSO is at least 67 percent owned by credit unions. For purposes of the application of the definition of control to a financial

institution subject to regulation by the United States Securities and Exchange Commission, a person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company is presumed to control the company, and a person who does not own more than 25 percent of the voting securities of a company is presumed not to control the company, and a presumption regarding control may be rebutted by evidence, but in the case of an investment company, the presumption shall continue until the United States Securities and Exchange Commission makes a decision to the contrary according to the procedures described in Section 2(a)(9) of the federal Investment Company Act of 1940.

(h) ''Necessary to effect, administer, or enforce'' means the following:

(1) The disclosure is required, or is a usual, appropriate, or acceptable method to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes the following:

(A) Providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.

(B) The accrual or recognition of incentives, discounts, or bonuses associated with the transaction or communications to eligible existing consumers of the financial institution regarding the availability of those incentives, discounts, and bonuses that are provided by the financial institution or another party.

(C) In the case of a financial institution that has issued a credit account bearing the name of a company primarily engaged in retail sales or a name proprietary to a company primarily engaged in retail sales, the financial institution providing the retailer with nonpublic personal information as follows:

(i) Providing the retailer, or licensees or contractors of the retailer that provide products or services in the name of the retailer and under a contract with the retailer, with the names and addresses of the consumers in whose name the account is held and a record of the purchases made using the credit account from a business establishment, including a Web site or catalog, bearing the brand name of the retailer.

(ii) Where the credit account can only be used for transactions with the retailer or affiliates of that retailer that are also primarily engaged in retail sales, providing the retailer, or licensees or contractors of the retailer that provide products or services in the name of the retailer and

under a contract with the retailer, with nonpublic personal information concerning the credit account, in connection with the offering or provision of the products or services of the retailer and those licensees or contractors.

(2) The disclosure is required or is one of the lawful or appropriate methods to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction or providing the product or service.

(3) The disclosure is required, or is a usual, appropriate, or acceptable method for insurance underwriting or the placement of insurance products by licensed agents and brokers with authorized insurance companies at the consumer's request, for reinsurance, stop loss insurance, or excess loss insurance purposes, or for any of the following purposes as they relate to a consumer's insurance:

(A) Account administration.

(B) Reporting, investigating, or preventing fraud or material misrepresentation.

(C) Processing premium payments.

(D) Processing insurance claims.

(E) Administering insurance benefits, including utilization review activities.

(F) Participating in research projects.

(G) As otherwise required or specifically permitted by federal or state law.

(4) The disclosure is required, or is a usual, appropriate, or acceptable method, in connection with the following:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means.

(B) The transfer of receivables, accounts, or interests therein.

(C) The audit of debit, credit, or other payment information.

(5) The disclosure is required in a transaction covered by the federal Real Estate Settlement Procedures Act (12 U.S.C. Sec. 2601 et seq.) in order to offer settlement services prior to the close of escrow (as those services are defined in 12 U.S.C. Sec. 2602), provided that (A) the nonpublic personal information is disclosed for the sole purpose of offering those settlement services and (B) the nonpublic personal information disclosed is limited to that necessary to enable the financial institution to offer those settlement services in that transaction.

(i) ''Financial product or service'' means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity under subsection (k) of Section 1843 of Title 12 of the United States Code (the United

States Bank Holding Company Act of 1956). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(j) ''Clear and conspicuous'' means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

(k) ''Widely distributed media'' means media available to the general public and includes a telephone book, a television or radio program, a newspaper, or a Web site that is available to the general public on an unrestricted basis.

4052.5. Except as provided in Sections 4053, 4054.6, and 4056, a financial institution shall not sell, share, transfer, or otherwise disclose nonpublic personal information to or with any nonaffiliated third parties without the explicit prior consent of the consumer to whom the nonpublic personal information relates.

4053. (a) (1) A financial institution shall not disclose to, or share a consumer's nonpublic personal information with, any nonaffiliated third party as prohibited by Section 4052.5, unless the financial institution has obtained a consent acknowledgment from the consumer that complies with paragraph (2) that authorizes the financial institution to disclose or share the nonpublic personal information. Nothing in this section shall prohibit or otherwise apply to the disclosure of nonpublic personal information as allowed in Section 4056. A financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or a financial service because the consumer has not provided consent pursuant to this subdivision and Section 4052.5 to authorize the financial institution to disclose or share nonpublic personal information pertaining to him or her with any nonaffiliated third party. Nothing in this section shall prohibit a financial institution from denying a consumer a financial product or service if the financial institution could not provide the product or service to a consumer without the consent to disclose the consumer's nonpublic personal information required by this subdivision and Section 4052.5, and the consumer has failed to provide consent. A financial institution shall not be liable for failing to offer products and services to a consumer solely because that consumer has failed to provide consent pursuant to this subdivision and Section 4052.5 and the financial institution could not offer the product or service without the consent to disclose the consumer's nonpublic personal information required by this subdivision and Section 4052.5, and the consumer has failed to provide consent. Nothing in this section is intended to prohibit a financial institution from offering incentives or discounts to elicit a specific response to the notice.

(2) A financial institution shall utilize a form, statement, or writing to obtain consent to disclose nonpublic personal information to nonaffiliated third parties as required by Section 4052.5 and this subdivision. The form, statement, or writing shall meet all of the following criteria:

(A) The form, statement, or writing is a separate document, not attached to any other document.

(B) The form, statement, or writing is dated and signed by the consumer.

(C) The form, statement, or writing clearly and conspicuously discloses that by signing, the consumer is consenting to the disclosure to nonaffiliated third parties of nonpublic personal information pertaining to the consumer.

(D) The form, statement, or writing clearly and conspicuously discloses (i) that the consent will remain in effect until revoked or modified by the consumer; (ii) that the consumer may revoke the consent at any time; and (iii) the procedure for the consumer to revoke consent.

(E) The form, statement, or writing clearly and conspicuously informs the consumer that (i) the financial institution will maintain the document or a true and correct copy; (ii) the consumer is entitled to a copy of the document upon request; and (iii) the consumer may want to make a copy of the document for the consumer's records.

(b) (1) A financial institution shall not disclose to, or share a consumer's nonpublic personal information with, an affiliate unless the financial institution has clearly and conspicuously notified the consumer annually in writing pursuant to subdivision (d) that the nonpublic personal information may be disclosed to an affiliate of the financial institution and the consumer has not directed that the nonpublic personal information not be disclosed. A financial institution does not disclose information to, or share information with, its affiliate merely because information is maintained in common information systems or databases, and employees of the financial institution and its affiliate have access to those common information systems or databases, or a consumer accesses a Web site jointly operated or maintained under a common name by or on behalf of the financial institution and its affiliate, provided that where a consumer has exercised his or her right to prohibit disclosure pursuant to this division, nonpublic personal information is not further disclosed or used by an affiliate except as permitted by this division.

(2) Subdivision (a) shall not prohibit the release of nonpublic personal information by a financial institution with whom the consumer has a relationship to a nonaffiliated financial institution for purposes of jointly offering a financial product or financial service pursuant to a written agreement with the financial institution that receives the

nonpublic personal information provided that all of the following requirements are met:

(A) The financial product or service offered is a product or service of, and is provided by, at least one of the financial institutions that is a party to the written agreement.

(B) The financial product or service is jointly offered, endorsed, or sponsored, and clearly and conspicuously identifies for the consumer the financial institutions that disclose and receive the disclosed nonpublic personal information.

(C) The written agreement provides that the financial institution that receives that nonpublic personal information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a financial product or financial service that is the subject of the written agreement.

(D) The financial institution that releases the nonpublic personal information has complied with subdivision (d) and the consumer has not directed that the nonpublic personal information not be disclosed.

(E) Notwithstanding this section, until January 1, 2005, a financial institution may disclose nonpublic personal information to a nonaffiliated financial institution pursuant to a preexisting contract with the nonaffiliated financial institution, for purposes of offering a financial product or financial service, if that contract was entered into on or before January 1, 2004. Beginning on January 1, 2005, no nonpublic personal information may be disclosed pursuant to that contract unless all the requirements of this subdivision are met.

(3) Nothing in this subdivision shall prohibit a financial institution from disclosing or sharing nonpublic personal information as otherwise specifically permitted by this division.

(4) A financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or a financial service because the consumer has directed pursuant to this subdivision that nonpublic personal information pertaining to him or her not be disclosed. A financial institution shall not be required to offer or provide products or services offered through affiliated entities or jointly with nonaffiliated financial institutions pursuant to paragraph (2) where the consumer has directed that nonpublic personal information not be disclosed pursuant to this subdivision and the financial institution could not offer or provide the products or services to the consumer without disclosure of the consumer's nonpublic personal information that the consumer has directed not be disclosed pursuant to this subdivision. A financial institution shall not be liable for failing to offer or provide products or services offered through affiliated entities or jointly with nonaffiliated financial institutions pursuant to paragraph (2) solely

because the consumer has directed that nonpublic personal information not be disclosed pursuant to this subdivision and the financial institution could not offer or provide the products or services to the consumer without disclosure of the consumer's nonpublic personal information that the consumer has directed not be disclosed to affiliates pursuant to this subdivision. Nothing in this section is intended to prohibit a financial institution from offering incentives or discounts to elicit a specific response to the notice set forth in this division. Nothing in this section shall prohibit the disclosure of nonpublic personal information allowed by Section 4056.

(5) The financial institution may, at its option, choose instead to comply with the requirements of subdivision (a).

(c) Nothing in this division shall restrict or prohibit the sharing of nonpublic personal information between a financial institution and its wholly owned financial institution subsidiaries; among financial institutions that are each wholly owned by the same financial institution; among financial institutions that are wholly owned by the same holding company; or among the insurance and management entities of a single insurance holding company system consisting of one or more reciprocal insurance exchanges which has a single corporation or its wholly owned subsidiaries providing management services to the reciprocal insurance exchanges, provided that in each case all of the following requirements are met:

(1) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are regulated by the same functional regulator; provided, however, that for purposes of this subdivision, financial institutions regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, National Credit Union Administration, or a state regulator of depository institutions shall be deemed to be regulated by the same functional regulator; financial institutions regulated by the Securities and Exchange Commission, the United States Department of Labor, or a state securities regulator shall be deemed to be regulated by the same functional regulator; and insurers admitted in this state to transact insurance and licensed to write insurance policies shall be deemed to be in compliance with this paragraph.

(2) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are both principally engaged in the same line of business. For purposes of this subdivision, ''same line of business'' shall be one and only one of the following:

(A) Insurance.

(B) Banking.

(C) Securities.

(3) The financial institution disclosing the nonpublic personal information and the financial institution receiving it share a common brand, excluding a brand consisting solely of a graphic element or symbol, within their trademark, service mark, or trade name, which is used to identify the source of the products and services provided.

A wholly owned subsidiary shall include a subsidiary wholly owned directly or wholly owned indirectly in a chain of wholly owned subsidiaries.

Nothing in this subdivision shall permit the disclosure by a financial institution of medical record information, as defined in subdivision (q) of Section 791.02 of the Insurance Code, except in compliance with the requirements of this division, including the requirements set forth in subdivisions (a) and (b).

(d) (1) A financial institution shall be conclusively presumed to have satisfied the notice requirements of subdivision (b) if it uses the form set forth in this subdivision. The form set forth in this subdivision or a form that complies with subparagraphs (A) to (L), inclusive, of this paragraph shall be sent by the financial institution to the consumer so that the consumer may make a decision and provide direction to the financial institution regarding the sharing of his or her nonpublic personal information. If a financial institution does not use the form set forth in this subdivision, the financial institution shall use a form that meets all of the following requirements:

(A) The form uses the same title (''IMPORTANT PRIVACY CHOICES FOR CONSUMERS'') and the headers, if applicable, as follows: ''Restrict Information Sharing With Companies We Own Or Control (Affiliates)'' and ''Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services.''

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.

(C) The form is a separate document, except as provided by subparagraph (D) of paragraph (2), and Sections 4054 and 4058.7.

(D) The choice or choices pursuant to subdivision (b) and Section 4054.6, if applicable, provided in the form are stated separately and may be selected by checking a box.

(E) The form is designed to call attention to the nature and significance of the information in the document.

(F) The form presents information in clear and concise sentences, paragraphs, and sections.

(G) The form uses short explanatory sentences (an average of 15-20 words) or bullet lists whenever possible.

(H) The form avoids multiple negatives, legal terminology, and highly technical terminology whenever possible.

(I) The form avoids explanations that are imprecise and readily subject to different interpretations.

(J) The form achieves a minimum Flesch reading ease score of 50, as defined in Section 2689.4(a)(7) of Title 10 of the California Code of Regulations, in effect on March 24, 2003, except that the information in the form included to comply with subparagraph (A) shall not be included in the calculation of the Flesch reading ease score, and the information used to describe the choice or choices pursuant to subparagraph (D) shall score no lower than the information describing the comparable choice or choices set forth in the form in this subdivision.

(K) The form provides wide margins, ample line spacing and uses boldface or italics for key words.

(L) The form is not more than one page.

(2) (A) None of the instructional items appearing in brackets in the form set forth in this subdivision shall appear in the form provided to the consumer, as those items are for explanation purposes only. If a financial institution does not disclose or share nonpublic personal information as described in a header of the form, the financial institution may omit the applicable header or headers, and the accompanying information and box, in the form it provides pursuant to this subdivision. The form with those omissions shall be conclusively presumed to satisfy the notice requirements of this subdivision.

Important Privacy Choices for Consumers

You have the right to control whether we share some of your personal information. Please read the following information carefully before you make your choices below.

Your Rights

You have the following rights to restrict the sharing of personal and financial information with our affiliates (companies we own or control) and outside companies that we do business with. Nothing in this form prohibits the sharing of information necessary for us to follow the law, as permitted by law, or to give you the best service on your accounts with us. This includes sending you information about some other products or services.

Your Choices

Restrict Information Sharing With Companies We Own or Control (Affiliates): Unless you say "No," we may share personal and financial information about you with our affiliated companies.

(_) NO, please do not share personal and financial information with your affiliated companies.

Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services: Unless you say "No," we may share personal and financial information about you with outside companies we contract with to provide financial products and services to you.

(_) NO, please do not share personal and financial information with outside companies you contract with to provide financial products and services.

Time Sensitive Reply

You may make your privacy choice(s) at any time. Your choice(s) marked here will remain unless you state otherwise. However, if we do not hear from you we may share some of your information with affiliated companies and other companies with whom we have contracts to provide products and services.

Name: _____

Account or Policy Number(s): _____ [to be filled in by consumer]

Signature: _____

To exercise your choices do [one of] the following:
(1) Fill out, sign and send back this form to us using the envelope provided (you may want to make a copy for your records); [#1 is mandatory]
[(2) Call this toll-free number (800) xxx-xxxx or (xxx) xxx-xxxx; [optional]
[(3) Reply electronically by contacting us through the following Internet option: xxxxx.com] [optional]

(B) If a financial institution uses a form other than that set forth in this subdivision, the financial institution may submit that form to its functional regulator for approval, and for forms filed with the Office of Privacy Protection prior to July 1, 2007, that approval shall constitute a rebuttable presumption that the form complies with this section.

(C) A financial institution shall not be in violation of this subdivision solely because it includes in the form one or more brief examples or explanations of the purpose or purposes, or context, within which information will be shared, as long as those examples meet the clarity and readability standards set forth in paragraph (1).

(D) The outside of the envelope in which the form is sent to the consumer shall clearly state in 16-point boldface type ''IMPORTANT PRIVACY CHOICES,'' except that a financial institution sending the form to a consumer in the same envelope as a bill, account statement, or application requested by the consumer does not have to include the wording ''IMPORTANT PRIVACY CHOICES'' on that envelope. The form shall be sent in any of the following ways:

(i) With a bill, other statement of account, or application requested by the consumer, in which case the information required by Title V of the Gramm-Leach-Bliley Act may also be included in the same envelope.

(ii) As a separate notice or with the information required by Title V of the Gramm-Leach-Bliley Act, and including only information related to privacy.

(iii) With any other mailing, in which case it shall be the first page of the mailing.

(E) If a financial institution uses a form other than that set forth in this subdivision, that form shall be filed with the Office of Privacy Protection within 30 days after it is first used.

(3) The consumer shall be provided a reasonable opportunity prior to disclosure of nonpublic personal information to direct that nonpublic personal information not be disclosed. A consumer may direct at any time that his or her nonpublic personal information not be disclosed. A financial institution shall comply with a consumer's directions concerning the sharing of his or her nonpublic personal information within 45 days of receipt by the financial institution. When a consumer directs that nonpublic personal information not be disclosed, that direction is in effect until otherwise stated by the consumer. A financial institution that has not provided a consumer with annual notice pursuant to subdivision (b) shall provide the consumer with a form that meets the requirements of this subdivision, and shall allow 45 days to lapse from the date of providing the form in person or the postmark or other postal verification of mailing before disclosing nonpublic personal information pertaining to the consumer.

Nothing in this subdivision shall prohibit the disclosure of nonpublic personal information as allowed by subdivision (c) or Section 4056.

(4) A financial institution may elect to comply with the requirements of subdivision (a) with respect to disclosure of nonpublic personal information to an affiliate or with respect to nonpublic personal information disclosed pursuant to paragraph (2) of subdivision (b), or subdivision (c) of Section 4054.6.

(5) If a financial institution does not have a continuing relationship with a consumer other than the initial transaction in which the product or service is provided, no annual disclosure requirement exists pursuant to this section as long as the financial institution provides the consumer with the form required by this section at the time of the initial transaction. As used in this section, ''annually'' means at least once in any period of 12 consecutive months during which that relationship exists. The financial institution may define the 12-consecutive-month period, but shall apply it to the consumer on a consistent basis. If, for example, a financial institution defines the 12-consecutive-month period as a calendar year and provides the annual notice to the consumer once in each calendar year, it complies with the requirement to send the notice annually.

(6) A financial institution with assets in excess of twenty-five million dollars ($25,000,000) shall include a self-addressed first class business reply return envelope with the notice. A financial institution with assets of up to and including twenty-five million dollars ($25,000,000) shall include a self-addressed return envelope with the notice. In lieu of the first class business reply return envelope required by this paragraph, a financial institution may offer a self-addressed return envelope with the notice and at least two alternative cost-free means for consumers to communicate their privacy choices, such as calling a toll-free number, sending a facsimile to a toll-free telephone number, or using electronic means. A financial institution shall clearly and conspicuously disclose in the form required by this subdivision the information necessary to direct the consumer on how to communicate his or her choices, including the toll-free or facsimile number or Web site address that may be used, if those means of communication are offered by the financial institution.

(7) A financial institution may provide a joint notice from it and one or more of its affiliates or other financial institutions, as identified in the notice, so long as the notice is accurate with respect to the financial institution and the affiliates and other financial institutions.

(e) Nothing in this division shall prohibit a financial institution from marketing its own products and services or the products and services of affiliates or nonaffiliated third parties to customers of the financial institution as long as (1) nonpublic personal information is not disclosed in connection with the delivery of the applicable marketing materials to

those customers except as permitted by Section 4056 and (2) in cases in which the applicable nonaffiliated third party may extrapolate nonpublic personal information about the consumer responding to those marketing materials, the applicable nonaffiliated third party has signed a contract with the financial institution under the terms of which (A) the nonaffiliated third party is prohibited from using that information for any purpose other than the purpose for which it was provided, as set forth in the contract, and (B) the financial institution has the right by audit, inspections, or other means to verify the nonaffiliated third party's compliance with that contract.

4053.5. Except as otherwise provided in this division, an entity that receives nonpublic personal information from a financial institution under this division shall not disclose this information to any other entity, unless the disclosure would be lawful if made directly to the other entity by the financial institution. An entity that receives nonpublic personal information pursuant to any exception set forth in Section 4056 shall not use or disclose the information except in the ordinary course of business to carry out the activity covered by the exception under which the information was received.

4054. (a) Nothing in this division shall require a financial institution to provide a written notice to a consumer pursuant to Section 4053 if the financial institution does not disclose nonpublic personal information to any nonaffiliated third party or to any affiliate, except as allowed in this division.

(b) A notice provided to a member of a household pursuant to Section 4053 shall be considered notice to all members of that household unless that household contains another individual who also has a separate account with the financial institution.

(c) (1) The requirement to send a written notice to a consumer may be fulfilled by electronic means if the following requirements are met:

(A) The notice, and the manner in which it is sent, meets all of the requirements for notices that are required by law to be in writing, as set forth in Section 101 of the federal Electronic Signatures in Global and National Commerce Act.

(B) All other requirements applicable to the notice, as set forth in this division, are met, including, but not limited to, requirements concerning content, timing, form, and delivery. An electronic notice sent pursuant to this section is not required to include a return envelope.

(C) The notice is delivered to the consumer in a form the consumer may keep.

(2) A notice that is made available to a consumer, and is not delivered to the consumer, does not satisfy the requirements of paragraph (1).

(3) Any electronic consumer reply to an electronic notice sent pursuant to this division is effective. A person that electronically sends

a notice required by this division to a consumer may not by contract, or otherwise, eliminate the effectiveness of the consumer's electronic reply.

(4) This division modifies the provisions of Section 101 of the federal Electronic Signatures in Global and National Commerce Act. However, it does not modify, limit, or supersede the provisions of subsection (c), (d), (e), (f), or (h) of Section 101 of the federal Electronic Signatures in Global and National Commerce Act, nor does it authorize electronic delivery of any notice of the type described in subsection (b) of Section 103 of that federal act.

4054.6. (a) When a financial institution and an organization or business entity that is not a financial institution (''affinity partner'') have an agreement to issue a credit card in the name of the affinity partner (''affinity card''), the financial institution shall be permitted to disclose to the affinity partner in whose name the card is issued only the following information pertaining to the financial institution's customers who are in receipt of the affinity card: (1) name, address, telephone number, and electronic mail address and (2) record of purchases made using the affinity card in a business establishment, including a Web site, bearing the brand name of the affinity partner.

(b) When a financial institution and an affinity partner have an agreement to issue a financial product or service, other than a credit card, on behalf of the affinity partner (''affinity financial product or service''), the financial institution shall be permitted to disclose to the affinity partner only the following information pertaining to the financial institution's customers who obtained the affinity financial product or service: name, address, telephone number, and electronic mail address.

(c) The disclosures specified in subdivisions (a) and (b) shall be permitted only if the following requirements are met:

(1) The financial institution has provided the consumer a notice meeting the requirements of subdivision (d) of Section 4053, and the consumer has not directed that nonpublic personal information not be disclosed. A response to a notice meeting the requirements of subdivision (d) directing the financial institution to not disclose nonpublic personal information to a nonaffiliated financial institution shall be deemed a direction to the financial institution to not disclose nonpublic personal information to an affinity partner, unless the form containing the notice provides the consumer with a separate choice for disclosure to affinity partners.

(2) The financial institution has a contractual agreement with the affinity partner that requires the affinity partner to maintain the confidentiality of the nonpublic personal information and prohibits affinity partners from using the information for any purposes other than verifying membership, verifying the consumer's contact information, or offering the affinity partner's own products or services to the consumer.

(3) The customer list is not disclosed in any way that reveals or permits extrapolation of any additional nonpublic personal information about any customer on the list.

(4) If the affinity partner sends any message to any electronic mail addresses obtained pursuant to this section, the message shall include at least both of the following:

(A) The identity of the sender of the message.

(B) A cost-free means for the recipient to notify the sender not to electronically mail any further message to the recipient.

(d) Nothing in this section shall prohibit the disclosure of nonpublic personal information pursuant to Section 4056.

(e) This section does not apply to credit cards issued in the name of an entity primarily engaged in retail sales or a name proprietary to a company primarily engaged in retail sales.

4056. (a) This division shall not apply to information that is not personally identifiable to a particular person.

(b) Notwithstanding Sections 4052.5, 4053, 4054, and 4054.6, a financial institution may release nonpublic personal information under the following circumstances:

(1) The nonpublic personal information is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer, or in connection with maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of that entity, or in connection with a proposed or actual securitization or secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer.

(2) The nonpublic personal information is released with the consent of or at the direction of the consumer.

(3) The nonpublic personal information is:

(A) Released to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein.

(B) Released to protect against or prevent actual or potential fraud, identity theft, unauthorized transactions, claims, or other liability.

(C) Released for required institutional risk control, or for resolving customer disputes or inquiries.

(D) Released to persons holding a legal or beneficial interest relating to the consumer, including for purposes of debt collection.

(E) Released to persons acting in a fiduciary or representative capacity on behalf of the consumer.

(4) The nonpublic personal information is released to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors.

(5) The nonpublic personal information is released to the extent specifically required or specifically permitted under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law enforcement agencies, including a federal functional regulator, the Secretary of the Treasury with respect to subchapter II of Chapter 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12 U.S.C. Secs. 1951-1959), the California Department of Insurance or other state insurance regulators, or the Federal Trade Commission, and self-regulatory organizations, or for an investigation on a matter related to public safety.

(6) The nonpublic personal information is released in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of the business or unit.

(7) The nonpublic personal information is released to comply with federal, state, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, administrative, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(8) When a financial institution is reporting a known or suspected instance of elder or dependent adult financial abuse or is cooperating with a local adult protective services agency investigation of known or suspected elder or dependent adult financial abuse pursuant to Article 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code.

(9) The nonpublic personal information is released to an affiliate or a nonaffiliated third party in order for the affiliate or nonaffiliated third party to perform business or professional services, such as printing, mailing services, data processing or analysis, or customer surveys, on behalf of the financial institution, provided that all of the following requirements are met:

(A) The services to be performed by the affiliate or nonaffiliated third party could lawfully be performed by the financial institution.

(B) There is a written contract between the affiliate or nonaffiliated third party and the financial institution that prohibits the affiliate or nonaffiliated third party, as the case may be, from disclosing or using the

nonpublic personal information other than to carry out the purpose for which the financial institution disclosed the information, as set forth in the written contract.

(C) The nonpublic personal information provided to the affiliate or nonaffiliated third party is limited to that which is necessary for the affiliate or nonaffiliated third party to perform the services contracted for on behalf of the financial institution.

(D) The financial institution does not receive any payment from or through the affiliate or nonaffiliated third party in connection with, or as a result of, the release of the nonpublic personal information.

(10) The nonpublic personal information is released to identify or locate missing and abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs.

(11) The nonpublic personal information is released to a real estate appraiser licensed or certified by the state for submission to central data repositories such as the California Market Data Cooperative, and the nonpublic personal information is compiled strictly to complete other real estate appraisals and is not used for any other purpose.

(12) The nonpublic personal information is released as required by Title III of the federal United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act; P.L. 107-56).

(13) The nonpublic personal information is released either to a consumer reporting agency pursuant to the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.) or from a consumer report reported by a consumer reporting agency.

(14) The nonpublic personal information is released in connection with a written agreement between a consumer and a broker-dealer registered under the Securities Exchange Act of 1934 or an investment adviser registered under the Investment Advisers Act of 1940 to provide investment management services, portfolio advisory services, or financial planning, and the nonpublic personal information is released for the sole purpose of providing the products and services covered by that agreement.

(c) Nothing in this division is intended to change existing law relating to access by law enforcement agencies to information held by financial institutions.

4056.5. (a) The provisions of this division do not apply to any person or entity that meets the requirements of paragraph (1) or (2) below. However, when nonpublic personal information is being or will be shared by a person or entity meeting the requirements of paragraph

(1) or (2) with an affiliate or nonaffiliated third party, this division shall apply.

(1) The person or entity is licensed in one or both of the following categories and is acting within the scope of the respective license or certificate:

(A) As an insurance producer, licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Division 1 of the Insurance Code, as a registered investment adviser pursuant to Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code, or as an investment adviser pursuant to Section 202(a)(11) of the federal Investment Advisers Act of 1940.

(B) Is licensed to sell securities by the National Association of Securities Dealers (NASD).

(2) The person or entity meets the requirements in paragraph (1) and has a written contractual agreement with another person or entity described in paragraph (1) and the contract clearly and explicitly includes the following:

(A) The rights and obligations between the licensees arising out of the business relationship relating to insurance or securities transactions.

(B) An explicit limitation on the use of nonpublic personal information about a consumer to transactions authorized by the contract and permitted pursuant to this division.

(C) A requirement that transactions specified in the contract fall within the scope of activities permitted by the licenses of the parties.

(b) The restrictions on disclosure and use of nonpublic personal information, and the requirement for notification and disclosure provided in this division, shall not limit the ability of insurance producers and brokers to respond to written or electronic, including telephone, requests from consumers seeking price quotes on insurance products and services or to obtain competitive quotes to renew an existing insurance contract, provided that any nonpublic personal information disclosed pursuant to this subdivision shall not be used or disclosed except in the ordinary course of business in order to obtain those quotes.

(c) (1) The disclosure or sharing of nonpublic personal information from an insurer, as defined in Section 23 of the Insurance Code, or its affiliates to an exclusive agent, defined for purposes of this division as a licensed agent or broker pursuant to Chapter 5 (commencing with Section 1621) of Part 2 of Division 1 of the Insurance Code whose contractual or employment relationship requires that the agent offer only the insurer's policies for sale or financial products or services that meet the requirements of paragraph (2) of subdivision (b) of Section 4053 and are authorized by the insurer, or whose contractual or employment

relationship with an insurer gives the insurer the right of first refusal for all policies of insurance by the agent, and who may not share nonpublic personal information with any insurer other than the insurer with whom the agent has a contractual or employment relationship as described above, is not a violation of this division, provided that the agent may not disclose nonpublic personal information to any party except as permitted by this division. An insurer or its affiliates do not disclose or share nonpublic personal information with exclusive agents merely because information is maintained in common information systems or databases, and exclusive agents of the insurer or its affiliates have access to those common information systems or databases, provided that where a consumer has exercised his or her rights to prohibit disclosure pursuant to this division, nonpublic personal information is not further disclosed or used by an exclusive agent except as permitted by this division.

(2) Nothing in this subdivision is intended to affect the sharing of information allowed in subdivision (a) or subdivision (b).

4057. (a) An entity that negligently discloses or shares nonpublic personal information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation. However, if the disclosure or sharing results in the release of nonpublic personal information of more than one individual, the total civil penalty awarded pursuant to this subdivision shall not exceed five hundred thousand dollars ($500,000).

(b) An entity that knowingly and willfully obtains, discloses, shares, or uses nonpublic personal information in violation of this division shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per individual violation, irrespective of the amount of damages suffered by the consumer as a result of that violation.

(c) In determining the penalty to be assessed pursuant to a violation of this division, the court shall take into account the following factors:

(1) The total assets and net worth of the violating entity.

(2) The nature and seriousness of the violation.

(3) The persistence of the violation, including any attempts to correct the situation leading to the violation.

(4) The length of time over which the violation occurred.

(5) The number of times the entity has violated this division.

(6) The harm caused to consumers by the violation.

(7) The level of proceeds derived from the violation.

(8) The impact of possible penalties on the overall fiscal solvency of the violating entity.

(d) In the event a violation of this division results in the identity theft of a consumer, as defined by Section 530.5 of the Penal Code, the civil penalties set forth in this section shall be doubled.

(e) The civil penalties provided for in this section shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(1) The Attorney General.

(2) The functional regulator with jurisdiction over regulation of the financial institution as follows:

(A) In the case of banks, savings associations, credit unions, commercial lending companies, and bank holding companies, by the Department of Financial Institutions or the appropriate federal authority; (B) in the case of any person engaged in the business of insurance, by the Department of Insurance; (C) in the case of any investment broker or dealer, investment company, investment advisor, residential mortgage lender or finance lender, by the Department of Corporations; and (D) in the case of a financial institution not subject to the jurisdiction of any functional regulator listed under subparagraphs (A) to (C), inclusive, above, by the Attorney General.

4058. Nothing in this division shall be construed as altering or annulling the authority of any department or agency of the state to regulate any financial institution subject to its jurisdiction.

4058.5. This division shall preempt and be exclusive of all local agency ordinances and regulations relating to the use and sharing of nonpublic personal information by financial institutions. This section shall apply both prospectively and retroactively.

4058.7. Nothing in this division shall prevent an insurer, as defined in Section 23 of the Insurance Code, from combining the form required by subdivision (d) of Section 4053 with the form required pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code and state regulations implementing the provisions of that article, provided that the combined form meets the requirements contained in paragraph (1) of subdivision (d) of Section 4053.

4059. The provisions of this division shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this division shall not be affected thereby.

4060. This division shall become operative on July 1, 2004.

CHAPTER 242

An act to add Sections 2031.1 and 2031.2 to the Code of Civil Procedure, relating to civil actions.

[Approved by Governor August 28, 2003. Filed with
Secretary of State August 29, 2003.]

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

SECTION 1. Section 2031.1 is added to the Code of Civil Procedure, to read:

2031.1. (a) Notwithstanding any other provision of law, it is the policy of the State of California that confidential settlement agreements are disfavored in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) Provisions of a confidential settlement agreement described in subdivision (a) may not be recognized or enforced by the court absent a showing of any of the following:

(1) The information is privileged under existing law.

(2) The information is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code.

(3) The party seeking to uphold the confidentiality of the information has demonstrated that there is a substantial probability that prejudice will result from the disclosure and that the party's interest in the information cannot be adequately protected through redaction.

(c) Nothing in paragraph (1), (2), or (3) of subdivision (b) permits the sealing or redacting of a defendant's name in any information made available to the public.

(d) Except as expressly provided in this section, nothing in this section is intended to alter, modify, or amend existing law.

(e) Nothing in this section may be deemed to prohibit the entry or enforcement of that part of a confidentiality agreement, settlement agreement, or stipulated agreement between the parties that requires the nondisclosure of the amount of any money paid in a settlement of a claim.

(f) Nothing in this section applies to or affects an action for professional negligence against a health care provider.

SEC. 2. Section 2031.2 is added to the Code of Civil Procedure, to read:

2031.2. (a) In any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code), any information that is acquired through discovery and is

protected from disclosure by a stipulated protective order shall remain subject to the protective order, except for information that is evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code.

In that instance, after redacting information in the document that is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code, a party may file that particularized information with the court. The party proposing to file the information shall offer to meet and confer with the party from whom the information was obtained at least one week prior to filing that information with the court.

(b) The filing party shall give concurrent notice of the filing with the court and its basis to the party from whom the information was obtained.

(c) Any filed information submitted to the court shall remain confidential under any protective order for 30 days after the filing and shall be part of the public court record thereafter, unless an affected party petitions the court and shows good cause for a court protective order.

(d) The burden of showing good cause shall be on the party seeking the court protective order.

(e) A stipulated protective order may not be recognized or enforced by the court to prevent disclosure of information filed with the court pursuant to subdivision (a), absent a showing of any of the following:

(1) The information is privileged under existing law.

(2) The information is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code.

(3) The party seeking to uphold the confidentiality of the information has demonstrated that there is a substantial probability that prejudice will result from the disclosure and that the party's interest in the information cannot be adequately protected through redaction.

(f) If the court denies the petition for a court protective order, it shall redact any part of the filed information it finds is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63. Nothing in this subdivision or in paragraph (1), (2), or (3) of subdivision (e) permits the sealing or redacting of a defendant's name in any information made available to the public.

(g) Nothing in this section applies to or affects an action for professional negligence against a health care provider.

CHAPTER 243

An act to amend Section 3044 of the Family Code, relating to child custody.

[Approved by Governor August 28, 2003. Filed with Secretary of State August 29, 2003.]

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

SECTION 1. Section 3044 of the Family Code is amended to read:

3044. (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.

(b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:

(1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the noncustodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) Whether the perpetrator is on probation or parole, and whether he or she has complied with the terms and conditions of probation or parole.

(6) Whether the perpetrator is restrained by a protective order or restraining order, and whether he or she has complied with its terms and conditions.

(7) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has ''perpetrated domestic violence'' when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if any court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) In any custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.

CHAPTER 244

An act to add Article 8.7 (commencing with Section 6047.60) to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to pest control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 28, 2003. Filed with Secretary of State August 29, 2003.]

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

SECTION 1. Article 8.7 (commencing with Section 6047.60) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 8.7. Table Grape Pierce's Disease Pest Abatement District

6047.60. The Legislature hereby finds and declares the following:

(a) California is the leading producer of table grapes in the United States, accounting for 97 percent of table grapes grown in this country.

(b) Table grapes are grown in 15 counties located throughout the state.

(c) California grows more than 170,000 acres of table grapes producing over 700,000 tons of table grapes per year, valued at more than eight hundred sixty million dollars ($860,000,000) with a direct and indirect impact on the state's economy that totals more than four billion dollars ($4,000,000,000).

(d) The plant killing bacterium, Xylella fastidiosa, and the resulting pathogen, Pierce's disease, and its vectors, present a clear and present danger to California's nearly three billion dollar ($3,000,000,000) grape industry, as well as to many other commodities and plant life.

(e) Pierce's disease and its vector the glassy-winged sharpshooter have spread into the southern San Joaquin Valley, which, if left unabated, places grapes and other commodities throughout California in immediate peril.

(f) In addition to the research funds and program provisions set forth in Article 8 (commencing with Section 6045) of Chapter 9 of Part 1 of Division 4, dealing with wine grapes, the table grape industry is at substantial risk for Pierce's disease and recognizes the need for additional specific control programs.

(g) Additional programs may include field treatments similar to, or the expansion of, the successful United States Department of Agriculture and California Department of Food and Agriculture General Beale area pilot program in Kern County. The expansion of those programs may require industry assessments from the table grape industry through the creation of a pest abatement district.

(h) The state has an interest in protecting its agricultural products from further destruction by the glassy-winged sharpshooter and Pierce's disease.

(i) As a known vector for Pierce's disease, the glassy-winged sharpshooter has been determined to carry and spread Pierce's disease to many forms of California agriculture, usually with complete destruction to the infected crop. This destructive effect of the disease has

been determined by experts in the viticulture field to be especially true with respect to infected table grapes. To avoid a potentially catastrophic loss to one of California's most important industries, the Legislature declares that this article is in the interest of the public health and welfare.

(j) This article shall not establish a precedent for, or supercede, reduce, or in any way alter, government funding from any source related to Pierce's disease or other pests in this state.

(k) The Legislature further declares that it is in the interest of the public health and welfare that the districts authorized to be created by this article not duplicate existing services already being provided by the University of California, state, counties, or the county agricultural commissioners to eradicate the glassy-winged sharpshooter and Pierce's disease.

6047.61. This article shall be known and may be cited as the Table Grape Pest and Disease Control District Law.

6047.62. (a) It is the purpose of this article to make available a procedure for the organization, operation, and dissolution of districts to respond to the effects of the spread of the glassy-winged sharpshooter and Pierce's disease, and other pests that attack table grape plants, and to collect and disseminate to table grape producers in the district all relevant information and scientific studies concerning the pest or pests, as well as to chart and determine the extent and location of any infestations.

(b) Division 3 (commencing with Section 56000) of Title 5 of the Government Code does not apply to districts organized pursuant to this article.

6047.63. Unless the context otherwise requires, the definitions in this section govern the construction of this article.

(a) ''Board'' or ''board of directors'' means the board of directors of a district.

(b) ''District'' means a table grape pest abatement district organized pursuant to this article.

(c) ''Owner'' includes joint owner, co-owner, guardian, executor, administrator, or any other person that holds property in a trust capacity under court appointment.

(d) ''Pierce's disease'' is the pathogen caused by the bacterium Xyella fastidiosa.

(e) ''Table grapes'' means grapes produced that are intended to be sold in their fresh form.

(f) ''Table grape acreage'' means any parcel of real property with one or more acres of table grape plants.

(g) ''Grower'' or ''producer'' means any person who is engaged within this state in the business of producing, or causing to be produced, table grapes for market.

6047.64. Proceedings for the formation of a district within any county shall be commenced by a petition that is either of the following:

(a) Signed by 50 percent or more of the table grape growers who own 65 percent or more of the affected land.

(b) Signed by 65 percent or more of the table grape growers who own 50 percent or more of the affected land.

The petition shall be addressed to, and filed with, the board of supervisors of the county.

6047.65. The petition may be filed in sections, each of which shall comply with all the requirements for a petition, except that a section need not contain the total number of signatures required for the petition.

6047.66. Signatures to the petition may be withdrawn at any time before it has been acted upon by filing with the clerk of the board of supervisors a declaration signed by the petitioner that states that it is the intention of the petitioner to withdraw his or her signature from the petition.

6047.67. (a) The petition shall state the name of the proposed district and shall set forth its boundaries or describe the lands to be included.

(b) It is a sufficient designation of the boundaries of a proposed district to recite that all the table grape acreage in the county that is to be included in the district, or that all the table grape acreage in a designated area within the county is to be included in the district.

(c) If either designation is used, the outside boundary of the area designated is the boundary of the district, and the district shall include all areas within the outside boundary.

6047.68. (a) The petition shall be accompanied by a fee in an amount established by the board of supervisors as is necessary to reimburse the county for all costs incurred by it in connection with the proposed organization of the district and subsequent election.

(b) Upon the establishment of the district, the district shall reimburse those who provided the funds specified in subdivision (a) from assessments collected pursuant to this article.

6047.69. (a) Upon the presentation and filing of a petition, the board of supervisors shall refer the petition to the county agricultural commissioner for the preparation of a register of owners of table grape acreage within the proposed district, and for an investigation and report.

(b) The agricultural commissioner shall create a register of all table grape acreage owners within the proposed district and specifically describe the net acreage of land devoted to the growing of table grapes by each grower. The commissioner shall file with the register of table grape growers a report to the board of supervisors describing the present condition of the glassy-winged sharpshooter and Pierce's disease infestations and any proposed control program that may warrant the

board of supervisors proceeding with the organization of the district and recommendation as to the advisability of creating the district.

6047.70. (a) The board of supervisors shall fix a time and place for a hearing of the petition.

(b) The hearing shall not be less than 20 days, or more than 40 days, after the filing of the petition with the board of supervisors.

(c) The board of supervisors shall order the county clerk to give notice of the hearing that will do the following:

(1) State the time and place for the hearing that was fixed by the board of supervisors.

(2) State that at the hearing protests will be considered by the board of supervisors.

(3) State that requests in writing for the exclusion of lands from, or the inclusion of lands in, the proposed district, will be heard and considered by the board of supervisors.

(4) State that the petition is available for inspection at the office of the clerk of the board of supervisors.

(5) Designate the boundaries of the proposed district in substantially the same way that they are described in the petition.

6047.71. Notice of the hearing shall be given by publication in a newspaper of general circulation published and circulated in the district.

6047.72. The notice shall be published once a week for two successive weeks prior to the date set for the hearing.

6047.73. At the hearing, the report of the county agricultural commissioner shall be received. Protests may be made orally or in writing by any person interested in the formation of the proposed district. Any protest that pertains to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the defects to which objection is made. All written protests shall be filed with the clerk of the board of supervisors on or before the time fixed for the final hearing. The hearing may be continued from time to time, not to exceed 60 days.

6047.74. At the hearing, any owner of table grape acreage in the proposed district may present to the board of supervisors a request, in writing, for the exclusion of that land or any part of that land from the proposed district upon a showing that the land or part of that land will not be benefited by the activities of the proposed district. However, if the excluded land is planted with table grapes, the landowner shall inform the district, in writing, within 30 days of planting. Factors that the board of supervisors may consider in its determination for exclusion, as set forth in an affidavit from the owner of the land, shall include the following:

(a) That the land is not planted to table grapes and will not be so planted in the foreseeable future, as evidenced by an affidavit from the landowner so stating.

(b) That the land has already been surveyed and is free from evidence of Pierce's disease.

(c) That there is no presence of the glassy-winged sharpshooter, its host plants, table grape pests or diseases.

(d) That the table grape plants have been removed from the land and that no living table grape plants remain on the land.

(e) That exclusion of the land, or any part of the land, from the district is unlikely to present a risk of glassy-winged sharpshooter infestation because of the land's distance or isolation from infested geographical regions.

6047.75. If the board of supervisors determines that the petition does not comply with the requirements of law, the matter may be dismissed without prejudice to present a new petition covering the same matter. A finding by the board of supervisors in favor of the sufficiency of the petition and notice is final and conclusive against all persons except the state in a proceeding brought by the Attorney General within one year of the date of the making of the order establishing and describing the boundaries of the district. If the petition is dismissed, that portion of the fee imposed under Section 6047.68 that would have been used to pay for costs of the election shall be refunded.

6047.76. (a) If the board of supervisors determines that the project is feasible and in the interest of the table grape growers of the county, the board of supervisors shall, by order entered in its minutes, declare the district is duly organized under the name designated in the petition for the formation of the district, subject to a majority vote of table grape growers in the district.

(b) The order shall describe the territory included in the district and, if the board of supervisors does not exclude or include land pursuant to Section 6047.78, it is a sufficient description of the territory to describe the boundaries in substantially the same way as they are described in the petition.

(c) A copy of the order certified by the clerk of the board of supervisors shall be filed with the county clerk and an election shall be held among the table grape growers registered pursuant to Section 6047.68, as being in the district.

6047.77. (a) Within 60 days of the filing of the supervisors' declaration that the district is organized, an election among registered table grape growers shall be conducted.

(b) The county clerk shall report the results of the election to the board of supervisors.

(c) If a majority of the eligible votes supports the decision of the board of supervisors to create a Table Grape Pierce's Disease Pest Abatement District, the county clerk shall file the board of supervisors' order and results of the election for the record in the office of the county recorder.

6047.78. (a) In determining the boundaries of the district, the board of supervisors shall exclude from the district any table grape acreage that it finds will not be benefited by the proposed project, pursuant to the facts in Section 6047.74, and it may include in the district any lands that it finds will be benefited if it also finds it will be in the interest of the district to include these lands. The inclusion may be upon application of the owner or, without the owner's application, upon giving the owner notice of the proposed inclusion and an opportunity for a hearing on the inclusion.

(b) Notice of inclusion shall be mailed, postage prepaid, by the clerk of the board of supervisors, to the address of the owner of the land as shown by the last equalized county assessment roll, and to any person that has filed with the clerk that person's name and address and description of land in which he or she has either a legal or equitable interest. The notice shall describe the land proposed to be included, and shall state the time and place at which objections to the inclusion will be heard.

(c) Any owner of table grape acreage outside of the proposed district may present to the board of supervisors a request in writing for inclusion of the acreage in the proposed district.

6047.79. Upon the filing of the order of organization and results of an election of growers, the board of supervisors shall immediately appoint a board of directors of five members to administer the affairs of the district.

6047.80. To be eligible to be a director of the district, a person shall be an owner of lands included in the district that are devoted, in whole or in part, to the growing of table grapes.

6047.81. Upon his or her appointment, each director shall, in the manner provided by law, subscribe the oath of office and file the oath with the county clerk.

6047.82. (a) From and after the filing for record of the order of the board of supervisors declaring the district organized, and certification from the county clerk that the grower vote upheld the creation of the district, pursuant to Sections 6047.76 and 6047.77, and the appointment and qualification of its first board of directors, the organization of the district is complete. The district shall operate for a period of five years from the date of its organization, and shall cease to exist after five years unless the district is reauthorized the board of supervisors.

(b) The board of directors shall hold a public hearing six months prior to termination of its initial organization or last reauthorization to

determine whether the conditions of the glassy-winged sharpshooter or Pierce's disease warrant the reauthorization of the district for an additional five years.

(c) The notice of hearing shall state the name of the district and that consideration is being given to reauthorizing the district for an additional five years, the boundaries of the district, and the time and place for the hearing. Notice of the hearing shall be given as provided in Sections 6047.71 and 6047.72. The board of directors shall submit the record of the hearing and its recommendation to the board of supervisors within 90 days of the hearing. The board of supervisors shall approve or reject the recommendation. If it rejects the recommendation, the board of supervisors shall return the report accompanied by its reasons for the rejection to the board of directors within 30 days of receipt. The board of directors may thereafter address the reasons for rejection by the board of supervisors and submit an amended report and new recommendations for reauthorization for approval or rejection by the board of supervisors, unless the district has ceased to exist pursuant to subdivision (a).

(d) If the board of supervisors approves the continuation of the district, the board shall, by an order entered in its minutes, declare the district duly extended subject to a majority vote of table grape growers in the district. The grower vote shall be held pursuant to Section 6047.77.

6047.83. (a) Immediately after the organization of the district, the directors shall meet and organize as a board and shall elect a chairperson, vice chairperson, and secretary from among their own number.

(b) The chairperson shall call and preside at all meetings of the board, sign all warrants drawn on the county treasurer, and all contracts and other documents, and the minutes of all meetings at which the chairperson is present. In case of the chairperson's absence from a meeting, the vice chairperson shall act as chairperson pro Tempore. The vice chairperson may sign warrants in place of the chairperson if the chairperson is absent from a meeting or unavailable. The secretary shall give notice of and keep the minutes of all meetings and prepare and have custody of all records and papers, and have custody of the seal of the district. The secretary shall attest all warrants drawn on the county treasury, all contracts and other documents, and shall sign the minutes of all meetings at which he or she is present. The secretary shall prepare the annual reports and any other reports required by the board and shall prepare all notices and all calls for bids.

6047.84. The members of the board shall serve for terms of two years, or for a longer term as determined by the board of supervisors, and until the appointment and qualification of their successors.

6047.85. Upon the expiration of the term of any member of the board, the board of supervisors shall appoint the successor. Vacancies shall be filled by the board of supervisors for the unexpired term.

6047.86. The members of the board shall not receive any compensation for their services, but may be reimbursed for their actual and necessary expenses, when claims for those expenses have been approved by the board.

6047.87. (a) The district may do all of the following:

(1) Sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(2) Adopt a seal and alter it at pleasure.

(3) Accept contributions, and by grant, purchase, gift, devise, lease, or otherwise, and hold, use and enjoy, and lease, or otherwise dispose of, real and personal property of every kind and description within or without the district necessary to the full and convenient exercise of its powers.

(4) Cause assessments to be levied on table grapes being grown in the district to pay obligations of the district incurred to accomplish the purposes of the district as provided in this article, which may involve funding all or a portion of a Pierce's disease or glassy-winged sharpshooter control program.

(5) Make contracts, and employ, except as otherwise provided in this article, all persons, firms, and corporations necessary to carry out the purposes and the powers of the district, and at any salary, wage, or other compensation as the board of directors shall determine.

(6) Respond to the effects of, the spread of glassy-winged sharpshooter and Pierce's disease and collect and disseminate to table grape growers in the district relevant information and scientific studies concerning the pest or disease, as well as to chart and determine the extent and location of any infestations.

(7) Take all actions necessary to control, eradicate, remove, or prevent the spread of the glassy-winged sharpshooter or Pierce's disease, or other pests injurious to table grapes.

(8) With reasonable advance notice in writing to the landowner, as determined by the district, enter into or upon any land included within the boundaries of the district for the purpose of inspecting the grape plants and any other host plants and fruit growing on these lands.

(9) Eradicate, eliminate, remove, or destroy any table grape plants having evidence of Pierce's disease.

(10) Coordinate with the County Agricultural Commissioner as to the commissioner's taking appropriate actions to have any table grape plants growing within the district infested with Pierce's disease adjudged a public nuisance, and decreed that the nuisance be abated.

(11) Coordinate district activities with other Table Grape Pierce's Disease Pest Abatement Districts established pursuant to this article and with the Pierce's Disease and Glassy-winged Sharpshooter Board established pursuant to Section 6047.3.

(12) Perform any and all acts, either within or outside the district, necessary or proper to fully and completely carry out the purposes for which the district is organized.

(b) The district's administrative costs shall be limited to 5 percent of the annual assessment revenue.

6047.88. Every district formed pursuant to this article has all of the powers prescribed by Section 6047.86 and other provisions of this article, regardless of any language in the petition for formation for any district or in any of the proceedings leading to the formation that would otherwise limit the power of the district.

6047.89. The county agricultural commissioner of the county in which the district is located shall, upon request of the board, assist the district to the extent possible in all activities undertaken by the district for the control of glassy-winged sharpshooter and Pierce's disease.

6047.90. The board shall, immediately after its appointment and after public hearing, formulate an effective plan and adopt a budget of expenditures for the forthcoming fiscal year. At a public hearing on the plan and the budget, any owner of table grape acreage included in the district may make written or oral protest against the budget or any item in it. The plan and the budget, as thereafter approved by the board, shall be the plan and the budget of the district for the forthcoming fiscal year.

6047.91. There may be added to the budget for the first fiscal year of the operation of the district an amount not to exceed 20 percent of the total amount of the budget to cover the preliminary expenses of the district, including, but not limited to, the costs of formation, before the beginning of the first fiscal year.

6047.92. For each fiscal year subsequent to the first year of operation of the district, the board shall adopt the final budget in the same manner and at the same time that the budget for the first fiscal year was adopted.

6047.93. The board of supervisors may charge the district for actual expenses incurred by the county in connection with the proceedings for the formation of the district, and the district shall reimburse the county from assessments levied for those expenses.

6047.94. The county assessor, in making the annual assessment of property included in the district each and every year after the organization of the district, shall identify any parcel of real property with one acre or more of table grape plants.

6047.95. Whenever acreage within the district is planted with table grape plants in a fashion so as to qualify as table grape acreage, the acreage is subject to assessment as provided in this article.

6047.96. (a) After the district has been formed, an owner of table grape acreage in the district may present to the board a request in writing for the exclusion of that land or any part of the land from the district upon

a showing that the land or part of the land will not be benefited by the activities of the district. Factors that the board may consider in its determination for exclusion, as set forth in an affidavit from the owner of the land, shall include those specified in Section 6047.74.

(b) After receipt of the request, the board shall cause an investigation of the parcel of land to be made and, if the board determines that the land or part of the land will not be benefited by the activities of the district, the board shall exclude the table grape acreage from the district and immediately certify this fact to the county assessor and the county auditor or tax collector.

(c) Any owner of table grape acreage outside of, or otherwise not included in, the district may present to the board a request in writing for inclusion of the land in the district.

6047.97. (a) The board shall, on or before the first Monday in April of each year, or as soon thereafter as possible, file with the board of supervisors a budget that sets forth all estimated expenditures of the district for the fiscal year commencing on the first day of July. A copy of the budget shall also, at the same time, be filed with the auditor of the county.

(b) The board of supervisors may, by ordinance or by resolution, adopted after notice and a hearing, determine and levy an assessment for table grape pest and disease control activities for any of the following purposes:

(1) Responding to, managing, and controlling the effects of the spread of glassy-winged sharpshooter and other pests that attack table grape plants.

(2) Collecting and disseminating to table grape producers in the district relevant information and scientific studies concerning the pest or pests.

(3) Charting and determining the extent and location of any Pierce's disease infestations.

(4) Reimbursing the county or counties in which the district is located for expenses incurred in connection with providing services under this article that are not otherwise reimbursed.

(c) The annual assessment shall not exceed fifteen dollars ($15) per planted acre.

(d) An annual assessment greater than the amount provided for in this section may not be charged unless a greater assessment is approved by eligible growers pursuant to subdivisions (a) and (b) of Section 6047.64.

(e) The board of supervisors shall cause to be prepared and filed with the clerk of the board of supervisors a written report that contains all of the following information:

(1) A description of each parcel of property proposed to be subject to the assessment.

(2) The amount of the assessment of each parcel for the initial fiscal year.

(3) The maximum amount of the assessment that may be levied for each parcel during any fiscal year.

(4) The duration of the assessment.

(5) The basis of the assessment.

(6) The schedule of the assessment.

(7) A description specifying the requirements for written and oral protests, and the protest threshold necessary for requiring abandonment of the proposed assessment pursuant to subdivision (f).

(f) Unless otherwise excluded, the assessment shall be levied on each parcel within the boundaries of the district, zone, or area of benefit.

(g) (1) The legislative body shall comply with the notice protest, and hearing procedures in Section 53753 of the Government Code.

(2) In addition, the mailed notice shall include the name of the district, the return address of the sender, the amount of the assessment for the initial fiscal year, the maximum amount of the assessment that may be levied during any fiscal year and the name and telephone number of the person designated by the board of supervisors to answer inquiries regarding the protest proceedings.

6047.98. The assessment authorized to be assessed and levied is hereby declared to be in the nature of a special assessment, and the Legislature hereby finds that the owners of all table grape plants will be benefited by the district to the same extent and in the same manner regardless of the age of the plants. The assessments authorized by this article shall be assessed and levied regardless of the age of the table grape plants growing on the land.

6047.99. (a) The assessment levied shall be computed and entered upon the assessment roll by the county auditor, and if the supervisors fail to levy the assessment as required, the auditor shall do so.

(b) The assessment shall be collected at the same time, and in the same manner as, and together with and not separate from, general county taxes, and when collected shall be paid into the county treasury for the use of the district.

6047.100. The general provisions of the laws of this state, prescribing the requirements for and manner of levying and collecting county taxes and the duties of the several county officers with respect to levying and collecting county taxes, are, so far as they are applicable and not in conflict with the specific provisions of this article, hereby adopted and made a part of this article. This article, however, shall operate so as to be compliant with Article XIII (C) and XIII (D) of the California Constitution, as incorporated by Proposition 218 of 1996. The several county officers referred to shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this article.

6047.101. The revenue from the assessments imposed pursuant to this article by the district are trust funds and shall be encumbered only for the purposes for which the district is formed and for the benefit of the property assessed. The district shall expend the minimum amount necessary for overhead and other administrative costs. No district funds shall be donated, loaned, or transferred to any other local agency or to the state for any purpose, except for the implementation of the duties of the district, set forth under this article, as determined to be necessary by the district board.

6047.102. (a) The county treasury shall be the repository of all the moneys of the district. The county treasurer shall receive and receipt for all those moneys, and place them to the credit of the district.

(b) The county treasurer shall be responsible upon his or her official bond for the safekeeping and disbursement, in the manner provided in this article, of all moneys held in the district.

6047.103. If a consolidated district includes parts of two or more counties, the repository of all money of the district shall be the county treasury of the county in which is located the largest area of table grape acreage of the district. Money collected for the use of the district in any other county in which a part of the district is located shall be transferred by the county treasurer upon warrant of the county auditor of the county in which the money was collected to the county treasurer of the county serving as repository for the district, in the same manner as prescribed for the disbursement of money held for a local district. Money derived from any county in which the district is located may be expended in any part of the district for the purposes authorized by this article, notwithstanding any other provision of law limiting the expenditure of any money to a specific area or county.

6047.104. (a) The county treasurer shall pay out money of the district only upon warrants of the county auditor drawn upon the order of the board of directors of the district signed by the chairperson or vice chairperson and attested to by the secretary. The county treasurer, with the approval of the board of supervisors, shall pay out the money of the district upon one master warrant of the county auditor drawn upon the order of the board of directors of the district and signed by the chairperson or vice chairperson and attested to by the secretary, to meet the district's expenses, including salaries, at intervals approved by the board of supervisors.

(b) The county treasurer shall report, in writing, on the first day of July, October, January, and March of each year, to the board of directors, the amount of money the treasurer then holds for the district, the amount of receipts since the last report, and the amounts paid out. Each report shall be verified and filed with the secretary of the district to whom it is addressed.

6047.105. Lands devoted exclusively to the growing of table grapes within a tract of land outside the district, but in the county in which the district is located, may be annexed to the district in the same manner provided in this article for the formation of the district.

6047.106. Any two or more districts organized or existing under this article may be consolidated, whether or not the boundaries are coterminous, and whether or not the districts are located in the same county.

6047.107. The board of directors may adopt a resolution that recites the fact of receipt and the willingness of the district to consolidate, and shall then send copies of the resolution to the board of directors of each of the other districts. The board shall send a certified copy of the resolution to the board of supervisors of the county in which is located the largest area of table grape acreage of the proposed consolidated district, and a copy of the resolution to the board of supervisors of each of the other counties in which is located any part of the proposed consolidated district.

6047.108. The board of supervisors of the county in which is located the largest area of table grape acreage of the proposed consolidated district shall fix a time and place for hearing the proposal. Notice shall be given and the hearing conducted in the same manner and with the same effect as prescribed for the formation of a district pursuant to Sections 6047.70, 6047.71, 6047.72, 6047.73, and 6047.74.

6047.109. If the board of supervisors determines that consolidation is feasible and in the best interests of the table grape growers of the respective districts, it shall, by resolution duly adopted, declare the districts consolidated into one district, giving the consolidated district a name that includes the term ''consolidated.'' Certified copies of the resolution shall be filed with the Secretary of State and with the county recorder of each county in which is located any part of the consolidated district. Upon the filing, the districts are consolidated into a single consolidated district with all the rights, privileges, and powers of a district. The consolidated district shall succeed to all the funds and other property, and is subject to all the indebtedness, bonded and otherwise, of the districts consolidated. Each district that is included in the consolidated district shall continue in existence for the purpose of representation on the board of the consolidated district, and for the purpose of levying, assessing, and collecting assessments for district purposes. The board of the consolidated district is, however, the board of each district that is included in the consolidated district.

6047.110. Upon the adoption of a resolution consolidating two or more districts, the board of supervisors of the county in which is located the largest area of table grape acreage shall immediately appoint a board of directors of at least five members, including at least one member from

each of the districts that are included in the consolidated district, and at least two members from each county, if districts located in more than one county are included in the consolidated district. If any of the districts that are included in the consolidated district includes more than 15,000 acres of table grape acreage, the board of directors shall be increased by one additional director for each 10,000 acres, or fraction of 10,000 acres, in any one district that is included in the consolidated district. If the consolidated districts are located in more than two counties, the board of directors of the consolidated district shall have at least seven members.

6047.111. The board of a consolidated district has all the duties, powers, purposes, responsibilities, and jurisdiction of the board of any other district organized pursuant to this article. The members of the consolidated board shall be appointed in the same manner and serve for the same term as the directors of any other district organized pursuant to this article.

6047.112. Any district that has been included in a consolidated district may withdraw from the consolidated district and be reconstituted as a separate district by filing with the board of directors of the consolidated district a petition for withdrawal that is signed by the owners of not less than a majority, by area, of table grape land in the district. The board of directors of the consolidated district shall send the original petition to the board of supervisors of the county in which the withdrawing district is located, and a copy of the petition to the board of supervisors of each of the other counties in which is located any part of the consolidated district. Upon receipt of a petition for withdrawal, the board of supervisors of the county in which the withdrawing district is located shall fix a time and place for hearing the petition. Notice shall be given and the hearing conducted in the same manner and with the same effect as prescribed for the formation of a district pursuant to Sections 6047.70, 6047.71, 6047.72, 6047.73, and 6047.74. Upon withdrawal of a district, all moneys collected from the district for the use of the consolidated district, and all property purchased with these moneys, shall remain the property of the consolidated district.

6047.113. Upon the filing of a petition with the board of supervisors that is signed by either (1) 50 percent or more of the table grape growers who own 65 percent or more of the affected land or by (2) 65 percent or more of the table grape growers who own 50 percent or more of the affected land requesting the dissolution of the district, the board of supervisors shall set a time and place for hearing on the petition, which shall not be less than 20 days, or more than 40 days, after the filing of the petition.

6047.114. The board of supervisors shall give notice of the time and place fixed for the hearing upon the petition for dissolution.

6047.115. The notice of hearing shall state all of the following:

(a) That a petition has been filed requesting the dissolution of the district.

(b) That the petition is available for inspection at the offices of the board of supervisors.

(c) The time and place for the hearing.

(d) That at the hearing protests against the dissolution of the district shall be considered by the board of supervisors.

6047.116. Notice of the hearing shall be given by publication in a newspaper of general circulation published and circulated in the district.

6047.117. The notice shall be published once a week for two successive weeks prior to the date set for the hearing.

6047.118. If, at the hearing, a majority of the board does not find a compelling reason to override the growers' petition to dissolve the district, the board of supervisors shall by resolution dissolve the district.

6047.119. The board of supervisors shall cause a certified copy of the resolution to be recorded in the office of the county recorder and shall file a certified copy of it with the Secretary of State. Thereupon, the district is dissolved for all purposes.

6047.120. Upon dissolution, the right, title, and interest to property owned or controlled by the district that is situated within the corporate limits of any city shall vest absolutely in the city. If the property is situated outside the corporate limits of a city, it shall vest in the county in which the property is situated.

6047.121. The board of supervisors is ex officio the governing body of the dissolved district. It may levy assessments and perform other acts solely for the purpose and as may be necessary to wind up the affairs of the district and to raise money for the payment of any outstanding indebtedness.

6047.122. All claims and accounts against the district that have not been settled by the board within 90 days after the resolution is recorded pursuant to Section 6047.119 shall be presented to the board of supervisors of the county in which the district was located, or in the case of a consolidated district to the board of supervisors of the county in which is located the largest area of table grape acreage, and shall be passed and approved by the board of supervisors in the same manner as county claims and shall be paid out of the funds of the dissolved district.

6047.123. If there are insufficient funds to discharge all claims and accounts brought pursuant to Section 6047.122, the board of supervisors shall, at the time of levying the next general county taxes, levy a special assessment upon the net acreage devoted to the growing of table grapes that benefited from the dissolved district in an amount sufficient to discharge all outstanding claims and accounts against the district. In the case of a consolidated district, the board of supervisors of each county

in which a portion of the district is located shall levy a special assessment based upon the ratio that the proportion of outstanding claims and accounts bears to the net acreage of the district in each county.

6047.124. Owners of wine grapes and raisin grapes and any other commodities may petition to become subject to any district established pursuant to this article. The petition shall adhere to all the requirements of this article and shall require the approval of the board of directors of the affected district.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

The spread of the glassy-winged sharpshooter and Pierce's disease threatens the economic viability of the table grape industry. Because the immediate establishment of a pest control district pursuant to this article is necessary to avoid severe economic loss, it is necessary that this act take effect immediately.

CHAPTER 245

An act to amend Section 290.85 of the Penal Code, relating to sex offenders.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 290.85 of the Penal Code is amended to read:

290.85. (a) Every person released on probation or parole who is required to register as a sex offender, pursuant to Section 290, shall provide proof of registration to his or her probation officer or parole agent within six working days of release on probation or parole. The six-day period for providing proof of registration may be extended only upon determination by the probation officer or parole agent that unusual circumstances exist relating to the availability of local law enforcement

registration capabilities that preclude the person's ability to meet the deadline.

(b) Every person released on probation or parole who is required to register as a sex offender pursuant to Section 290 shall provide proof of any change or update to his or her registration information to his or her probation officer or parole agent within five working days for so long as he or she is required to be under the supervision of a probation officer or parole agent.

(c) A probation officer or parole agent who supervises an individual who is required to register as a sex offender pursuant to Section 290 shall inform that individual of his or her duties under this section not fewer than six days prior to the date on which proof of registration or proof of any change or update to registration information is to be provided to the probation officer or parole agent.

(d) For purposes of this section, ''proof of registration'' means a photocopy of the actual registration form. A law enforcement agency that registers an individual as a sex offender pursuant to Section 290 who is released on probation or parole and is therefore subject to this section shall provide that individual with proof of his or her registration free of charge when requested by the registrant to fulfill the requirements of this section or 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 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 246

An act to amend Sections 417.2 and 12001 of the Penal Code, relating to imitation firearms.

[Approved by Governor September 1, 2003. Filed with
Secretary of State September 2, 2003.]

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

SECTION 1. Section 417.2 of the Penal Code is amended to read:

417.2. (a) Any person who, for commercial purposes, purchases, sells, manufactures, ships, transports, distributes, or receives, by mail order or in any other manner, an imitation firearm except as permitted by this section shall be liable for a civil fine in an action brought by the city attorney of the city or the district attorney of the county of not more than ten thousand dollars ($10,000) for each violation.

(b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt, by mail or in any other manner, of imitation firearms is permitted if the device is manufactured, purchased, sold, shipped, transported, distributed, or received for any of the following purposes:

(1) Solely for export in interstate or foreign commerce.

(2) Solely for lawful use in theatrical productions, including motion picture, television, and stage productions.

(3) For use in a certified or regulated athletic event or competition.

(4) For use in military or civil defense activities.

(5) For public displays authorized by public or private schools.

(c) As used in this section, ''imitation firearm'' means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(d) As used in this section, ''imitation firearm'' does not include any of the following:

(1) A nonfiring collector's replica of an antique firearm that was designed prior to 1898, is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A nonfiring collector's replica of a firearm that was designed after 1898, is historically significant, was issued as a commemorative by a nonprofit organization, and is offered for sale in conjunction with a wall plaque or presentation case.

(3) A device, as defined in subdivision (g) of Section 12001.

(4) An imitation firearm where the coloration of the entire exterior surface of the device is bright orange or bright green, either singly or in combination.

(5) An instrument that expels a projectile, such as a BB or pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action, or a spot marker gun.

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 projectile, such as a BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas 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. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 247

An act to add Section 366.28 to the Welfare and Institutions Code, relating to adoption.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 366.28 is added to the Welfare and Institutions Code, to read:

366.28. (a) The Legislature finds and declares that delays caused by appeals from court orders designating the specific placement of a dependent child after parental rights have been terminated may cause a substantial detriment to the child. The Legislature recognizes that the juvenile court intervenes in placement decisions after parental rights have been terminated only in exceptional circumstances, and this section is not intended to place additional authority or responsibility on the juvenile court.

(b) (1) After parental rights have been terminated pursuant to Section 366.26, an order by the court that a dependent child is to reside

in, be retained in, or be removed from a specific placement, is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule of court, to substantively address the specific placement order that is challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(c) This section does not affect the right of a parent, a legal guardian, or the child to appeal any order that is otherwise appealable and that is issued at a hearing held pursuant to Section 366.26.

(d) The Judicial Council shall adopt a rule of court on or before July 1, 2004, to implement this section. This section shall become operative after the rule of court is adopted.

CHAPTER 248

An act to amend Section 431 of, and to add Section 412.5 to, the Military and Veterans Code, relating to the state militia.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 412.5 is added to the Military and Veterans Code, to read:

412.5. (a) Notwithstanding any other provision of law, the Adjutant General may do all of the following:

(1) Establish rules and regulations in accordance with Army, Air Force, and National Guard Bureau regulations for the provision of morale, welfare, and recreational activities that benefit soldiers and airmen of the National Guard.

(2) Provide other services, in accordance with the regulations of the Department of the Army, the Department of the Air Force, and the National Guard Bureau, governing morale, welfare, and recreation fund activities.

(3) Adopt rules and regulations for the establishment and deposit of military post, welfare, or similar unit, or organizational funds.

(b) The Adjutant General or the National Guard may accept funds or other donations for the benefit of the Military Department.

SEC. 2. Section 431 of the Military and Veterans Code is amended to read:

431. (a) The Adjutant General may, either directly or through armory boards, or through subordinate commanders, lease or otherwise authorize the use of, by any person for any lawful purpose, manage, supervise all activities in, perform all necessary military duties with respect to and control all armories that are built or acquired by the state, that come into possession or control of the state, or that are erected, purchased, leased, or provided or contributed to, in whole or in part, by any city, county, political subdivision, or district, or by anyone, for armory purposes.

(b) The Adjutant General may contract with the United States for the operation of any armory for purposes of training of federal military personnel, with provision that all state costs related to that operation shall be reimbursed by the United States.

(c) All revenues or income from any armory shall be paid to the Adjutant General who shall account for the revenues or income to the Controller at the close of each month in the form that the Controller prescribes and shall deposit the revenues and income into the Treasury to the credit of the Armory Discretionary Improvement Account, which is hereby created, in the General Fund. The revenues and income in the account shall be available, when appropriated, to the Adjutant General, for allocation for the maintenance, repairs, improvements, and operating expenses necessary or desirable for increased or improved community utilization of the facilities of the armory from which the revenues and income were derived.

(d) The Adjutant General, on May 1st of each year, shall submit to the Department of General Services and obtain approval of a schedule of rental, license, or lease fees for each state-owned or leased armory by location. This schedule, when approved by the Department of General Services, shall be used by the Adjutant General during the next succeeding fiscal year to determine the minimum rental, license, or lease fees to be charged the renter, licensee, or lessor.

CHAPTER 249

An act to amend Section 798.51 of, and to add Sections 798.74.4 and 799.10 to, the Civil Code, relating to mobilehome parks.

[Approved by Governor September 1, 2003. Filed with
Secretary of State September 2, 2003.]

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

SECTION 1. Section 798.51 of the Civil Code is amended to read:

798.51. (a) No provision contained in any mobilehome park rental agreement, rule, or regulation shall deny or prohibit the right of any homeowner or resident in the park to do any of the following:

(1) Peacefully assemble or meet in the park, at reasonable hours and in a reasonable manner, for any lawful purpose. Meetings may be held in the park community or recreation hall or clubhouse when the facility is not otherwise in use, and, with the consent of the homeowner, in any mobilehome within the park.

(2) Invite public officials, candidates for public office, or representatives of mobilehome owner organizations to meet with homeowners and residents and speak upon matters of public interest, in accordance with Section 798.50.

(3) Canvass and petition homeowners and residents for noncommercial purposes relating to mobilehome living, election to public office, or the initiative, referendum, or recall processes, at reasonable hours and in a reasonable manner, including the distribution or circulation of information.

(b) A homeowner or resident may not be charged a cleaning deposit in order to use the park recreation hall or clubhouse for meetings of resident organizations for any of the purposes stated in Section 798.50 and this section, whether or not guests or visitors from outside the park are invited to attend the meeting, if a homeowner or resident of the park is hosting the meeting and all homeowners or residents of the park are allowed to attend.

(c) A homeowner or resident may not be required to obtain liability insurance in order to use common area facilities for the purposes specified in this section and Section 798.50. However, if alcoholic beverages are to be served at any meeting or private function, a liability insurance binder may be required by the park ownership or management. The ownership or management of a mobilehome park may prohibit the consumption of alcoholic beverages in the park common area facilities if the terms of the rental agreement or the rules and regulations of the park prohibit it.

(d) A homeowner, organization, or group of homeowners using a recreation hall or clubhouse pursuant to this section shall be required to adhere to any limitations or restrictions regarding vehicle parking or maximum occupancy for the clubhouse or recreation hall.

(e) A homeowner or resident may not be prohibited from displaying a political campaign sign relating to a candidate for election to public office or to the initiative, referendum, or recall process in the window or on the side of a manufactured home or mobilehome, or within the site on which the home is located or installed. The size of the face of a political sign may not exceed six square feet, and the sign may not be displayed in excess of a period of time from 90 days prior to an election to 15 days following the election, unless a local ordinance within the jurisdiction where the mobilehome park is located imposes a more restrictive period of time for the display of such a sign.

SEC. 2. Section 798.74.4 is added to the Civil Code, to read:

798.74.4. The transfer or sale of a manufactured home or mobilehome in a mobilehome park is subject to the transfer disclosure requirements and provisions set forth in Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of the Civil Code. The requirements include, but are not limited to, the use of the Manufactured Home and Mobilehome Transfer Disclosure Statement set forth in Section 1102.6d of the Civil Code.

SEC. 3. Section 799.10 is added to the Civil Code, to read:

799.10. A resident may not be prohibited from displaying a political campaign sign relating to a candidate for election to public office or to the initiative, referendum, or recall process in the window or on the side of a manufactured home or mobilehome, or within the site on which the home is located or installed. The size of the face of a political sign may not exceed six square feet, and the sign may not be displayed in excess of a period of time from 90 days prior to an election to 15 days following the election, unless a local ordinance within the jurisdiction where the manufactured home or mobilehome subject to this article is located imposes a more restrictive period of time for the display of such a sign. In the event of a conflict between the provisions of this section and the provisions of Title 6 (commencing with Section 1350) of Part 4 of Division 2, relating to the size and display of political campaign signs, the provisions of this section shall prevail.

SEC. 4. It is the intent of the Legislature that enactment of this bill not affect any other form of political expression by a homeowner or resident of a mobilehome park where that expression is not associated with an election or political campaign.

CHAPTER 250

An act to amend Sections 4022, 4067, 4170, 4171, and 4175 of the Business and Professions, relating to veterinary drugs.

[Approved by Governor September 1, 2003. Filed with
Secretary of State September 2, 2003.]

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

SECTION 1. Section 4022 of the Business and Professions Code is amended to read:

4022. ''Dangerous drug'' or ''dangerous device'' means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: ''Caution: federal law prohibits dispensing without prescription,'' ''Rx only,'' or words of similar import.

(b) Any device that bears the statement: ''Caution: federal law restricts this device to sale by or on the order of a ____,'' ''Rx only,'' or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

SEC. 2. Section 4067 of the Business and Professions Code is amended to read:

4067. (a) No person or entity shall dispense or furnish, or cause to be dispensed or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state without a prescription issued pursuant to a good faith prior examination of a human or animal for whom the prescription is meant if the person or entity either knew or reasonably should have known that the prescription was not issued pursuant to a good faith prior examination of a human or animal, or if the person or entity did not act in accordance with Section 1761 of Title 16 of the California Code of Regulations.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars ($25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars ($25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using

the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Pharmacy Board Contingent Fund.

(e) Nothing in this section shall be construed to permit the unlicensed practice of pharmacy, or to limit the authority of the board to enforce any other provision of this chapter.

(f) For the purposes of this section, ''good faith prior examination'' includes the requirements for a physician and surgeon in Section 2242 and the requirements for a veterinarian in Section 2032.1 of Title 16 of the California Code of Regulations.

SEC. 3. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(8) A certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure

described in Section 2836.1, or protocol, or a physician assistant who functions pursuant to Section 3502.1, may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, or a pharmacist.

(b) The Medical Board of California, the State Board of Optometry, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, and the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) ''Prescriber,'' as used in this section, means a person, who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice dentistry, a license to practice veterinary medicine, or a certificate to practice podiatry, and who is duly registered by the Medical Board of California, the State Board of Optometry, the Dental Board of California, the Veterinary Medical Board, or the Board of Osteopathic Examiners of this state.

SEC. 4. Section 4171 of the Business and Professions Code is amended to read:

4171. (a) Section 4170 shall not prohibit the furnishing of a limited quantity of samples by a prescriber, if the prescriber dispenses the samples to the patient in the package provided by the manufacturer, no charge is made to the patient therefor, and an appropriate record is entered in the patient's chart.

(b) Section 4170 shall not apply to clinics, as defined in subdivision (a) of Section 1204 or subdivision (b) or (c) of Section 1206 of the Health and Safety Code, to programs licensed pursuant to Sections 11876, 11877, and 11877.5 of the Health and Safety Code, or to a prescriber dispensing parenteral chemotherapeutic agents, biologicals, or delivery systems used in the treatment of cancer.

SEC. 5. Section 4175 of the Business and Professions Code is amended to read:

4175. (a) The California State Board of Pharmacy shall promptly forward to the appropriate licensing entity, including the Medical Board of California, the Veterinary Medical Board, the Dental Board of California, the State Board of Optometry, the Osteopathic Medical Board of California, the Board of Registered Nursing, or the Physician Assistant Committee, all complaints received related to dangerous drugs or dangerous devices dispensed by a prescriber, certified nurse-midwife, nurse practitioner, or physician assistant pursuant to Section 4170.

(b) All complaints involving serious bodily injury due to dangerous drugs or dangerous devices dispensed by prescribers, certified

nurse-midwives, nurse practitioners, or physician assistants pursuant to Section 4170 shall be handled by the Medical Board of California, the Dental Board of California, the State Board of Optometry, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, or the Physician Assistant Committee as a case of greatest potential harm to a patient.

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 251

An act to amend Sections 7620, 7630, 7662, 7669, 8614, 8714, 8714.5, 8715, and 8814.5 of, and to amend and renumber Section 8714.7 of, the Family Code, and to add Section 1516.5 to the Probate Code, relating to adoption.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 7620 of the Family Code is amended to read:

7620. (a) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse.

(b) An action under this part shall be brought in the county in which the child resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

SEC. 2. Section 7630 of the Family Code is amended to read:

7630. (a) A child, the child's natural mother, or a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) An action under subdivision (c) shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664. The consolidated action shall be heard in the court in which the Section 7662 proceeding is filed, unless the court in which the action under subdivision (c) is filed finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

SEC. 3. Section 7662 of the Family Code is amended to read:

7662. (a) If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who does not have a presumed father under Section 7611, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not, in writing, denied paternity, waived his right to notice, or voluntarily relinquished for or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having physical or legal custody of the child, or the prospective adoptive parent, shall file a petition to terminate the parental rights of the father, unless either of the following occurs:

(1) The father's relationship to the child has been previously terminated or determined not to exist by a court.

(2) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child

to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

(b) All proceedings affecting a child under Divisions 8 (commencing with Section 3000) to 11 (commencing with Section 6500), inclusive, and Parts 1 (commencing with Section 7500) to 3 (commencing with Section 7600), inclusive, of this division, other than an action brought pursuant to this section, shall be stayed pending final determination of proceedings to terminate the parental rights of the father pursuant to this section.

(c) Nothing in this section may limit the jurisdiction of the court pursuant to Part 3 (commencing with Section 6240) and Part 4 (commencing with Section 6300) of Division 10 with respect to domestic violence orders.

SEC. 4. Section 7669 of the Family Code is amended to read:

7669. (a) An order requiring or dispensing with a father's consent for the adoption of a child may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court and is conclusive and binding upon the father.

(b) After making the order, the court has no power to set aside, change, or modify that order.

(c) Nothing in this section limits the right to appeal from the order and judgment.

SEC. 5. 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 8616.5, the certificate shall not state the name of the birth parents of the child.

SEC. 6. Section 8714 of the Family Code is amended to read:

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the birth parent or birth parents resided when the relinquishment of parental rights for the purpose of adoption was signed. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8616.5, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (a).

(d) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(f) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

SEC. 7. 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 8616.5 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. 8. Section 8714.7 of the Family Code is amended and renumbered to read:

8616.5. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.

(b) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.

(1) Except as provided in paragraph (2), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(C) Provisions for the sharing of information about the child in the future.

(2) The terms of any postadoption contact agreement entered into pursuant to a petition filed under Section 8714 shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in

good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court may not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.

SEC. 9. Section 8715 of the Family Code is amended to read:

8715. (a) The department or licensed adoption agency, whichever is a party to, or joins in, the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half siblings.

(c) If a petition for adoption has been filed with a postadoption contact agreement pursuant to Section 8616.5, the report shall address whether the postadoption contact agreement has been entered into voluntarily, and whether it is in the best interests of the child who is the subject of the petition.

(d) The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

(e) If a petitioner is a resident of a state other than California, an updated and current homestudy report, conducted and approved by a licensed adoption agency or other authorized resource in the state in which the petitioner resides, shall be reviewed and endorsed by the department or licensed adoption agency, if the standards and criteria established for a homestudy report in the other state are substantially commensurate with the homestudy standards and criteria established in California adoption regulations.

SEC. 10. Section 8814.5 of the Family Code is amended to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 30 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, in

cases where the birth parent or parents have not regained custody, or the birth parent or parents have failed to make efforts to exercise their rights under subdivision (b) of Section 8815, a written notarized statement reinstating the original consent may be signed and delivered to the department or delegated county adoption agency, in which case the revocation of consent shall be void and the remainder of the original 30-day period shall commence. After revoking consent, in cases in which the birth parent or parents have regained custody or made efforts to exercise their rights under subdivision (b) of Section 8815 by requesting the return of the child, upon the delivery of a written notarized statement reinstating the original consent to the department or delegated county adoption agency, the revocation of consent shall be void and a new 30-day period shall commence. The birth mother shall be informed of the operational timelines associated with this section at the time of signing of the statement reinstating the original consent.

(2) (A) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency. If neither a representative of the department nor a representative of a delegated county adoption agency is reasonably available, the waiver of the right to revoke consent may be signed in the presence of a judicial officer of a court of record if the birth parent is represented by independent legal counsel. "Reasonably available" means that a representative from either the department or the delegated county adoption agency is available to accept the signing of the waiver within 10 days and is within 100 miles of the location of the birth mother.

(B) An adoption service provider may assist the birth parent or parents in any activity where the primary purpose of that activity is to facilitate the signing of the waiver with the department, a delegated county agency, or a judicial officer. The adoption service provider or another person designated by the birth parent or parents may also be present at any interview conducted pursuant to this section to provide support to the birth parent or parents.

(C) The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record as specified in this section, in which case the interview and the witnessing of the signing of the waiver shall be conducted by the judicial officer. Within 10 working days of a request made after the department, the delegated county adoption agency, or the court has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department, the delegated county adoption agency, or the court shall interview, at the department or agency office or the court,

any birth parent requesting to be interviewed. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

(i) A representative of a public adoption agency in that state.

(ii) A judicial officer in that state where the birth parent is represented by independent legal counsel.

(iii) An adoption service provider.

(3) Allow the consent to become a permanent consent on the 31st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 30 days, beginning on the date the consent was signed or as provided in paragraph (1) of subdivision (a), whichever occurs first.

SEC. 11. Section 1516.5 is added to the Probate Code, to read:

1516.5. (a) A proceeding to have a child declared free from the custody and control of one or both parents may be brought in the guardianship proceeding pursuant to Part 4 (commencing with Section 7800) of Division 12 of the Family Code, if all of the following requirements are satisfied:

(1) One or both parents do not have the legal custody of the child.

(2) The child has been in the physical custody of the guardian for a period of not less than two years.

(3) The court finds that the child would benefit from being adopted by his or her guardian. In making this determination, the court shall consider all factors relating to the best interest of the child, including but not limited to, the nature and extent of the relationship between all of the following:

(A) The child and the birth parent.

(B) The child and the guardian, including family members of the guardian.

(C) The child and any siblings or half-siblings.

(b) The court shall appoint a court investigator or other qualified professional to investigate all factors enumerated in subdivision (a). The findings of the investigator or professional regarding those issues shall be included in the written report required pursuant to Section 7851 of the Family Code.

(c) The rights of the parent, including the rights to notice and counsel provided in Part 4 (commencing with Section 7800) of Division 12 of the Family Code, shall apply to actions brought pursuant to this section.

(d) This section does not apply to any child who is a dependent of the juvenile court.

CHAPTER 252

An act to amend Sections 111 and 38506 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 111 of the Vehicle Code is amended to read:

111. ''All-terrain vehicle'' means a motor vehicle subject to subdivision (a) of Section 38010 which is all of the following:

(a) Designed for operation off of the highway by an operator with no more than one passenger.

(b) Fifty inches or less in width.

(c) Nine hundred pounds or less unladen weight.

(d) Suspended on three or more low-pressure tires.

(e) Has a single seat designed to be straddled by the operator, or a single seat designed to be straddled by the operator and a seat for no more than one passenger.

(f) Has handlebars for steering control.

SEC. 2. Section 38506 of the Vehicle Code is amended to read:

38506. No operator of an all-terrain vehicle may carry a passenger when operating on public lands.

However, the operator of an all-terrain vehicle, that is designed for operation off of the highway by an operator with no more than one passenger, may carry a passenger when operating on public lands.

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 253

An act to amend Section 14132.47 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 14132.47 of the Welfare and Institutions Code is amended to read:

14132.47. (a) It is the intent of the Legislature to provide local governmental agencies the choice of participating in either or both of the Targeted Case Management (TCM) and Administrative Claiming process programs at their option, subject to the requirements of this section and Section 14132.44.

(b) The department may contract with each participating local governmental agency or each local educational consortium to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program, pursuant to Section 1396b(a) of Title 42 of the United States Code, Section 1903a of the federal Social Security Act, and this activity shall be known as the Administrative Claiming process.

(c) (1) As a condition for participation in the Administrative Claiming process, each participating local governmental agency or each local educational consortium shall, for the purpose of claiming federal medicaid matching funds, enter into a contract with the department and shall certify to the department the amount of local governmental agency or each local educational consortium general funds or any other funds allowed under federal law and regulation expended on the allowable administrative activities.

(2) The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(d) Each participating local governmental agency or local educational consortium may subcontract with nongovernmental entities to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program under the conditions specified by the department in regulations.

(e) Each Administrative Claiming process contract shall include a requirement that each participating local governmental agency or each local educational consortium submit a claiming plan in a manner that shall be prescribed by the department in regulations, developed in consultation with local governmental agencies.

(f) The department shall require that each participating local governmental agency or each local educational consortium certify to the department both of the following:

(1) The availability and expenditure of 100 percent of the nonfederal share of the cost of performing Administrative Claiming process activities. The funds expended for this purpose shall be from the local governmental agency's general fund or the general funds of local educational agencies or from any other funds allowed under federal law and regulation.

(2) In each fiscal year that its expenditures represent costs that are eligible for federal financial participation for that fiscal year. The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(g) (1) Notwithstanding any other provision of this section, the state shall be held harmless, in accordance with paragraphs (2) and (3), from any federal audit disallowance and interest resulting from payments made to a participating local governmental agency or local educational consortium pursuant to this section, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(2) To the extent that a federal audit disallowance and interest results from a claim or claims for which any participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities, the department shall recoup from the local governmental agency or local educational consortium that submitted the disallowed claim, through offsets or by a direct billing, amounts equal to the amount of the disallowance and interest, in that fiscal year, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim. All subsequent claims submitted to the department applicable to any previously disallowed administrative activity or claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.

(3) Notwithstanding paragraph (2), to the extent that a federal audit disallowance and interest results from a claim or claims for which the participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities performed by a nongovernmental entity under contract with, and on behalf of, the participating local governmental agency or local educational consortium, the department shall be held harmless by that particular participating local governmental agency or local educational consortium for 100 percent of the amount of the federal audit disallowance and interest, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(h) The use of local matching funds required by this section shall not create, lead to, or expand the health care funding obligations or service

obligations for current or future years for any participating local governmental agency or local educational consortium, except as required by this section or as may be required by federal law.

(i) The department shall deny any claim from a participating local governmental agency or local educational consortium if the department determines that the claim is not adequately supported in accordance with criteria established pursuant to this subdivision and implementing regulations before it forwards the claim for reimbursement to the federal medicaid program. In consultation with local government agencies and local educational consortia, the department shall adopt regulations that prescribe the requirements for the submission and payment of claims for administrative activities performed by each participating local governmental agency and local educational consortium.

(j) Administrative activities shall be those determined by the department to be necessary for the proper and efficient administration of the state's medicaid plan and shall be defined in regulation.

(k) If the department denies any claim submitted under this section, the affected participating local governmental agency or local educational consortium may, within 30 days after receipt of written notice of the denial, request that the department reconsider its action. The participating local governmental agency or local educational consortium may request a meeting with the director or his or her designee within 30 days to present its concerns to the department after the request is filed. If the director or his or her designee cannot meet, the department shall respond in writing indicating the specific reasons for which the claim is out of compliance to the participating local governmental agency or local educational consortium in response to its appeal. Thereafter, the decision of the director shall be final.

(*l*) Participating local governmental agencies or local educational consortium may claim the actual costs of nonemergency, nonmedical transportation of Medi-Cal eligibles to Medi-Cal covered services, under guidelines established by the department, to the extent that these costs are actually borne by the participating local governmental agency or local educational consortium. A local educational consortium may only claim for nonemergency, nonmedical transportation of Medi-Cal eligibles for Medi-Cal covered services, through the Medi-Cal administrative activities program. Medi-Cal medical transportation services shall be claimed under the local educational agency Medi-Cal billing option, pursuant to Section 14132.06.

(m) (1) Each participating local governmental agency shall contribute to the department a portion of the agency's general fund that has been made available due to the coverage of administrative activities described in this section under the Medi-Cal program. The contributed funds shall be reinvested in health services through the Medi-Cal

program. The total contribution amount shall be equal to $33^1/_3$ percent of amounts made available under this section, but in no case shall the contribution exceed twenty million dollars ($20,000,000) a fiscal year less the amount contributed pursuant to subdivision (m) of Section 14132.44. Beginning with the 1994–95 fiscal year, each local governmental agency's share of the total contribution shall be determined by claims submitted and approved for payment through January 1 of the following calendar year. Claims received and approved for payment after January 1 for dates of service in the previous fiscal year shall be included in the following year's calculation. Each local governmental agency's share of the contribution for the previous fiscal year shall be determined no later than February 15 and shall be remitted to the state no later than April 1 of each year. The contribution amount shall be paid from nonfederal, general fund revenues and shall be deposited in the Administrative Claiming Fund for transfer to the Health Care Deposit Fund.

(2) Moneys received by the department pursuant to this subdivision are hereby continuously appropriated to the department for support of the Medi-Cal program, and the funds shall be administered in accordance with procedures prescribed by the Department of Finance. If not paid as provided in this section, the department may offset payments due to each participating local governmental agency from the state, not related to payments required to be made pursuant to this section in order to recoup these funds for the Administrative Claiming Fund.

(3) This subdivision shall only apply to claims approved for the 1994–95 to 1997–98 fiscal years, inclusive.

(n) As a condition of participation in the Administrative Claiming process and in recognition of revenue generated to each participating local governmental agency and each local educational consortium in the Administrative Claiming process, each participating local governmental agency and each local educational consortium shall pay an annual participation fee through a mechanism agreed to by the state and local governmental agencies and local educational consortia, or, if no agreement is reached by August 1 of each year, directly to the state. The participation fee shall be used to cover the cost of administering the Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. The department shall determine and report staffing requirements upon which projected costs will be based. The amount of the participation fee shall be based upon the anticipated salaries, benefits, and operating expenses, to administer the Administrative Claiming process and other costs related to that process.

(o) For the purposes of this section "participating local governmental agency" means a county, chartered city, Native American Indian tribe,

tribal organization, or subgroup of a Native American Indian tribe or tribal organization, under contract with the department pursuant to subdivision (b).

(p) For purposes of this section, ''local educational agency'' means a local educational agency, as defined in subdivision (h) of Section 14132.06, that participates under the Administrative Claiming process as a subcontractor to the local educational consortium in its service region.

(q) (1) For purposes of this section, ''local educational consortium'' means a local agency that is one of the service regions of the California County Superintendent Educational Services Association.

(2) Each local educational consortium shall contract with the department pursuant to paragraph (1) of subdivision (c).

(r) (1) Each participating local educational consortium shall be responsible for the local educational agencies in its service region that participate in the Administrative Claiming process. This responsibility includes, but is not limited to, the preparation and submission of all administrative claiming plans, training of local educational agency staff, overseeing the local educational agency time survey process, and the submission of detailed quarterly invoices on behalf of any participating local educational agency.

(2) Each participating local educational consortium shall ensure local educational agency compliance with all requirements of the Administrative Claiming process established for local governmental agencies.

(3) Ninety days prior to the initial participation in the Administrative Claiming process, each local educational consortium shall notify the department of its intent to participate in the process, and shall identify each local educational agency that will be participating as its subcontractor.

(s) (1) Each local educational agency that elects to participate in the Administrative Claiming process shall submit claims through its local educational consortium or through the local governmental agency, but not both.

(2) Each local educational agency participating as a subcontractor to a local educational consortium shall comply with all requirements of the Administrative Claiming process established for local governmental agencies.

(t) For the purposes of this section, a ''nongovernmental entity'' does not include an entity or person administered by, affiliated with, or employed by a participating local governmental agency or a local educational consortium.

(u) The requirements of subdivision (m) shall not apply to claims for administrative activities, pursuant to the Administrative Claiming process, performed by public health programs administered by the state.

(v) A participating local governmental agency or a local educational consortium may charge an administrative fee to any entity claiming Administrative Claiming through that agency.

(w) The department shall continue to administer the Administrative Claiming process in conformity with federal requirements.

(x) The department shall provide technical assistance to all participating local governmental agencies and local educational consortia in order to maximize federal financial participation in the Administrative Claiming process.

(y) This section shall be applicable to Administrative Claiming process activities performed, and to moneys paid to participating local governmental agencies for those activities in the 1994–95 fiscal year and thereafter, and to local educational consortia in the 1998–99 fiscal year and thereafter.

CHAPTER 254

An act to amend Sections 13353.8 and 23612 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 13353.8 of the Vehicle Code is amended to read:

13353.8. (a) After the department has issued an order suspending or delaying driving privileges as a result of a violation of subdivision (a) of Section 23136, the department, upon petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive, if the department determines that, within seven years of the current violation of Section 23136, the person has not violated Section 23136 or been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and that the person's driving privilege has not been suspended or revoked under Section 13353, 13353.1, or 13353.2 within that seven-year period.

(b) For purposes of this section, a conviction of an offense in a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

(c) As used in this section, ''critical need to drive'' means the circumstances that are required to be shown for the issuance of a junior permit pursuant to Section 12513.

(d) The restriction shall be imposed not earlier than the 31st day after the date the order of suspension became effective and shall remain in effect for the balance of the period of suspension or restriction in this section.

SEC. 2. Section 23612 of the Vehicle Code is amended to read:

23612. (a) (1) (A) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code that resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion, or (iii) the revocation of the person's

privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses that occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests that are available at the facility to which that person has been transported. In that case, the officer shall

advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) A person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. A person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

(b) A person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) A person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d) (1) A person lawfully arrested for an offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

(f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace

officer shall take possession of all driver's licenses issued by this state which are held by the person. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of arrest.

(g) (1) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 13380, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.

(2) (A) Notwithstanding any other provision of law, a document containing data prepared and maintained in the governmental forensic laboratory computerized database system that is electronically transmitted or retrieved through public or private computer networks to or by the department is the best available evidence of the chemical test results in all administrative proceedings conducted by the department. In addition, any other official record that is maintained in the governmental forensic laboratory, relates to a chemical test analysis prepared and maintained in the governmental forensic laboratory computerized database system, and is electronically transmitted and retrieved through a public or private computer network to or by the department is admissible as evidence in the department's administrative proceedings. In order to be admissible as evidence in administrative proceedings, a document described in this subparagraph shall bear a certification by the employee of the department who retrieved the document certifying that the information was received or retrieved directly from the computerized database system of a governmental forensic laboratory and that the document accurately reflects the data received or retrieved.

(B) Notwithstanding any other provision of law, the failure of an employee of the department to certify under subparagraph (A) is not a public offense.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit

to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

CHAPTER 255

An act to amend Sections 65863.10 and 65863.13 of the Government Code, relating to housing.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 65863.10 of the Government Code is amended to read:

65863.10. (a) As used in this section, the following terms have the following meaning:

(1) ''Affected public entities'' means the mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) ''Affected tenant'' means a tenant household residing in an assisted housing development, as defined in paragraph (3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) ''Assisted housing development'' means a multifamily rental housing development that receives governmental assistance under any of the following federal programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715*l*(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code.

(4) ''City'' means a general law city, a charter city, or a city and county.

(5) ''Expiration of rental restrictions'' means the expiration of rental restrictions for an assisted housing development described in subparagraph (E) of paragraph (3) unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units.

(6) ''Prepayment'' means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in subparagraph (B) of paragraph (3) that would have the effect of removing the current low-income affordability restrictions contained in the applicable laws and the regulatory agreement.

(7) ''Termination'' means an owner's decision not to extend or renew its participation in a federal subsidy program for an assisted housing development described in subparagraph (A) of paragraph (3), either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(b) (1) At least 12 months prior to the anticipated date of the termination of a subsidy contract, expiration of rental restrictions, or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of the expiration of rental restrictions, a statement that the restrictions will expire and whether the owner intends to increase rents greater than permitted under Section 42 of the Internal Revenue Code.

(C) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(D) The anticipated date of the termination, prepayment of the federal program or expiration of rental restrictions, and the identity of the federal program described in subdivision (a).

(E) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(F) A statement of the possibility that the housing may remain in the federal program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's offer.

(G) A statement that other governmental assistance may be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(H) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract, or expiration of rental restrictions, or prepayment.

(I) A statement of notice of opportunity to submit an offer to purchase, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice does not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions under Section 42 of the Internal Revenue Code shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is

provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal program, or expiration of rental restrictions, and the identity of the federal program, as described in subdivision (a).

(B) The current rent and anticipated new rent for the unit on the date of the prepayment or termination of the federal program, or expiration of rental restrictions.

(C) A statement that a copy of the notice will be sent to the city , county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's offer or that a rent increase may not take place due to the expiration of rental restrictions.

(E) A statement of the owner's intention to participate in any current replacement federal subsidy program made available to the affected tenants.

(F) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The

information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions under Section 42 of the Internal Revenue Code shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. ''Significant changes'' shall include, but not be limited to, any changes to the date of termination or prepayment, or expiration of rental restrictions or the anticipated new rent.

(e) An owner who is subject to the requirements of this section shall also provide a copy of any notices issued to existing tenants pursuant to subdivision (b), (c), or (d) to any prospective tenant at the time he or she is interviewed for eligibility.

(f) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in his or her records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(g) For purposes of this section, service of the notice to the affected tenants, the city, county, or city and county, the appropriate local public housing authority, if any, and the Department of Housing and Community Development by the owner pursuant to subdivisions (b) to (e), inclusive, shall be made by first-class mail postage prepaid.

(h) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(i) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(j) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section.

(k) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b) and (c). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b) and (c).

(*l*) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

SEC. 2. Section 65863.13 of the Government Code is amended to read:

65863.13. (a) An owner shall not be required to provide a notice prior to prepayment as required by Section 65863.10 if, upon prepayment, all of the following conditions are contained in a regulatory agreement that has been recorded against the property:

(1) No tenant who resides in the development on the effective date of prepayment shall be involuntarily displaced on a permanent basis as a result of the prepayment, unless the tenant has breached the terms of the lease.

(2) The owner shall accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, and if that assistance is at a level to maintain the project's fiscal viability. The property shall be deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the regulated rent levels established pursuant to subparagraph (A) of paragraph (6).

(3) The owner shall accept all enhanced Section 8 vouchers, if the tenants receive them, and all other Section 8 vouchers for future vacancies.

(4) The owner shall not terminate a tenancy at the end of a lease term without demonstrating a breach of the lease.

(5) The owner may, in selecting eligible applicants for admission, utilize criteria that permit consideration of the amount of income, as long as the owner adequately considers other factors relevant to an applicant's ability to pay rent.

(6) (A) For units that have project-based Section 8 assistance upon the effective date of prepayment and subsequently become unassisted by any form of Section 8 assistance, rents shall not exceed 30 percent of 60 percent of the area median income. If any form of Section 8 assistance is or becomes available, rent and occupancy levels shall be set in accordance with federal regulations for the Section 8 program.

(B) For unassisted units and units that do not have project-based Section 8 assistance upon the effective date of prepayment and subsequently remain unassisted or become unassisted by any form of Section 8 assistance, rents shall not exceed the greater of (i) 30 percent of 50 percent of the area median income, or (ii) for projects insured under Section 241(f) of the National Housing Act, the regulated rents, expressed as a percentage of area median income. If any form of Section 8 assistance is or becomes available, rent and occupancy levels will be

set in accordance with federal regulations governing the Section 8 program.

(b) As used in this section, ''regulatory agreement'' means an agreement with a governmental agency for the purposes of any governmental program, which agreement applies to the development that would be subject to the notice requirement in Section 65863.10 and which obligates the owner and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for the greater of the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10 or 30 years.

(c) Section 65863.11 shall not apply to any development for which the owner is exempt from the notice requirements of Section 65863.10 pursuant to this section.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

CHAPTER 256

An act to amend Sections 597b, 597c, 597i, and 597j of the Penal Code, relating to animals.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 597b of the Penal Code is amended to read:

597b. (a) Except as provided in subdivision (b), any person who, for amusement or gain, causes any bull, bear, or other animal, not including any dog, to fight with like kind of animal or creature, or causes any animal, including any dog, to fight with a different kind of animal or creature, or with any human being; or who, for amusement or gain, worries or injures any bull, bear, dog or other animal, or causes any bull, bear, or other animal, not including any dog, to worry or injure each other; and any person who permits the same to be done on any premises under his or her charge or control; and any person who aids, abets, or is present at the fighting or worrying of an animal or creature, as a spectator, is guilty of a misdemeanor.

(b) Notwithstanding subdivision (a), any person who, for amusement or gain, causes any cock to fight with another cock or with a different kind of animal or creature or with any human being; or who, for

amusement or gain, worries or injures any cock, or causes any cock to worry or injure another animal; and any person who permits the same to be done on any premises under his or her charge or control, and any person who aids or abets the fighting or worrying of any cock is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(c) A second or subsequent conviction of this section, Section 597c, or Section 597j is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed twenty-five thousand dollars ($25,000), or by both that imprisonment and fine, except in unusual circumstances where the interests of justice would be better served by the imposition of a lesser sentence.

(d) For the purposes of this section, aiding and abetting a violation of this section shall consist of something more than merely being present or a spectator at a place where a violation is occurring.

SEC. 2. Section 597c of the Penal Code is amended to read:

597c. (a) Except as provided in subdivision (b), whoever owns, possesses, keeps, or trains any animal, with the intent that the animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement, where preparations are being made for an exhibition of the fighting of animals, with the intent to be present at that exhibition, or is present at that exhibition, is guilty of a misdemeanor.

(b) Notwithstanding subdivision (a), whoever owns, possesses, keeps, or trains any cock or other bird, with the intent that the cock or other bird shall be engaged in an exhibition of fighting is guilty of a crime punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(c) A second or subsequent conviction of this section, Section 597b, or Section 597j is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed twenty-five thousand dollars ($25,000), or by both that imprisonment and fine, except in unusual circumstances where the interests of justice would be better served by the imposition of a lesser sentence.

(d) This section shall not apply to an exhibition of fighting of a dog with another dog.

SEC. 3. Section 597i of the Penal Code is amended to read:

597i. (a) It shall be unlawful for anyone to manufacture, buy, sell, barter, exchange, or have in his or her possession any of the implements commonly known as gaffs or slashers, or any other sharp implement designed to be attached in place of the natural spur of a gamecock or other fighting bird.

(b) Any person who violates any of the provisions of this section is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine and upon conviction thereof shall, in addition to any judgment or sentence imposed by the court, forfeit possession or ownership of those implements.

SEC. 4. Section 597j of the Penal Code is amended to read:

597j. (a) Any person who owns, possesses, keeps, or trains any bird or animal with the intent that it be used or engaged by himself or herself, by his or her vendee, or by any other person in an exhibition of fighting is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(b) This section shall not apply to an exhibition of fighting of a dog with another dog.

(c) A second or subsequent conviction of this section, Section 597b, or Section 597c is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed twenty-five thousand dollars ($25,000), or by both that imprisonment and fine, except in unusual circumstances where the interests of justice would be better served by the imposition of a lesser sentence.

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 257

An act to amend Sections 71801, 71802, 71804, 71805, 71806, and 71828 of the Government Code, and to amend Section 1 of Chapter 1047 of the Statutes of 2002, relating to courts.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 71801 of the Government Code is amended to read:

71801. For purposes of this chapter, the following definitions shall apply:

(a) ''Certified interpreter'' and ''registered interpreter'' have the same meanings as in Article 4 (commencing with Section 68560) of Chapter 2. This chapter does not apply to sign language interpreters.

(b) ''Cross-assign'' and "cross-assignment'' refer to the appointment of a court interpreter employed by a trial court to perform spoken language interpretation services in another trial court, pursuant to Section 71810.

(c) ''Employee organization'' means a labor organization that has as one of its purposes representing employees in their relations with the trial courts.

(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 or regional court interpreter committee and the recognized employee organization through interpretation, suggestion, and advice.

(e) ''Meet and confer in good faith'' means that a trial court or regional court interpreter committee or those representatives it may designate, and representatives of a recognized employee organization, 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 shall include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter, or when the procedures are used 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) ''Recognized employee organization'' means an employee organization that has been formally acknowledged to represent the court interpreters employed by the trial courts in a region, pursuant to this chapter.

(h) ''Regional court interpreter employment relations committee'' means the committee established pursuant to Section 71807.

(i) ''Regional transition period'' means the period from January 1, 2003, to July 1, 2005, inclusive, except that the transition period for the region may be terminated earlier by a memorandum of understanding or agreement between the regional court interpreter employment relations committee and a recognized employee organization.

(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 the superior court in each county.

SEC. 2. Section 71802 of the Government Code is amended to read:

71802. (a) On and after July 1, 2003, trial courts shall appoint trial court employees, rather than independent contractors, to perform spoken language interpretation of trial court proceedings. An interpreter may be an employee of the trial court or an employee of another trial court on cross-assignment.

(b) Notwithstanding subdivision (a), a trial court may appoint an independent contractor to perform spoken language interpretation of trial court proceedings if one or more of the following circumstances exists:

(1) An interpreter who is not registered or certified is appointed on a temporary basis pursuant to Rule 984.2 of the California Rules of Court.

(2) The interpreter is over 60 years of age on January 1, 2003, or the sum of the interpreter's age in years on January 1, 2003, and the number of years the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, is equal to or greater than 70, the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, and the interpreter requests in writing prior to June 1, 2003, the opportunity to perform services for the trial court as an independent contractor rather than as an employee.

(3) The interpreter is paid directly by the parties to the proceeding.

(4) The interpreter has performed services for the trial courts as an independent contractor prior to January 1, 2003, the interpreter notifies the trial court in writing prior to June 1, 2003, that the interpreter is precluded from accepting employment because of the terms of an employment contract with a public agency or the terms of a public employee retirement program, the interpreter provides supporting documentation, and the interpreter requests in writing the opportunity to perform services for the trial court as an independent contractor rather than an employee.

(c) Notwithstanding subdivisions (a) and (b), and unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, a trial court may also appoint an independent contractor on a day-to-day basis to perform spoken

language interpretation of trial court proceedings if all of the following circumstances exist:

(1) The trial court has assigned all the available employees and independent contractors appointed pursuant to paragraphs (2) and (4) of subdivision (b) in the same language pair and has need for additional interpreters. Employees and independent contractors who are appointed pursuant to paragraphs (2) and (4) of subdivision (b) shall be given priority for assignments over independent contractors who are appointed pursuant to this subdivision.

(2) The interpreter has not previously been appointed as an independent contractor by the same trial court on more than 100 court days or parts of court days during the same calendar year, except that the trial court may continue to appoint an independent contractor on a day-to-day basis to complete a single court proceeding, if the trial court determines that the use of the same interpreter to complete that proceeding is necessary to provide continuity. An interpreter who has been appointed by a trial court as an independent contractor pursuant to this subdivision on more than 45 court days or parts of court days during the same calendar year shall be entitled to apply for employment by that trial court as a court interpreter pro tempore and the trial court may not refuse to offer employment to the interpreter, except for cause. For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(3) The trial court does not provide independent contractors appointed pursuant to this subdivision with lesser duties or more favorable working conditions than those to which a court interpreter pro tempore employed by that trial court would be subject for the purpose of discouraging interpreters from applying for pro tempore employment with the trial court. The trial court is not required to apply the employee training, disciplinary, supervisory, and evaluation procedures of the trial court to any independent contractor.

(d) Only registered and certified interpreters may be hired by a trial court as employees to perform spoken language interpretation of trial court proceedings. Interpreters who are not certified or registered may be assigned to provide services as independent contractors only when certified and registered interpreters are unavailable and the good cause and qualification procedures and guidelines adopted by the Judicial Council pursuant to subdivision (c) of Section 68561 have been followed.

(e) A trial court that has appointed independent contractors pursuant to paragraph (1) of subdivision (b) or to subdivision (c) for a language pair on more than 60 court days or parts of court days in the prior 180 days shall provide public notice that the court is accepting applications

for the position of court interpreter pro tempore for that language pair and shall offer employment to qualified applicants.

(f) Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service.

SEC. 3. Section 71804 of the Government Code is amended to read:

71804. (a) Each trial court shall offer to employ as a court interpreter pro tempore each interpreter who meets all of the following criteria:

(1) The interpreter is certified or registered.

(2) The interpreter has provided services to the same trial court as an independent contractor on at least either:

(A) Thirty court days or parts of court days in both calendar year 2001 and calendar year 2002.

(B) Sixty court days or parts of court days in calendar year 2002.

(3) The interpreter has applied for the position of court interpreter pro tempore prior to July 1, 2003, and has complied with reasonable requirements for submitting an application and providing documentation.

(4) The interpreter's application is not rejected by the trial court for cause.

(b) Each trial court shall begin accepting applications for court interpreters pro tempore by no later than May 1, 2003. Court interpreters who qualify for employment pursuant to this section shall receive offers of employment within 30 days after an application is submitted. Applicants shall have at least 15 days to accept or reject an offer of employment. The hiring process for applicants who accept the offer of employment shall be completed within 30 days after acceptance, but the trial court need not set employment to commence prior to July 1, 2003.

(c) For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(d) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated during the regional transition period shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

SEC. 4. Section 71805 of the Government Code is amended to read:

71805. (a) Until the conclusion of the regional transition period, all interpreters who are employed by a trial court shall be classified as court interpreters pro tempore, except as provided in Section 71828, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization.

(b) This chapter does not require trial courts to alter their past practices regarding the assignment of interpreters. If an interpreter had a regular assignment for the trial court as an independent contractor prior to the effective date of this chapter, nothing in this chapter shall prohibit the trial court from continuing to appoint the same interpreter to the same assignment as a court interpreter pro tempore during the regional transition period.

(c) During the regional transition period, the existing statewide per diem pay rate may not be reduced, and the existing statewide compensation policies set by the Judicial Council shall be maintained, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization. The per diem pay rate and compensation policies shall apply to court interpreters pro tempore.

(d) Court interpreters pro tempore are not subject to disciplinary action during the regional transition period, except for cause.

(e) For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(f) During the regional transition period, a trial court may not retaliate or threaten to retaliate against a court interpreter or applicant for interpreter employment because of the individual's membership in an interpreter association or employee organization, participation in any grievance, complaint, or meet and confer activities, or exercise of rights under this chapter, including by changing past practices regarding assignments, refusing to offer work to an interpreter, altering working conditions, or otherwise coercing, harassing, or discriminating against an applicant or interpreter.

(g) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

SEC. 5. Section 71806 of the Government Code is amended to read:

71806. (a) At the conclusion of the regional transition period, trial courts in the region may employ certified and registered interpreters to perform spoken language interpretation for the trial courts in full-time or part-time court interpreter positions created by the trial courts with the

authorization of the regional committee and subject to meet and confer in good faith. The courts may also continue to employ court interpreters pro tempore.

(b) For purposes of hiring interpreters for positions other than court interpreter pro tempore, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, trial courts shall consider applicants in the following order of priority:

(1) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 150 court days or parts of court days during each of the past five years, including time spent performing work for the trial court as an independent contractor.

(2) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in each of the past five years, including time spent performing work for the trial court as an independent contractor.

(3) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in at least two of the past four years, including time spent as an independent contractor.

(4) Other applicants.

(c) A trial court may not reject an applicant in favor of an applicant with lower priority except for cause.

(d) For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(e) Applicants may be required to provide sufficient documentation to establish that they are entitled to priority in hiring. Trial courts shall make their records of past assignments available to interpreters for purposes of obtaining that documentation.

(f) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

(g) Subdivision (b) shall become inoperative on January 1, 2007, unless otherwise provided by a memorandum of understanding or agreement with a recognized employee organization, and on and after that time hiring shall be in accordance with the personnel rules of the trial court.

SEC. 6. Section 71828 of the Government Code is amended to read:

71828. (a) This chapter does not apply to trial courts in Solano and Ventura Counties. Labor and employment relations for court interpreters employed by trial courts in Solano and Ventura Counties shall remain

subject to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), and nothing in this chapter shall be construed to affect the application of the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), to court interpreters employed by those counties.

(b) If an interpreter employed by a trial court in a different county accepts a temporary appointment to perform services for a trial court in the Solano or Ventura County, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(c) If an interpreter employed by a trial court in Solano or Ventura County accepts a temporary appointment to perform services for another trial court, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(d) This chapter also does not apply to court interpreters who have been continuously employed by a trial court in any county beginning prior to September 1, 2002, and who are covered by a memorandum of understanding or agreement entered into pursuant to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600) and to future employees hired in the same positions as replacements for those employees. For any other certified or registered interpreters hired by trial courts as employees prior to December 31, 2002, the trial courts may not change existing job classifications and may not reduce their wages and benefits during the regional transition period or during the term of an existing contract, whichever is longer.

SEC. 7. Section 1 of Chapter 1047 of the Statutes of 2002 is amended to read:

Section 1. The Legislature finds and declares as follows:

(a) Court interpreters provide constitutionally mandated spoken language services to the court, attorneys, defendants, victims, and witnesses in trial court proceedings. These services are vital to ensuring access and fairness in the trial courts. The purpose of this act is to provide for the fair treatment of court interpreters, to enhance access to the court system for persons who depend upon the services of interpreters, and to promote sound court management.

(b) The intent of the Legislature is to provide that the trial courts shall make an orderly transition from relying on independent contractors to using employees for interpretation services. Accordingly, this act provides for a transition period of up to two years during which the trial courts shall hire as employees court interpreters pro tempore who shall

perform work as needed on a per diem basis. After the transition period, the trial courts may continue to employ court interpreters pro tempore as well as create other interpreter classifications.

CHAPTER 258

An act to amend Section 14763 of the Government Code, relating to state property.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 14673 of the Government Code is amended to read:

14673. The jurisdiction of real property owned by the state may be transferred from one state agency to another state agency with the written approval of the director.

In connection with such a transfer, the director may authorize the payment of the consideration he or she deems proper from available funds of the receiving agency to the transferring agency.

Where the interest the state owns in real property is not under the jurisdiction of any specified state agency the department may act as the transferring agency.

Upon request and without fee, the recorder of each county in which any portion of real property so transferred is located shall record any instruments executed in connection with such a transfer.

SEC. 2. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease, for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interests of the state, all or any part of the following real property:

Parcel 1: Real property known as the San Jose Armory, located at 240 North 2nd Street, San Jose, Santa Clara County.

Parcel 2: Real property known as the Calexico Armory, located at 210 Sheridan Street, Calexico, Imperial County.

Parcel 3: Real property known as the Quincy Armory, located at 75 Redberg Avenue, Quincy, Plumas County.

SEC. 3. Notwithstanding Section 14670 of the Government Code or any other provision of law, the Director of General Services, with the approval of the Adjutant General, may lease approximately 4 acres of the

San Diego Armory located at 7401 Mesa College Drive, in San Diego, San Diego County, for a community purpose on the terms and conditions and subject to the reservations and exceptions that may be in the best interests of the state for a period not to exceed 25 years. This section is intended to continue the existing lease authorized under prior law.

SEC. 4. Notwithstanding any other provision of law, including, but not limited to, Article 1 (commencing with Section 11000) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, the Director of General Services, with the approval of the Adjutant General, may convey for no less than 50 percent of fair market value, to the City of Salinas for development of a police station, which shall be considered a public benefit, real property located at 100 Howard Street, Salinas, Monterey County on the terms and conditions and subject to the reservations and exceptions that may be in the best interests of the state. The Department of General Services shall be reimbursed for its costs related to the transfer, including, but not limited to, any survey costs, title transfer fees, and department staff time.

SEC. 5. (a) A notice of each public auction or bid opening shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 6. (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) (1) Except as provided in paragraph (2), the net proceeds of any moneys received from the disposition of any parcels described in this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code.

(2) Notwithstanding paragraph (1), the net proceeds of any moneys received from the disposition of any parcels described in this act that were armories under the jurisdiction of the Department of the Military shall be deposited in the Armory Fund established in Section 435 of the Military and Veterans Code, and shall be available for appropriation in accordance with that section.

SEC. 7. (a) 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.

(b) 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 259

An act to add Title 2.97 (commencing with Section 1812.700) to Part 4 of Division 3 of the Civil Code, relating to debt collection.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Title 2.97 (commencing with Section 1812.700) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 2.97. CONSUMER COLLECTION NOTICE

1812.700. (a) In addition to the requirements imposed by Article 2 (commencing with Section 1788.10) of Title 1.6C, third-party debt collectors subject to the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall provide a notice to debtors that shall include the following description of debtor rights:

''The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.''

(b) The notice shall be included with the first written notice initially addressed to a California address of a debtor in connection with collecting the debt by the third-party debt collector.

(c) If a language other than English is principally used by the third-party debt collector in the initial oral contact with the debtor, a notice shall be provided to the debtor in that language within five working days.

1812.701. (a) The notice required in this title may be changed only as necessary to reflect changes under the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) that would otherwise make the disclosure inaccurate.

(b) The type-size used in the disclosure shall be in at least the same type-size as that used to inform the debtor of his or her specific debt, but is not required to be larger than 12-point type.

1812.702. Any violation of this act shall be considered a violation of the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788)).

SEC. 2. The provisions of this act shall become operative on July 1, 2004.

CHAPTER 260

An act to amend Sections 33020, 33333.2, 33333.6, and 33683 of, and to add Sections 33681.9, 33681.10, and 33681.11 to, the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 1, 2003. Filed with Secretary of State September 2, 2003.]

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

SECTION 1. Section 33020 of the Health and Safety Code is amended to read:

33020. ''Redevelopment'' means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them and payments to school and community college districts in the fiscal years specified in Sections 33681, 33681.5, 33681.7, and 33681.9.

SEC. 2. Section 33333.2 of the Health and Safety Code is amended to read:

33333.2. (a) A redevelopment plan containing the provisions set forth in Section 33670 shall contain all of the following limitations. A redevelopment plan that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (4):

(1) (A) A 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 adoption of the redevelopment plan, except by amendment of the redevelopment plan as authorized by subparagraph (B). This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under subdivision (a) of Section 33333.8. The loans, advances, or indebtedness may be repaid over a period of time longer than this 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. This limit shall not prevent agencies from refinancing, refunding, or restructuring indebtedness after the time limit if the indebtedness is not increased and the time during which the indebtedness is to be repaid is not extended beyond the time limit to repay indebtedness required by this section.

(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) significant blight remains within the project area; and (ii) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 30 years from the effective date of the ordinance adopting the redevelopment plan, except as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit, not to exceed 30 years from the adoption of the redevelopment plan, 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 and to enforce existing covenants or contracts, unless the agency has not completed its housing obligations pursuant to subdivision (a) of Section 33333.8, in which case the agency shall retain its authority to implement requirements under subdivision (a) of Section 33333.8, including its ability to incur and pay indebtedness for this purpose, and shall use this authority to complete these housing obligations as soon as is reasonably possible.

(3) A time limit, not to exceed 45 years from the adoption of the redevelopment plan, 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.

(4) A time limit, not to exceed 12 years from the adoption of the redevelopment plan, 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.

(b) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by this section.

(c) When an agency is required to make a payment pursuant to Section 33681.9, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to paragraphs (2) and (3) of subdivision (a) by one year by adoption of an ordinance. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans.

(d) This section shall apply 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, 1994, and to amendments that add territory and that are adopted on or after January 1, 1994.

SEC. 3. 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) 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 an ordinance pursuant to this subparagraph, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans.

(B) 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 an ordinance pursuant to this subparagraph, neither the legislative body nor the agency is required to comply with Section 33354.6, 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.

(C) When an agency is required to make a payment pursuant to Section 33681.9, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to subdivisions (a) and (b) by one year by adoption of an ordinance. In adopting an ordinance pursuant to this subparagraph, 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, including, but not limited to, the requirement to 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. 4. Section 33681.9 is added to the Health and Safety Code, to read:

33681.9. (a) (1) During the 2003–04 fiscal year, a redevelopment agency shall, prior to May 10, remit an amount equal to the amount determined for that agency pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) For the 2003–04 fiscal year, on or before October 1, the Director of Finance shall do all of the following:

(A) Determine the net tax increment apportioned to each agency pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2001–02 fiscal year.

(B) Determine the net tax increment apportioned to all agencies pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2001–02 fiscal year.

(C) Determine a percentage factor by dividing sixty-seven million five hundred thousand dollars ($67,500,000) by the amount determined pursuant to subparagraph (B).

(D) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (A) by the percentage factor determined pursuant to subparagraph (C).

(E) Determine the total amount of property tax revenue apportioned to each agency pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2001–02 fiscal year.

(F) Determine the total amount of property tax revenue apportioned to all agencies pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2001–02 fiscal year.

(G) Determine a percentage factor by dividing sixty-seven million five hundred thousand dollars ($67,500,000) by the amount determined pursuant to subparagraph (F).

(H) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (E) by the percentage factor determined pursuant to subparagraph (G).

(I) Add the amount determined pursuant to subparagraph (D) to the amount determined pursuant to subparagraph (H).

(J) Notify each agency and each legislative body of the amount determined pursuant to subparagraph (I).

(K) Notify each county auditor of the amounts determined pursuant to subparagraph (I) for each agency in his or her county.

(b) (1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other provision of law, in order to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 during the 2003–04 fiscal year, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low and Moderate Income Housing Fund pursuant to the authority of this subdivision.

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full within 10 years following the date on which moneys were borrowed.

(c) In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low- and moderate-income fund as of July 1 of that fiscal year may be used for this purpose.

(d) The legislative body shall by March 1 report to the county auditor as to how the agency intends to fund the allocation required by this section, or that the legislative body intends to remit the amount in lieu of the agency pursuant to Section 33681.11.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under 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 shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(f) It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the financing or refinancing, in whole or in part, of the community's redevelopment projects pursuant to Section 16 of Article XVI of the California Constitution.

(g) In making the determinations required by subdivision (a), the Director of Finance shall use those amounts reported as the ''Tax Increment Retained by Agency'' for all agencies and for each agency in Table 7 of the 2001–02 fiscal year Controller's State of California Community Redevelopment Agencies Annual Report.

(h) If revised reports have been accepted by the Controller on or before January 1, 2004, the Director of Finance shall use appropriate data that has been certified by the Controller for the purpose of making the determinations required by subdivision (a).

SEC. 5. Section 33681.10 is added to the Health and Safety Code, to read:

33681.10. (a) (1) For the purposes of this section, ''existing indebtedness'' means one or more of the following obligations incurred by a redevelopment agency prior to the effective date of this section, the payment of which is to be made in whole or in part, directly or indirectly, out of taxes allocated to the agency pursuant to Section 33670, and that is required by law or provision of the existing indebtedness to be made during the fiscal year of the relevant allocation required by Section 33681.9:

(A) Bonds, notes, interim certificates, debentures, or other obligations issued by the agency, whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33640).

(B) Loans or moneys advanced to the agency, including, but not limited to, loans from federal, state, or local agencies, or a private entity.

(C) A contractual obligation that, if breached, could subject the agency to damages or other liabilities or remedies.

(D) An obligation incurred pursuant to Section 33445.

(E) Indebtedness incurred pursuant to Section 33334.2.

(F) An amount, to be expended for the operation and administration of the agency, that may not exceed 90 percent of the amount spent for those purposes in the 2001–02 fiscal year.

(G) Obligations imposed by law with respect to activities that occurred prior to the effective date of the act that adds this section.

(2) Existing indebtedness incurred prior to the effective date of this section may be refinanced, refunded, or restructured after that date, and shall remain existing indebtedness for the purposes of this section, if the annual debt service during that fiscal year does not increase over the prior fiscal year and the refinancing does not reduce the ability of the agency to make the payment required by subdivision (a) of Section 33681.9.

(3) For the purposes of this section, indebtedness shall be deemed to be incurred prior to the effective date of this section if the agency has entered into a binding contract subject to normal marketing conditions, to deliver the indebtedness, or if the redevelopment agency has received bids for the sale of the indebtedness prior to that date and the indebtedness is issued for value and evidence thereof is delivered to the initial purchaser no later than 30 days after the date of the contract or sale.

(b) During the 2003–04 fiscal year, an agency that has adopted a resolution pursuant to subdivision (c) may, pursuant to subdivision (a) of Section 33681.9, allocate to the auditor less than the amount required

by subdivision (a) of Section 33681.9, if the agency finds that either of the following has occurred:

(1) That the difference between the amount allocated to the agency and the amount required by subdivision (a) of Section 33681.9 is necessary to make payments on existing indebtedness that are due or required to be committed, set aside, or reserved by the agency during the applicable fiscal year and that are used by the agency for that purpose, and the agency has no other funds that can be used to pay this existing indebtedness, and no other feasible method to reduce or avoid this indebtedness.

(2) The agency has no other funds to make the allocation required by subdivision (a) of Section 33681.9.

(c) (1) Any agency that, pursuant to subdivision (b), intends to allocate to the auditor less than the amount required by subdivision (a) of Section 33681.9 shall adopt, prior to December 31, 2003, after a noticed public hearing, a resolution that lists all of the following:

(A) Each existing indebtedness incurred prior to the effective date of this section.

(B) Each indebtedness on which a payment is required to be made during the 2003–04 fiscal year.

(C) The amount of each payment, the time when it is required to be paid, and the total of the payments required to be made during the 2003–04 fiscal year. For indebtedness that bears interest at a variable rate, or for short-term indebtedness that is maturing during the fiscal year and that is expected to be refinanced, the amount of payments during the fiscal year shall be estimated by the agency.

(2) The information contained in the resolution required by this subdivision shall be reviewed for accuracy by the chief fiscal officer of the agency.

(3) The legislative body shall additionally adopt the resolution required by this section.

(d) (1) Any agency that, pursuant to subdivision (b), determines that it will be unable in the 2003–04 fiscal year, to allocate the full amount required by subdivision (a) of Section 33681.9 shall, subject to paragraph (3), enter into an agreement with the legislative body by February 15, 2004, to fund the payment of the difference between the full amount required to be paid pursuant to subdivision (a) of Section 33681.9 and the amount available for allocation by the agency.

(2) The obligations imposed by paragraph (1) are hereby declared to be indebtedness incurred by the redevelopment agency to finance a portion of a redevelopment project within the meaning of Section 16 of Article XVI of the California Constitution. This indebtedness shall be payable from tax revenues allocated to the agency pursuant to Section 33670, and any other funds received by the agency. The obligations

imposed by paragraph (1) shall remain an indebtedness of the agency to the legislative body until paid in full, or until the agency and the legislative body otherwise agree.

(3) The agreement described in paragraph (1) shall be subject to these terms and conditions specified in a written agreement between the legislative body and the agency.

(e) If the agency fails, under either Section 33681.9 or subdivision (d), to transmit the full amount of funds required by Section 33681.9, is precluded by court order from transmitting that amount, or is otherwise unable to meet its full obligation pursuant to Section 33681.9, the county auditor, by no later than May 15, 2004, shall transfer any amount necessary to meet the obligation determined for that agency in paragraph (1) of subdivision (c) of Section 33681.9 from the legislative body's property tax allocation pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

SEC. 6. Section 33681.11 is added to the Health and Safety Code, to read:

33681.11. (a) In lieu of the remittance required by Section 33681.9, during the 2003–04 fiscal year, a legislative body may, prior to May 10, 2004, remit an amount equal to the amount determined for the agency pursuant to subparagraph (I) of paragraph (2) of subdivision (a) of Section 33681.9 to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(b) The legislative body may make the remittance authorized by this section from any funds that are legally available for this purpose. No moneys held in an agency's Low and Moderate Income Housing Fund shall be used for this purpose.

(c) If the legislative body, pursuant to subdivision (d) of Section 33681.9, reported to the county auditor that it intended to remit the amount in lieu of the agency and the legislative body fails to transmit the full amount as authorized by this section by May 10, 2004, the county auditor, no later than May 15, 2004, shall transfer an amount necessary to meet the obligation from the legislative body's property tax allocation pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. If the amount of the legislative body's property tax allocation is not sufficient to meet this obligation, the county auditor shall transfer an additional amount necessary to meet this obligation from the property tax increment revenue apportioned to the agency pursuant to Section 33670, provided that no moneys allocated to the agency's Low and Moderate Income Housing Fund shall be used for this purpose.

SEC. 7. Section 33683 of the Health and Safety Code is amended to read:

33683. For the purpose of calculating the amount which has been divided and allocated to the redevelopment agency to determine whether the limitation adopted pursuant to Section 33333.2 or 33333.4 or pursuant to agreement or court order has been reached, any payments made pursuant to subdivision (a) of Sections 33681, 33681.5, 33681.7, and 33681.9 or subdivision (d) of Sections 33682, 33682.5, 33681.8, and 33681.10 with property tax revenues shall be deducted from the amount of property tax dollars deemed to have been received by the agency.

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

In order to make the necessary changes to implement the Budget Act of 2003 at the earliest possible time, it is necessary that this take effect immediately.

CHAPTER 261

An act to amend Sections 31485.7 and 31485.8 of, and to add Section 31658 to, the Government Code, relating to county employees' retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 31485.7 of the Government Code is amended to read:

31485.7. Notwithstanding anything to the contrary in this chapter, a member who elects to purchase retirement service credit under Section 31494.3, 31641.1, 31641.5, 31646, 31652, or 31658, or under the

regulations adopted by the board pursuant to Section 31643 or 31644 shall complete that purchase within 120 days after the effective date of his or her retirement.

This section is not operative in any county until the board of supervisors, by resolution, makes this section applicable in the county.

SEC. 2. Section 31485.8 of the Government Code is amended to read:

31485.8. Notwithstanding anything to the contrary in this chapter, a member who elects to purchase retirement service credit under Section 31494.3, 31641.1, 31641.5, 31646, 31652, or 31658, or under the regulations adopted by the board pursuant to Section 31643 or 31644 shall complete that purchase within 120 days after the effective date of his or her retirement.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

SEC. 3. Section 31658 is added to the Government Code, to read:

31658. (a) An active member may elect, by written notice filed with the board, to make contributions pursuant to this section and to receive up to five years of service credit in the retirement system for additional retirement credit, if the member has completed at least five years of credited service with that retirement system.

(b) As used in this section, ''additional retirement credit'' means time that does not otherwise qualify as county service, public service, military service, medical leave of absence, or any other time recognized for service credit by the retirement system.

(c) Notwithstanding any other provision of this chapter, service credit for additional retirement credit may not be counted to meet the minimum qualifications for service or disability retirement or for purposes of establishing eligibility for any benefits based on 30 years of service, additional ad hoc cost-of-living benefits based on service credit, health care benefits, or any other benefits based upon service credit.

(d) Any member who elects to make contributions and receive service credit for additional retirement credit shall contribute to the retirement fund, prior to the effective date of his or her retirement, by lump-sum payment or by installment payments over a period not to exceed 10 years, an amount that, at the time of commencement of purchase, in the opinion of the board and the actuary, is sufficient to not place any additional financial burden upon the retirement system.

(e) No member may receive service credit under this section for any additional retirement credit for which he or she has not completed payment pursuant to subdivision (d) before the effective date of his or her retirement. Subject to the limitations of United States Internal Revenue Service regulations, a member who has elected to make

payment in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

(f) Any sums paid by a member pursuant to this section shall be considered to be and administered as contributions by the member.

(g) This section is not operative in any county until the board of supervisors, by resolution adopted by majority vote, makes this section applicable in the county.

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:

Because of the recent declines in the performance of the stock market and the impact of those declines on future retirees, and in order to provide county employees a means to offset those declines, it is necessary that this act take effect immediately.

CHAPTER 262

An act to amend Section 273.5 of the Penal Code, relating to crime.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both that fine and imprisonment.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, ''traumatic condition'' means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is

presumed the natural father under Sections 7611 and 7612 of the Family Code.

(e) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars ($10,000).

(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars ($10,000), or by both that imprisonment and fine.

(f) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (e), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition thereof, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant 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.

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, 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. Where 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 this section, 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 section, until all separate property of the offending spouse is exhausted.

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 263

An act to amend Section 871 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 871 of the Welfare and Institutions Code is amended to read:

871. (a) Any person under the custody of a probation officer or any peace officer in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility, who escapes or attempts to escape from the institution or facility in which he or she is confined, who escapes or attempts to escape while being conveyed to or from such

an institution or facility, or who escapes or attempts to escape while outside or away from such an institution or facility while under the custody of a probation officer or any peace officer, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding one year.

(b) Any person who commits any of the acts described in subdivision (a) by use of force or violence shall be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(c) The willful failure of a person under the custody of a probation officer or any peace officer in a county juvenile hall, or committed to a county juvenile ranch camp, or forestry camp, to return to the county juvenile hall, ranch, camp, or forestry camp at the prescribed time while outside or away from the county facility on furlough or temporary release constitutes an escape punishable as provided in subdivision (a). However, a willful failure to return at the prescribed time shall not be considered an escape if the failure to return was reasonable under the circumstances.

(d) A minor who, while under the supervision of a probation officer, removes his or her electronic monitor without authority and who, for more than 48 hours, violates the terms and conditions of his or her probation relating to the proper use of the electronic monitor shall be guilty of a misdemeanor. If an electronic monitor is damaged or discarded while in the possession of the minor, restitution for the cost of replacing the unit may be ordered as part of the punishment.

(e) The liability established by this section shall be limited by the financial ability of the person or persons ordered to pay restitution under this section, who shall, upon request, be entitled to an evaluation and determination of ability to pay under Section 903.45.

(f) For purposes of this section, ''regional facility'' means any facility used by one or more public entities for the confinement of juveniles for more than 24 hours.

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 264

An act to amend Section 330b of the Penal Code, relating to gaming.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 330b of the Penal Code is amended to read:

330b. Possession or keeping of slot machines or devices.

(1) It is unlawful for any person to manufacture, repair, own, store, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to repair, sell, rent, lease, let on shares, lend or give away, or permit the operation, placement, maintenance, or keeping of, in any place, room, space, or building owned, leased, or occupied, managed, or controlled by that person, any slot machine or device, as defined in this section.

It is unlawful for any person to make or to permit the making of an agreement with another person regarding any slot machine or device, by which the user of the slot machine or device, as a result of the element of hazard or chance or other unpredictable outcome, may become entitled to receive money, credit, allowance, or other thing of value or additional chance or right to use the slot machine or device, or to receive any check, slug, token, or memorandum entitling the holder to receive money, credit, allowance, or other thing of value.

(2) The limitations of paragraph (1), insofar as they relate to owning, storing, possessing, or transporting any slot machine or device, do not apply to any slot machine or device located upon or being transported by any vessel regularly operated and engaged in interstate or foreign commerce, so long as the slot machine or device is located in a locked compartment of the vessel, is not accessible for use, and is not used or operated within the territorial jurisdiction of this state.

(3) The limitations of paragraph (1) do not apply to a manufacturer's business activities that are conducted in accordance with the terms of a license issued by a tribal gaming agency pursuant to the tribal-state gaming compacts entered into in accordance with the Indian Gaming Regulatory Act (18 U.S.C. Sec. 1166 to 1168, inclusive, and 25 U.S.C. Sec. 2701 et seq.).

(4) For purposes of this section, ''slot machine or device'' means a machine, apparatus, or device that is adapted, or may readily be converted, for use in a way that, as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated, and by reason of any element of hazard or chance or of other outcome of operation

unpredictable by him or her, the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value or additional chance or right to use the slot machine or device, or any check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance or thing of value, or which may be given in trade, irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver or present some merchandise, indication of weight, entertainment, or other thing of value.

(5) Every person who violates this section is guilty of a misdemeanor.

(6) Pinball and other amusement machines or devices, which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not, are not included within the term slot machine or device, as defined in this section.

CHAPTER 265

An act to amend Section 1563 of the Code of Civil Procedure, and to amend Section 179 of the Military and Veterans Code, relating to military artifacts.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

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

(a) Members of the United States Armed Forces have consistently answered their nation's call to duty with honor and bravery.

(b) Californians serve proudly and with distinction in every branch of the United States Armed Forces.

(c) Californians have been recognized for their distinguished service by being honored through the awarding of Purple Hearts, Silver Stars, and Congressional Medals of Honor, among other commendations and awards.

(d) The heritage and culture of the State of California is uniquely represented in military equipment, artifacts, memorabilia, documents, photographs, films, literature, and other items relating to the military history and tradition of California and Californians.

SEC. 2. Section 1563 of the Code of Civil Procedure is amended to read:

1563. (a) Except as provided in subdivisions (b) and (c), all escheated property delivered to the Controller under this chapter shall be sold by the Controller to the highest bidder at public sale in whatever city in the state affords in his or her judgment the most favorable market for the property involved, or the Controller may conduct the sale by electronic media, including, but not limited to, the Internet, if in his or her judgment it is cost effective to conduct the sale of the property involved in that manner. The Controller may decline the highest bid and reoffer the property for sale if he or she considers the price bid insufficient. The Controller need not offer any property for sale if, in his or her opinion, the probable cost of sale exceeds the value of the property. Any sale of escheated property held under this section shall be preceded by a single publication of notice thereof, at least one week in advance of sale, in an English language newspaper of general circulation in the county where the property is to be sold.

(b) Securities listed on an established stock exchange within two years following receipt by the Controller shall be sold at the prevailing prices on that exchange. Other securities may be sold over the counter at prevailing prices or, with prior approval of the State Board of Control, by any other method that the Controller may determine to be advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment. Subdivision (a) does not apply to the property described in this subdivision.

(c) (1) All escheated property consisting of military awards, decorations, equipment, artifacts, memorabilia, documents, photographs, films, literature, and any other item relating to the military history of California and Californians that is delivered to the Controller is exempt from subdivision (a) and shall be held in trust for the Controller at the California State Military Museum and Resource Center. All escheated property held in trust pursuant to this subdivision is subject to the applicable regulations of the United States Army governing Army museum activities as described in Section 179 of the Military and Veterans Code. Any person claiming an interest in the escheated property may file a claim to the property pursuant to Article 4 (commencing with Section 1540).

(2) The California State Military Museum and Resource Center shall be responsible for the costs of storage and maintenance of escheated property delivered by the Controller under this subdivision.

(d) The purchaser at any sale conducted by the Controller pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The Controller shall execute all documents necessary to complete the transfer of title.

SEC. 3. Section 179 of the Military and Veterans Code is amended to read:

179. (a) The Adjutant General shall establish a California State Military Museum and Resource Center as a repository for military artifacts, memorabilia, equipment, documents, and other items relating to the history of the California National Guard, in accordance with applicable regulations of the United States Army governing Army museum activities. The museum shall consist of the facility described in the Proclamation of the Governor dated May 11, 1994, and any branches as may currently exist or may from time-to-time be created throughout the state. Each facility shall be deemed to be an armory within the meaning of Section 430.

(b) The Adjutant General shall enter into an operating agreement with the California Military Museum Foundation, formerly known as the California National Guard Historical Society, an existing California nonprofit public benefit corporation, that is tax exempt under Section 501(c)(3) of the Internal Revenue Code. Under the operating agreement with the Adjutant General, the foundation shall operate the museum in coordination with the California Center for Military History of the California State Military Reserve. The foundation shall develop, administer, interpret, and manage museum historical programs and related public services, and acquire and manage funding for museum programs and services.

(c) Volunteers, docents, members of the State Military Reserve, or others working with or for the California Military Museum Foundation for purposes consistent with the mission of the organization, shall be considered volunteers under Sections 3118 and 3119 of the Government Code and Section 3363.5 of the Labor Code.

(d) The Board of Trustees of the California Military Museum Foundation shall include the Adjutant General, or the Assistant Adjutant General, or any Deputy Adjutant General designated by the Adjutant General, as an ex officio voting member of the board. The board of trustees of the foundation shall be the governing authority for operations funded through moneys received by the foundation. The board of trustees of the foundation shall submit an audit report annually to the Adjutant General. The board of trustees of the foundation shall submit copies of annual audit reports to the Director of the Department of Finance, the Chair of the Joint Legislative Audit Committee, and the Chair of the Joint Legislative Budget Committee. No funds raised or assets acquired by the foundation shall be used for purposes inconsistent with support of the museum.

(e) The Board of Trustees of the California Military Museum Foundation shall, no later than January 10 of each year, submit a business plan for the following fiscal year to the Adjutant General, the Director

of the Department of Finance, and the Chair of the Joint Legislative Budget Committee for review and comment. The board of trustees shall also submit, not less than 30 days prior to adoption, any proposed formal amendments to the business plan to the Adjutant General, the Director of the Department of Finance, and the Chair of the Joint Legislative Budget Committee for review and comment.

(f) (1) The Adjutant General or the California State Military Museum may solicit, receive, and administer donations of funds or property for the support and improvement of the museum. Any grants or donations received may be expended or used for museum purposes.

(2) Property of historical military significance, not including real property, that is owned by the state and is determined by the Adjutant General to be in excess of the needs of the Military Department, shall be transferred to the museum.

(3) Property determined by the California State Military Museum to be in excess of the needs of the museum may be sold, donated, exchanged, or otherwise disposed of, at its discretion, in a manner appropriate to the historical and intrinsic value of the property, and the benefits from the disposition shall inure to the museum. This paragraph does not apply to property held in trust for the Controller pursuant to Section 1563 of the Code of Civil Procedure.

(g) The Adjutant General or the California State Military Museum may solicit and receive firearms and other weaponry confiscated by or otherwise in the possession of law enforcement officers as donations to the museum if he or she deems them to be of historical or military interest.

(h) The Adjutant General shall, in cooperation with the California State Military Museum, conduct a study of the future needs of the National Guard to preserve, display, and interpret artifacts, documents, photographs, films, literature, and other items relating to the history of the military in California.

(i) (1) The California State Military Museum may enter into agreements with other military museums in California, including, but not limited to, the Legion of Valor Museum, to loan property that is not real property and that is under the direct control of the California State Military Museum.

(2) The California State Military Museum may enter into agreements with other military museums in California to loan property held in trust for the Controller pursuant to Section 1563 of the Code of Civil Procedure.

CHAPTER 266

An act to add Sections 10290.3 and 12101.7 to the Public Contract Code, relating to public contracts.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 10290.3 is added to the Public Contract Code, to read:

10290.3. (a) Notwithstanding the bidding provisions of this chapter, reverse auctions may be utilized for the acquisition of goods and services. The reverse auction process shall include a specification of an opening date and time when real-time electronic bids may be accepted, and provide that the procedure shall remain open until the designated closing date and time.

(b) All bids on reverse auctions shall be posted electronically on the Internet, updated on a real-time basis, and shall allow registered bidders to lower the price of their bid below the lowest bid posted on the Internet.

(c) The Department of General Services shall require vendors to register before the reverse auction opening date and time, and as part of the registration, agree to any terms and conditions and other requirements of the solicitation. The Department of General Services may require vendors to be prequalified prior to placing bids in a reverse auction.

(d) For purposes of this section, ''reverse auction'' means a competitive online solicitation process for fungible goods or services in which vendors compete against each other online in real time in an open and interactive environment.

(e) The reverse auction process may not be used for bidding on any construction contract that is subject to Chapter 1 (commencing with Section 10100).

SEC. 2. Section 12101.7 is added to the Public Contract Code, to read:

12101.7. (a) Notwithstanding the sealed bidding provisions of this chapter, reverse auctions may be utilized for the acquisition of information technology, in accordance with the procedures set forth in Section 10290.3.

(b) For purposes of this section, ''reverse auction'' means a competitive online solicitation process for fungible information

technology in which vendors compete against each other online in real time in an open and interactive environment.

CHAPTER 267

An act to amend Sections 21703 and 21705 of the Business and Professions Code, relating to self-service storage facilities.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 21703 of the Business and Professions Code is amended to read:

21703. If any part of the rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address and to the alternative address specified in subdivision (b) of Section 21712. The notice shall be sent by certified mail, postage prepaid, or by regular first-class mail if the owner obtains a certificate of mailing indicating the date the notice was mailed. The notice shall contain all of the following:

(a) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due.

(b) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than 14 days after the mailing of the notice) unless all sums due are paid by the occupant prior to the specified date.

(c) A notice that the occupant may be denied access to the storage space after the termination date if the sums are not paid and that an owner's lien, as provided for in Section 21702, may be imposed thereafter.

(d) The name, street address, and telephone number of the owner or his or her designated agent whom the occupant may contact to respond to the notice.

SEC. 2. Section 21705 of the Business and Professions Code is amended to read:

21705. (a) If the notice required by Section 21703 is sent by certified mail and the total sum due has not been paid as of the date specified in the preliminary lien notice as the termination date, the lien imposed by this chapter attaches as of that date and the owner may do all of the following:

(1) Deny an occupant access to the space.

(2) Enter the space.

(3) Remove any property found therein to a place of safe keeping.

(b) If the notice required by Section 21703 is sent by regular first-class mail with a certificate of mailing and the total sum due has not been paid as of the termination date, the lien imposed by this chapter attaches as of that date and the owner may deny an occupant access to the space and enter the space. The owner may not remove the occupant's property until not less than 14 days after the termination date, during which time the occupant may regain full use of the space by paying the full lien amount.

(c) Under either subdivision (a) or subdivision (b), the owner shall send to the occupant, addressed to the occupant's last known address, and to the alternative address specified in subdivision (b) of Section 21712, by certified mail, postage prepaid, all of the following:

(1) A notice of lien sale that states all of the following:

(A) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(B) That the stored property is subject to a lien, and the amount of the lien.

(C) That the property will be sold to satisfy the lien after a specified date that is not less than 14 days from the date of mailing the notice unless the amount of the lien is paid or the occupant executes and returns by certified mail a declaration under penalty of perjury in opposition to the lien sale in the form set forth in paragraph (2). If the notice required by Section 21703 was sent by regular mail with a certificate of mailing, the notice of lien sale shall include a statement that the occupant may regain full use of the space by paying the full lien amount prior to the date specified in this paragraph.

(D) That any excess proceeds of the sale over the lien amount and costs of sale will be retained by the owner and may be reclaimed by the occupant or claimed by another person at any time for a period of one year from the sale and that thereafter the proceeds will escheat to the county.

(2) A blank declaration in opposition to the lien sale that shall be in substantially the following form:

DECLARATION IN OPPOSITION TO LIEN SALE

I, _____,

(occupant's name)

have received the notice of lien sale of the property stored at

_____.
(location and space #)

I oppose the lien sale of the property. My address is:

_____
(address)

_____
(city) (state) (ZIP Code)

I understand that the lienholder may file an action in court against me, and if a judgment is given in his or her favor, I may be liable for the court costs. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was signed by me on

_____ at _____.
(date) (place)

_____.
(signature of occupant)

CHAPTER 268

An act to amend Sections 17731, 17733, 19136, 23800, 23800.5, 23801, 23802, 23802.5, 23803, 23804, 23809, and 23811 of, and to repeal Section 23804.5 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. 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) The amendments made to Section 692 of the Internal Revenue Code by Sections 101 and 113 of the Victims of Terrorism Tax

Relief Act of 2001 (Public Law 107-134) shall apply to the same periods as applied under federal law, except as otherwise provided.

(2) Section 692(d)(2) of the Internal Revenue Code, relating to the ten thousand dollar ($10,000) minimum benefit, does not apply.

(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. 2. Section 17733 of the Revenue and Taxation Code is amended to read:

17733. (a) An estate shall be allowed a credit of ten dollars ($10) against the tax imposed under Section 17041, less any amounts imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(b) (1) Except as provided in paragraph (2), a trust shall be allowed a credit of one dollar ($1) against the tax imposed under Section 17041, less any amounts imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(2) (A) A disability trust, as defined in Internal Revenue Code Section 642(b)(2)(C), as amended by the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134), shall be allowed a credit in an amount equal to the personal exemption credit authorized for a single individual pursuant to subdivision (a) of Section 17054.

(B) The credit authorized by subparagraph (A) shall be subject to the credit reduction provisions of Section 17054.1. For purposes of making the adjustments required by Section 17054.1, the adjusted gross income of the disability trust shall be computed in accordance with Internal Revenue Code Section 167(e).

(C) This paragraph applies to taxable years beginning on or after January 1, 2004.

(c) The credits allowed by this section shall be in lieu of the credits allowed under Section 17054 (relating to credit for personal exemption).

SEC. 3. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, does not apply.

(2) No addition to the tax shall be imposed under this section if the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than two hundred dollars ($200), except in the case of a separate return filed by a married person the amount shall be less than one hundred dollars ($100).

(d) Section 6654(f) of the Internal Revenue Code does not apply and for purposes of this section the term ''tax'' means the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 less any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(e) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, shall be the credit allowed under subdivision (a) of Section 19002.

(f) This section shall apply to a nonresident individual.

SEC. 4. Section 23800 of the Revenue and Taxation Code is amended to read:

23800. Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to the tax treatment of ''S corporations'' and their shareholders, shall apply, except as otherwise provided.

SEC. 5. Section 23800.5 of the Revenue and Taxation Code is amended to read:

23800.5. (a) Section 1361(b)(3) of the Internal Revenue Code, relating to treatment of certain wholly owned subsidiaries, is modified as follows:

(1) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part:

(A) Section 1361(b)(3)(A)(i) of the Internal Revenue Code shall apply, except as provided in subparagraph (B).

(B) There is hereby imposed a tax annually in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 on a qualified Subchapter S subsidiary that is incorporated under the laws of this state, qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code, or doing business in this state.

(C) Every qualified Subchapter S subsidiary described in subparagraph (B) shall be subject to the tax imposed under subparagraph (B) from the earlier of the date of incorporation, qualification, or

commencement of business in this state, until the effective date of dissolution or withdrawal as provided in Section 23331, or, if later, the date the corporation ceases to do business in this state.

(2) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part:

(A) Section 1361(b)(3)(A)(ii) of the Internal Revenue Code does not apply and, in lieu thereof, subparagraph (B) shall apply and all references to Section 1361(b)(3)(A)(ii) of the Internal Revenue Code shall be treated as a reference to subparagraph (B).

(B) All activities, assets, liabilities, including liability for the tax imposed under this subdivision, and items of income, deduction, and credit of a qualified Subchapter S subsidiary shall be treated as activities (including activities for purposes of Section 23101), assets, liabilities, and those items, as the case may be, of the ''S corporation.''

(3) Section 1361(b)(3)(B) of the Internal Revenue Code is modified to include the following requirements in addition to the requirements contained therein:

(A) The ''S corporation'' has in effect a valid election to treat the corporation as a qualified Subchapter S subsidiary for federal income tax purposes.

(B) An election made by the ''S corporation'' under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal income tax purposes shall be treated for purposes of this part as an election made by the ''S corporation'' under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 may not be allowed.

(C) No election under this subdivision shall be allowed unless the ''S corporation'' has made the election under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal income tax purposes.

(b) Section 1361(c)(6) of the Internal Revenue Code, relating to certain exempt organizations permitted as shareholders, is modified by substituting a reference to Section 17631 or Section 23701d in lieu of the reference to Section 501(c)(3) of the Internal Revenue Code and by substituting a reference to Section 17631 or Section 23701 in lieu of the reference to Section 501(a) of the Internal Revenue Code.

(c) Section 1361(e)(1)(B)(ii) of the Internal Revenue Code, relating to certain trusts not eligible, is modified by substituting ''under Part 10 (commencing with Section 17001) or this part'' in lieu of ''under this subtitle.''

(d) Section 1361(e)(3) of the Internal Revenue Code, relating to election, is modified to include the following provisions:

(1) An election made by the trustee under Section 1361(e) of the Internal Revenue Code to be an electing small business trust for federal

income tax purposes shall be treated for purposes of this part as an election made by the trustee under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 may not be allowed. Any election made shall apply to the taxable year of the trust for which that election is made and to all subsequent taxable years of that trust, unless revoked with the consent of the Franchise Tax Board.

(2) No election under this subdivision shall be allowed unless the trustee has made the election under Section 1361(e) of the Internal Revenue Code to be an electing small business trust for federal income tax purposes.

SEC. 6. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) A corporation that has in effect for federal income tax 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) Except as provided in subdivision (d), a corporation that is an ''S corporation'' for purposes of this part may not be included in a combined report pursuant to Chapter 17 (commencing with Section 25101).

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), that 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.''

(e) (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.

(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) Section 1362(d)(3) of the Internal Revenue Code, relating to circumstances where passive investment income exceeds 25 percent of gross receipts for three consecutive taxable years and the corporation has accumulated earnings and profits, does not apply unless the ''S'' election is terminated for federal income tax purposes.

(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, 2003, 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 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. 7. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an ''S corporation,'' does not apply.

(b) Corporations that are ''S corporations'' under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

(2) In the case of an ''S corporation'' that is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) An ''S corporation'' shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an ''S corporation'' shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation is an ''S corporation'' for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between ''C years'' and ''S years,'' shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision do not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru of items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an ''S corporation,'' to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an ''S corporation'' shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b):

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held "C corporations" and personal service corporations.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 may not be allowed to an "S corporation."

(5) The deduction for bad debts under paragraph (2) of subdivision (a) of Section 24348 may not be allowed to an "S corporation."

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19101 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 8. Section 23802.5 of the Revenue and Taxation Code is amended to read:

23802.5. (a) Section 1366(a)(1) of the Internal Revenue Code, relating to determination of shareholder's tax liability, is modified to apply to the final taxable year of a trust or estate that terminates before the end of the corporation's taxable year.

(b) Section 1366(d)(1)(A) of the Internal Revenue Code, relating to losses and deductions that cannot exceed shareholder's basis in stock and debt, is modified to additionally provide that the adjusted basis of a shareholder's stock in the "S corporation" is to be decreased by distributions by the corporation that were not includable in the income of the shareholder by reason of Section 1368 of the Internal Revenue Code.

(c) Section 1366(d)(3) of the Internal Revenue Code, relating to carryover of disallowed losses and deductions to post-termination transition period, is modified to provide that to the extent that any increase in adjusted basis described in Section 1366(d)(3)(B) of the Internal Revenue Code would have increased the shareholder's amount

at risk under Section 465 if the increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in Section 1366(d)(3)(A) to (C), inclusive, of the Internal Revenue Code shall apply to any losses disallowed by reason of Section 465(a) of the Internal Revenue Code.

SEC. 9. Section 23803 of the Revenue and Taxation Code is amended to read:

23803. (a) With respect to credits that are otherwise allowed to reduce the taxes imposed under this part:

(1) The amount of any credit to be claimed shall be limited to one-third of the amount otherwise allowable.

(2) (A) Any unused portion of the credit allowable under paragraph (1) (one-third of the total credit) shall be allowed to be carried forward and may not be subject to additional reductions under paragraph (1) in later years.

(B) No carryforward shall be allowed for the portion of the credit denied under paragraph (1) (two-thirds of the total credit).

(C) Credits carried forward from taxable years beginning prior to the first taxable year in which the corporation is treated as an ''S corporation'' under this part, shall be reduced in accordance with paragraph (1) for that first taxable year and may not be subject to additional reductions under paragraph (1) in later years.

(D) The provisions of paragraphs (2) and (3) of subdivision (f) of Section 23802 shall be applied prior to the reduction required by paragraph (1).

(E) No portion of any credit to which this subdivision applies shall be passed through to the shareholders of the ''S corporation.''

(F) The provisions of this subdivision do not affect the amount of any credit computed under Part 10 (commencing with Section 17001) for pass through to shareholders in accordance with the provisions of Section 1366 of the Internal Revenue Code.

(b) Section 1366(f) of the Internal Revenue Code, relating to special rules, shall be modified as follows:

(1) The amount of tax used to compute the loss allowed by Section 1366(f)(2) shall be the amount of tax imposed on built-in gains under this part.

(2) The amount of tax used to compute the reduction allowed by Section 1366(f)(3) shall be the amount of tax imposed on excess net passive income under this part.

SEC. 10. Section 23804 of the Revenue and Taxation Code is amended to read:

23804. Section 1367(b)(4) of the Internal Revenue Code, relating to adjustments in case of inherited stock, shall apply for decedents dying after December 31, 1996.

SEC. 11. Section 23804.5 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 23809 of the Revenue and Taxation Code is amended to read:

23809. There is hereby imposed a tax on built-in gains attributable to California sources, determined in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, as modified by this section.

(a) (1) The rate of tax specified in Section 1374(b)(1) of the Internal Revenue Code shall be equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an ''S corporation'' that is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(b) The provisions of Section 1374(b)(3) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) may not be reduced by any credits allowed under this part.

(c) The provisions of Section 1374(b)(4) of the Internal Revenue Code, relating to coordination with Section 1201(a), do not apply.

SEC. 13. Section 23811 of the Revenue and Taxation Code is amended to read:

23811. Except as otherwise provided in this section, there is hereby imposed a tax on passive investment income attributable to California sources, determined in accordance with the provisions of Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, as modified by this section.

(a) The tax imposed under this section may not be imposed on an ''S corporation'' that has no excess net passive income for federal income tax purposes determined in accordance with Section 1375 of the Internal Revenue Code.

(b) (1) The rate of tax shall be equal to the rate of tax imposed under Section 23151 in lieu of Section 11(b) of the Internal Revenue Code.

(2) In the case of an ''S corporation'' that is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) Section 1375(c)(1) of the Internal Revenue Code, relating to credits, is modified to provide that the tax imposed under subdivision (a) may not be reduced by any credits allowed under this part.

(d) The term ''subchapter C earnings and profits'' or ''accumulated earnings and profits'' as used in Section 1375 of the Internal Revenue

Code shall mean the ''subchapter C earnings and profits'' of the corporation attributable to California sources determined under this part, modified as provided in subdivision (e).

(e) (1) In the case of a corporation that is an ''S corporation'' for purposes of this part for its first taxable year for which it has in effect a valid federal S election, there shall be allowed as a deduction in determining that corporation's ''subchapter C earnings and profits'' at the close of any taxable year the amount of any consent dividend (as provided in paragraph (2)) paid after the close of that taxable year.

(2) In the event there is a determination that a corporation described in paragraph (1) has ''subchapter C earnings and profits'' at the close of any taxable year, that corporation shall be entitled to distribute a consent dividend to its shareholders. The amount of the consent dividend may not exceed the difference between the corporation's ''subchapter C earnings and profits'' determined under subdivision (d) at the close of the taxable year with respect to which the determination is made and the corporation's ''subchapter C earnings and profits'' for federal income tax purposes at the same date. A consent dividend must be paid within 90 days of the date of the determination that the corporation has ''subchapter C earnings and profits.'' For this purpose, the date of a determination means the effective date of a closing agreement pursuant to Section 19441, the date an assessment of tax imposed by this section becomes final, or the date of execution by the corporation of an agreement with the Franchise Tax Board relating to liability for the tax imposed by this section. For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, a corporation must make the election provided in Section 1368(e)(3) of the Internal Revenue Code.

(3) If a corporation distributes a consent dividend, it shall claim the deduction provided in paragraph (1) by filing a claim therefor with the Franchise Tax Board within 120 days of the date of the determination specified in paragraph (2).

(4) The collection of tax imposed by this section from a corporation described in paragraph (2) shall be stayed for 120 days after the date of the determination specified in paragraph (2). If a claim is filed pursuant to paragraph (3), collection of that tax shall be further stayed until the date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

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CHAPTER 269

An act to amend Section 13515.25 of the Penal Code, relating to peace officers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Many of the incoming calls received by police and law enforcement departments involve situations with seriously emotionally disturbed and mentally ill persons. Poverty, homelessness, substance addiction, and mental illness are not in themselves police problems. They are health and economic problems that have become law enforcement problems because of inadequate funding and manpower resources, and the stigma the community places upon the mentally ill. Until more resources are allocated to community treatment services, health care providers and law enforcement will share joint responsibility for dealing with severely mentally ill persons. The Police Crisis Intervention Training Program used by the San Francisco and San Jose Police Departments is an example of one joint effort. It is designed to give law enforcement officers additional resources and skills with which to perform their jobs more effectively.

(b) It is critical that law enforcement mental health training be developed for the local community. There are as many differences, if not more, as there are similarities in each community regarding issues involving local police, mental health providers, and mentally ill persons. Local police, local staff from community mental health services and agencies, local mental health advocates, and local mental health consumers must work together to create the training and curriculum that is customized for each particular community.

SEC. 2. Section 13515.25 of the Penal Code is amended to read:

13515.25. (a) The Commission on Peace Officer Standards and Training shall, on or before June 30, 2001, establish and keep updated a continuing education classroom training course relating to law enforcement interaction with developmentally disabled and mentally ill persons. The training course shall be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family advocate groups. In developing the course, the commission shall also examine existing courses certified by the commission that relate to mentally ill and developmentally disabled persons. The commission

shall make the course available to law enforcement agencies in California.

(b) The course described in subdivision (a) shall consist of classroom instruction and shall utilize interactive training methods to ensure that the training is as realistic as possible. The course shall include, at a minimum, core instruction in all of the following:

(1) The cause and nature of mental illnesses and developmental disabilities.

(2) How to identify indicators of mental illness and developmental disability and how to respond appropriately in a variety of common situations.

(3) Conflict resolution and de-escalation techniques for potentially dangerous situations involving mentally ill and developmentally disabled persons.

(4) Appropriate language usage when interacting with mentally ill and developmentally disabled persons.

(5) Alternatives to lethal force when interacting with potentially dangerous mentally ill and developmentally disabled persons.

(6) Community and state resources available to serve mentally ill and developmentally disabled persons and how these resources can be best utilized by law enforcement to benefit the mentally ill and developmentally disabled community.

(c) The commission shall submit a report to the Legislature by October 1, 2004, that shall include all of the following:

(1) A description of the process by which the course was established, including a list of the agencies and groups that were consulted.

(2) Information on the number of law enforcement agencies that utilized, and the number of officers that attended, the course or other courses certified by the commission relating to mentally ill and developmentally disabled persons from July 1, 2001, to July 1, 2003, inclusive.

(3) Information on the number of law enforcement agencies that utilized, and the number of officers that attended, courses certified by the commission relating to mentally ill and developmentally disabled persons from July 1, 2000, to July 1, 2001, inclusive.

(4) An analysis of the Police Crisis Intervention Training (CIT) Program used by the San Francisco and San Jose Police Departments, to assess the training used in these programs and compare it with existing courses offered by the commission in order to evaluate the adequacy of mental illness and developmental disability training available to local law enforcement officers.

(d) The Legislature encourages law enforcement agencies to include the course created in this section, or any other course certified by the

commission relating to mentally ill and developmentally disabled persons, as part of their advanced officer training program.

(e) It is the intent of the Legislature to reevaluate, on the basis of its review of the report required in subdivision (c), the extent to which law enforcement officers are receiving adequate training in how to interact with mentally ill and developmentally disabled persons.

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:

To override current law and extend by one year the date by which the Peace Officers Standards and Training Commission is required to submit to the Legislature a specified report relating to peace officer training regarding persons with developmental disabilities or mental illness, it is necessary that this act go into immediate effect.

CHAPTER 270

An act to amend Sections 23356.1 and 25503.4 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 23356.1 of the Business and Professions Code is amended to read:

23356.1. (a) A winegrower's license also authorizes the person to whom issued to conduct winetastings of wine produced or bottled by, or produced and packaged for, the licensee, either on or off the winegrower's premises. When a winetasting is held off the winegrower's premises at an event sponsored by a private nonprofit organization, no wine may be sold, and no sales or orders solicited, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises. For purposes of this subdivision, ''private nonprofit organization'' means an organization described in Section 23701a, 23701b, 23701d, 23701e, 23701k, 23701*l*, 23701r, or 23701w of the Revenue and Taxation Code.

(b) Notwithstanding any other provisions of this division, a winegrower who, prior to July 1, 1970, had, at his or her premises of production, sold to consumers for consumption off the premises domestic wine other than wine which was produced or bottled by, or

produced and packaged for, the licensee, and which was not sold under a brand or trade name owned by the licensee, and who had, prior to July 1, 1970, conducted winetastings of the domestic wine at his or her licensed premises, is authorized to continue to conduct the winetasting and selling activities at the licensed premises.

(c) A winegrower who was licensed as such prior to July 1, 1954, and who prior to July 1, 1970, had, at his or her licensed premises, sold to consumers for consumption off the premises, wine packaged for and imported by him or her, and who conducted winetastings of the wines at his or her licensed premises, may continue to conduct the winetasting and selling activities at the licensed premises.

(d) The department may adopt the rules as it determines to be necessary for the administration of this section.

SEC. 2. Section 25503.4 of the Business and Professions Code is amended to read:

25503.4. (a) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, wine importer, or any director, partner, officer, agent, or representative of that person, may conduct or participate in, and serve wine at, an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer, subject to the following conditions:

(1) No premium, gift, free goods, or other thing of value may be given away in connection with the instructional event by the winegrower, California winegrower's agent, wine importer, or retailer, except as authorized by this division.

(2) No alcoholic beverages may be given away in connection with the instructional event except that wine, taken from barrels or from tanks, may be sampled at the instructional event. For the purposes of this section, minimal amounts of the samples provided for tasting at the instructional event in addition to the wines being featured do not constitute a thing of value.

(3) No alcoholic beverages may be sold at the instructional event, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises.

(b) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, or wine importer, in advance of an instructional event for consumers being held at a retailer's premises, may list in an advertisement the name and address of the retailer, the names of the wines being featured at the instructional event, and the time, date, and location of, and other information about, the instructional event, provided:

(1) The advertisement does not also contain the retail price of the wines.

(2) The listing of the retailer's name and address is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole. Pictures or illustrations of the retailer's premises and laudatory references to the retailer in such advertisements are not hereby authorized.

(c) Notwithstanding any other provision of this division, the name and address of a winegrower, wine importer, or winegrower's agent licensee, the brand names of wine being featured, and the time, date, location, and other identifying information of a wine promotional lecture at retail premises may be listed in advance of the event in an advertisement of the off-sale or on-sale retail licensee.

(d) Nothing in this section authorizes a winegrower, wine importer, or winegrower's agent licensee to share in the costs, if any, of the retailer licensee's advertisement.

(e) Nothing in this section authorizes any person to consume any alcoholic beverage on any premises licensed with an off-sale retail license.

CHAPTER 271

An act to add Section 22816.1 to the Government Code, relating to public employees' health benefits, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 22816.1 is added to the Government Code, to read:

22816.1. An employee of a contracting agency and his or her family members may continue enrollment in a health benefits plan under this part if the employee is granted a leave of absence by the contracting agency for military duty. The coverage may continue for up to one year.

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 employees of contracting agencies can elect to receive continuing health benefits coverage while on active military

duty, including coverage of their family members, and avoid any disruption of their existing coverage, it is necessary that this act take effect immediately.

CHAPTER 272

An act to amend Section 13201 of the Water Code, relating to California regional water quality control boards.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 13201 of the Water Code is amended to read:

13201. (a) There is a regional board for each of the regions described in Section 13200. Each board shall consist of the following nine members appointed by the Governor, each of whom shall represent and act on behalf of all the people and shall reside or have a principal place of business within the region:

(1) One person associated with water supply, conservation, and production.

(2) One person associated with irrigated agriculture.

(3) One person associated with industrial water use.

(4) One person associated with municipal government. Upon the next vacancy occurring in this office on or after January 1, 2004, this person shall be a city council member or mayor.

(5) One person associated with county government. Upon the next vacancy occurring in this office on or after January 1, 2004, this person shall be a county supervisor.

(6) One person from a responsible nongovernmental organization associated with recreation, fish, or wildlife.

(7) Three persons not specifically associated with any of the foregoing categories, two of whom shall have special competence in areas related to water quality problems.

(b) All persons appointed to a regional board shall be subject to Senate confirmation, but shall not be required to appear before any committee of the Senate for purposes of such confirmation unless specifically requested to appear by the Senate Committee on Rules.

(c) Insofar as practicable, appointments shall be made in such manner as to result in representation on the board from all parts of the region.

(d) Notwithstanding subdivision (a), if appointments cannot be made pursuant to paragraph (5) of subdivision (a) because of the requirements

of Section 13388, those appointments may be made of persons not specifically associated with any category.

CHAPTER 273

An act to add Sections 17.1 and 25620 to the Corporations Code, relating to business organizations.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 17.1 is added to the Corporations Code, to read:

17.1. (a) In addition to the definition set forth in Section 17, the term ''signature'' includes a signature in a facsimile document filed pursuant to this code or pursuant to regulations adopted under this code, and presented to the Secretary of State.

(b) The terms ''signed'' and ''executed,'' when used with respect to the documents filed pursuant to this code or pursuant to regulations adopted under this code, and presented to the Secretary of State, include a document bearing a signature under subdivision (a).

(c) The Secretary of State shall accept facsimile signatures on documents that are delivered by mail or by hand.

(d) A person on whose behalf a document bearing a facsimile signature is submitted for filing to the Secretary of State shall maintain the originally signed document for at least five years from the date of filing.

(e) The Secretary of State may adopt procedures permitting the direct electronic or facsimile presentation of the documents specified in subdivisions (a) and (b). However, the Secretary of State is not required to accept those direct electronic or facsimile filings until procedures are adopted.

SEC. 2. Section 25620 is added to the Corporations Code, to read:

25620. (a) Notwithstanding any other provision of law, the commissioner may by rule or order prescribe circumstances under which to accept electronic records or electronic signatures. However, nothing in this section requires the commissioner to accept electronic records or electronic signatures.

(b) For purposes of this section, the following terms have the following meanings:

(1) ''Electronic record'' means a record created, generated, sent, communicated, received, or stored by electronic means, and includes a record transmitted by means of facsimile machine or other telephone transceiving equipment.

(2) ''Electronic signature'' means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(c) The Legislature hereby finds and declares that the Department of Corporations has continuously implemented methods to file records electronically, including broker-dealer and investment adviser applications, and is encouraged to continue to expand its use of electronic filings to the extent feasible, as budget, resources, and equipment are made available to accomplish that goal.

CHAPTER 274

An act to amend Sections 241 and 243 of the Penal Code, relating to crime.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 241 of the Penal Code is amended to read:

241. (a) An assault is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

(b) When an assault is committed against the person of a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

(c) As used in this section, the following definitions apply:

(1) Peace officer means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) ''Emergency medical technician'' means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) ''Mobile intensive care paramedic'' refers to those persons who meet the standards set forth in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) ''Nurse'' means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) ''Lifeguard'' means a person who is:

(A) Employed as a lifeguard by the state, a county, or a city, and is designated by local ordinance as a public officer who has a duty and responsibility to enforce local ordinances and misdemeanors through the issuance of citations.

(B) Wearing distinctive clothing which includes written identification of the person's status as a lifeguard and which clearly identifies the employing organization.

(6) ''Process server'' means any person who meets the standards or is expressly exempt from the standards set forth in Section 22350 of the Business and Professions Code.

(7) ''Traffic officer'' means any person employed by a county or city to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(8) ''Animal control officer'' means any person employed by a county or city for purposes of enforcing animal control laws or regulations.

(9) (A) ''Code enforcement officer'' means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, that has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) ''Code enforcement officer'' also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1

(commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Mobilehomes-Manufactured Housing Act (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

SEC. 2. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician,

lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars ($2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment in the state prison for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, 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 five thousand dollars ($5,000).

(B) That the defendant 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.

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, 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. Where 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 this section, 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 section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

(4) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) ''Peace officer'' means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) ''Emergency medical technician'' means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) ''Nurse'' means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) ''Serious bodily injury'' means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(5) ''Injury'' means any physical injury which requires professional medical treatment.

(6) ''Custodial officer'' means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) ''Lifeguard'' means a person defined in paragraph (5) of subdivision (c) of Section 241.

(8) ''Traffic officer'' means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) ''Animal control officer'' means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) ''Dating relationship'' means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11) (A) ''Code enforcement officer'' means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) ''Code enforcement officer'' also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Mobilehomes-Manufactured Housing Act (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace

officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

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 275

An act to amend Sections 68085 and 77205 of the Government Code, and to amend Section 1463.010 of the Penal Code, relating to courts.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 68085 of the Government Code is amended to read:

68085. (a) (1) There is hereby established the Trial Court Trust Fund, the proceeds of which shall be apportioned at least quarterly for the purpose of funding trial court operations, as defined in Section 77003. Apportionment payments may not exceed 30 percent of the total annual apportionment to the Trial Court Trust Fund for state trial court funding in any 90-day period.

(2) The apportionment payments shall be made by the Controller. The final payment from the Trial Court Trust Fund for each fiscal year shall be made on or before August 31 of the subsequent fiscal year.

(3) If apportionment payments are made on a quarterly basis, the payments shall be on July 15, October 15, January 15, and April 15. In addition to quarterly payments, a final payment from the Trial Court Trust Fund for each fiscal year may be made on or before August 31 of the subsequent fiscal year.

(4) Notwithstanding any other provision of law, in order to promote statewide efficiency, the Judicial Council may authorize the direct payment or reimbursement or both of actual costs from the Trial Court Trust Fund or the Trial Court Improvement Fund to fund administrative infrastructure within the Administrative Office of the Courts, such as

legal services, financial services, information systems services, human resource services, and support services, for one or more participating courts upon appropriation of funding for these purposes in the annual Budget Act. The amount of appropriations from the Trial Court Improvement Fund under this subdivision may not exceed 20 percent of the amount deposited in the Trial Court Improvement Fund pursuant to subdivision (a) of Section 77205. Upon prior written approval of the Director of Finance, the Judicial Council may also authorize an increase in any reimbursements or direct payments in excess of the amount appropriated in the annual Budget Act. For any increases in reimbursements or direct payments within the fiscal year that exceed two hundred thousand dollars ($200,000), the Director of Finance shall provide notification in writing of any approval granted under this section, not less than 30 days prior to the effective date of that approval, to the chairperson of the committee in each house of the Legislature that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house of the Legislature that consider the annual Budget Act, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance, determine. The direct payment or reimbursement of costs from the Trial Court Trust Fund may be supported by the reduction of a participating court's allocation from the Trial Court Trust Fund to the extent that the court's expenditures for the program are reduced and the court is supported by the program. The Judicial Council shall provide the affected trial courts with quarterly reports on expenditures from the Trial Court Trust Fund incurred as authorized by this subdivision. The Judicial Council shall establish procedures to provide for the administration of this paragraph in a way that promotes the effective, efficient, reliable, and accountable operation of the trial courts.

(b) Notwithstanding any other provision of law, the fees listed in subdivision (c) shall all be deposited upon collection in a special account in the county treasury, and transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

(c) (1) Except as specified in subdivision (d), this section applies to all fees collected pursuant to Sections 631.3, 116.230, and 403.060 of the Code of Civil Procedure and Sections 26820.4, 26823, 26826, 26826.01, 26827, 26827.4, 26830, 26832.1, 26833.1, 26835.1, 26836.1, 26837.1, 26838, 26850.1, 26851.1, 26852.1, 26853.1, 26855.4, 26862, 27081.5, 68086, 72055, 72056, 72056.01, and 72060.

(2) If any of the fees provided for in this subdivision are partially waived by court order, and the fee is to be divided between the Trial Court Trust Fund and any other fund, the amount of the partial waiver

shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee.

(3) Any amounts transmitted by a county to the Controller for deposit into the Trial Court Trust Fund from fees collected pursuant to Section 27361 between January 1, 1998, and the effective date of this paragraph shall be credited against the total amount the county is required to pay to the state pursuant to paragraph (2) of subdivision (b) of Section 77201 for the 1997–98 fiscal year.

(d) This section does not apply to that portion of a filing fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056 which is allocated for dispute resolution pursuant to Section 470.3 of the Business and Professions Code, the county law library pursuant to Section 6320 of the Business and Professions Code, the Judges' Retirement Fund pursuant to Section 26822.3, automated recordkeeping or conversion to micrographics pursuant to Sections 26863 and 68090.7, and courthouse financing pursuant to Section 76238. This section also does not apply to fees collected pursuant to subdivisions (a) and (c) of Section 27361.

(e) This section applies to all payments required to be made to the State Treasury by any county or city and county pursuant to Section 77201, 77201.1, or 77205.

(f) Notwithstanding any other provision of law, no agency may take action to change the amounts allocated to any of the funds described in subdivision (a), (b), (c), or (d).

(g) Before making any apportionments under this section, the Controller shall deduct, from the annual appropriation for that purpose, the actual administrative costs that will be incurred under this section. Costs reimbursed under this section shall be determined on an annual basis in consultation with the Judicial Council.

(h) Any amounts required to be transmitted by a county or city and county to the state pursuant to this section shall be remitted to the Controller no later than 45 days after the end of the month in which the fees were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund to which it is to be deposited. Any remittance which is not made by the county or city and county in accordance with this section shall be considered delinquent, and subject to the penalties specified in this section.

(i) Upon receipt of any delinquent payment required pursuant to this section, the Controller shall calculate a penalty on any delinquent payment by multiplying the amount of the delinquent payment at a daily rate equivalent to $1^1/_2$ percent per month for the number of days the payment is delinquent. Notwithstanding Section 77009, any penalty on

a delinquent payment that a court is required to reimburse to a county's general fund pursuant to this section and Section 24353 shall be paid from the Trial Court Operations Fund for that court.

(j) Penalty amounts calculated pursuant to subdivision (i) shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(k) The Trial Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Trial Court Trust Fund semiannually and shall be allocated among the courts in accordance with the requirements of subdivision (a). The specific allocations shall be specified by the Judicial Council, based upon recommendations from the Trial Court Budget Commission.

(*l*) It is the intent of the Legislature that the revenues required to be deposited into the Trial Court Trust Fund be remitted as soon after collection by the courts as possible. Not later than February 1, 2001, the Judicial Council, in consultation with the California State Association of Counties and the California County Auditors Association, shall study and make recommendations to the Legislature on alternative procedures that would improve the collection and remittance of revenues to the Trial Court Trust Fund.

SEC. 2. Section 77205 of the Government Code is amended to read:

77205. (a) Notwithstanding any other provision of law, in any year in which a county collects fee, fine, and forfeiture revenue for deposit into the county general fund pursuant to Sections 1463.001 and 1464 of the Penal Code, Sections 42007, 42007.1, and 42008 of the Vehicle Code, and Sections 27361 and 76000 of, and subdivision (f) of Section 29550 of, the Government Code that would have been deposited into the General Fund pursuant to these sections as they read on December 31, 1997, and pursuant to Section 1463.07 of the Penal Code, and that exceeds the amount specified in paragraph (2) of subdivision (b) of Section 77201 for the 1997–98 fiscal year, and paragraph (2) of subdivision (b) of Section 77201.1 for the 1998–99 fiscal year, and thereafter, the excess amount shall be divided between the county or city and county and the state, with 50 percent of the excess transferred to the state for deposit in the Trial Court Improvement Fund and 50 percent of the excess deposited into the county general fund. The Judicial Council, by court rule, shall allocate 80 percent of the amount deposited in the Trial Court Improvement Fund pursuant to this subdivision each fiscal year that exceeds the amount deposited in the 2002–03 fiscal year among:

(1) The trial court in the county from which the revenue was deposited.

(2) Other trial courts, as provided in paragraph (1) of subdivision (a) of Section 68085.

(3) For retention in the Trial Court Improvement Fund.

For the purpose of this subdivision, fee, fine, and forfeiture revenue shall only include revenue that would otherwise have been deposited in the General Fund prior to January 1, 1998.

(b) Any amounts required to be distributed to the state pursuant to subdivision (a) shall be remitted to the Controller no later than 45 days after the end of the fiscal year in which those fees, fines, and forfeitures were collected. This remittance shall be accompanied by a remittance advice identifying the quarter of collection and stating that the amount should be deposited in the Trial Court Improvement Fund.

(c) Notwithstanding subdivision (a), the following counties whose base-year remittance requirement was reduced pursuant to subdivision (c) of Section 77201.1 shall not be required to split their annual fee, fine, and forfeiture revenues as provided in this section until such revenues exceed the following amounts:

County	Amount
Placer	$ 1,554,677
Riverside	11,028,078
San Joaquin	3,694,810
San Mateo	5,304,995
Ventura	4,637,294

SEC. 3. Section 1463.010 of the Penal Code is amended to read:

1463.010. The enforcement of court orders is recognized as an important element of collections efforts. The prompt, efficient, and effective collection of court-ordered fees, fines, forfeitures, penalties, and assessments ensures the appropriate respect for court orders. To provide for this prompt, efficient, and effective collection:

(a) The Judicial Council shall adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees, fines, forfeitures, penalties, and assessments imposed by court order after considering the recommendations of the collaborative court-county working group established pursuant to subdivision (b). As part of its guidelines, the Judicial Council may establish standard agreements for entities to provide collection services. As part of its guidelines, the Judicial Council shall include provisions that promote competition by and between entities in providing collection services to courts and counties. The Judicial Council may delegate to the Administrative Director of the Courts the implementation of the aspects of this program to be carried out at the state level.

(b) The Judicial Council shall establish a collaborative court-county working group on collections. The California State Association of Counties shall appoint eight members of the working group. The

Judicial Council shall appoint four court executives, two judges, and two employees of the Administrative Office of the Courts as members of the working group, and shall designate a chair of the working group. The working group shall, among other activities, survey courts and counties regarding current collection efforts and evaluate a variety of methods to enhance future collections, including, but not limited to, referring accounts to private agencies for collection, develop a strategy for court and county cooperation in collection plan discussions, consult with groups other than courts and counties that are affected by collection programs, and evaluate and make recommendations to the Judicial Council concerning current and future collection methods.

(c) The courts and counties shall maintain the collection program which was in place on January 1, 1996, unless otherwise agreed to by the court and county. The program may wholly or partially be staffed and operated within the court itself, may be wholly or partially staffed and operated by the county, or may be wholly or partially contracted with a third party. In carrying out this collection program, each superior court and county shall develop a cooperative plan to implement the Judicial Council guidelines. In the event that a court and a county are unwilling or unable to enter into a cooperative plan pursuant to this section, the court or the county may request the continuation of negotiations with mediation assistance as mutually agreed upon and provided by the Administrative Director of the Courts and the California Association of Counties.

(d) Each superior court and county shall jointly report to the Judicial Council, as provided by the Judicial Council and not more than once a year, on the effectiveness of the cooperative superior court and county collection program. The Judicial Council shall report to the Legislature, as appropriate, on the effectiveness of the program.

(e) The Judicial Council may, when the efficiency and effectiveness of the collection process may be improved, facilitate a joint collection program between superior courts, between counties, or between superior court and counties.

(f) The Judicial Council may establish, by court rule, a program providing for the suspension and nonrenewal of a business and professional license if the holder of the license has unpaid fees, fines, forfeitures, penalties, and assessments imposed upon them under a court order. The Judicial Council may provide that some or all of the superior courts or counties participate in the program. Any program established by the Judicial Council shall ensure that the licensee receives adequate and appropriate notice of the proposed suspension or nonrenewal of his or her license and has an opportunity to contest the suspension or nonrenewal. The opportunity to contest may not require a court hearing.

(g) Notwithstanding any other provision of law, the Judicial Council, after consultation with the Franchise Tax Board with respect to collections under Section 19280 of the Revenue and Taxation Code, may provide for an amnesty program involving the collection of outstanding fees, fines, forfeitures, penalties, and assessments, applicable either statewide or within one or more counties. The amnesty program shall provide that some or all of the interest or collections costs imposed on outstanding fees, fines, forfeitures, penalties, and assessments may be waived if the remaining amounts due are paid within the amnesty period.

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 276

An act to amend Section 3543.5 of the Government Code, relating to public school employment.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 3543.5 of the Government Code is amended to read:

3543.5. It is unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, ''employee'' includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative. Knowingly providing an exclusive representative with inaccurate information, whether or not in response to a request for information, regarding the financial resources of the public school

employer constitutes a refusal or failure to meet and negotiate in good faith.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

CHAPTER 277

An act to amend Section 17526 of, and to add Section 17528.5 to, the Business and Professions Code, and to amend Section 8040 of, and to add Article 3 (commencing with Section 18320) to Chapter 4 of Division 18 of, the Elections Code, relating to fraudulent practices.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

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

(a) The World Wide Web is a unique arena for the free and open exchange of ideas.

(b) ''Political cyberfraud'' stifles that open exchange, thus undermining the essential element of our democracy.

(c) Political cyberfraud has the effect of denying, or interfering with access to information that would allow a person to make a knowledgeable electoral decision. It misleads, deceives, or defrauds voters or candidates, or both. It is the equivalent of stealing campaign literature out of a voter's mailbox and it sows confusion in the minds of voters regarding information presented.

(d) Political cyberfraud violates principles of free speech by denying unfettered access to the free and open exchange of ideas. Therefore, it is the intent of the Legislature to protect that free and open exchange of ideas at the heart of our electoral system by prohibiting the act of political cyberfraud.

(e) ''Cyber piracy'' involves, among other things, the misuse of a domain name with a bad-faith intent to profit from a legal name by using a domain name that is identical or confusingly similar to the legal name and selling it to the owner of the legal name. Cyber piracy infringes upon the legal rights of persons protected by law for whom a financial remedy

for that infringement should be provided equivalent to that for political cyberfraud infringement provided by this act.

SEC. 2. Section 17526 of the Business and Professions Code is amended to read:

17526. In determining whether there is a bad faith intent pursuant to Section 17525, a court may consider factors, including, but not limited to, the following:

(a) The trademark or other intellectual property rights of the person alleged to be in violation of this article, if any, in the domain name.

(b) The extent to which the domain name consists of the legal name of the person alleged to be in violation of this article or a name that is otherwise commonly used to identify that person.

(c) The prior use, if any, by the person alleged to be in violation of this article of the domain name in connection with the bona fide offering of any goods or services.

(d) The legitimate noncommercial or fair use of the person's or deceased personality's name in an Internet Web site accessible under the domain name by the person alleged to be in violation of this article.

(e) The intent of a person alleged to be in violation of this article to divert consumers from the person's or deceased personality's name online location to a site accessible under the domain name that could harm the goodwill represented by the person's or deceased personality's name either for commercial gain or with the intent to tarnish or disparage the person's or deceased personality's name by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

(f) The offer by a person alleged to be in violation of this article to transfer, sell, or otherwise assign the domain name to the rightful owner or any third party for substantial consideration without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services.

(g) The intentional provision by the person alleged to be in violation of this article of material and misleading false contact information when applying for the registration of the domain name.

(h) The registration or acquisition by the person alleged to be in violation of this article of multiple domain names that are identical or confusingly similar to names of other living persons or deceased personalities.

(i) Whether the person alleged to be in violation of this article sought or obtained consent from the rightful owner to register, traffic in, or use the domain name.

(j) The intent of a person alleged to be in violation of this article to mislead, deceive, or defraud voters.

SEC. 3. Section 17528.5 is added to the Business and Professions Code, to read:

17528.5. In addition to any other remedies available under law, a court may order the transfer of a domain name as part of the relief awarded for a violation of this article.

SEC. 4. Section 8040 of the Elections Code is amended to read:

8040. (a) The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a ____ Party candidate for nomination to the office of ____ District Number ____ to be voted for at the primary election to be held ____, 20__, and declare the following to be true:

My name is _____.

I want my name and occupational designation to appear on the ballot as follows: _____.

Addresses:

Residence _____

_____

Business _____

_____

Mailing _____

_____

Telephone numbers: Day _____ Evening _____

Web site: _____

I meet the statutory and constitutional qualifications for this office (including, but not limited to, citizenship, residency, and party affiliation,if required).

I am at present an incumbent of the following public office (if any) ____.

If nominated, I will accept the nomination and not withdraw.

_____

Signature of candidate

State of California)
County of _____) ss.
)

Subscribed and sworn to before me this ___ day of ____, 20__.

_____

Notary Public (or other official)

Examined and certified by me this ____ day of ____, 20__.

_____

County Elections Official

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any declaration of candidacy in his or her possession which is entitled to be filed under the provisions of the Elections Code Section 18202.

(b) A candidate for a judicial office may not be required to state his or her residential address on the declaration of candidacy. However, in cases where the candidate does not state his or her residential address on the declaration of candidacy, the elections official shall verify whether his or her address is within the appropriate political subdivision and add the notation ''verified'' where appropriate.

SEC. 5. Article 3 (commencing with Section 18320) is added to Chapter 4 of Division 18 of the Elections Code, to read:

Article 3. Deceptive Online Activities

18320. (a) This act shall be known and may be cited as the ''California Political Cyberfraud Abatement Act.''

(b) It is unlawful for a person, with intent to mislead, deceive, or defraud, to commit an act of political cyberfraud.

(c) As used in this section:

(1) ''Political cyberfraud'' means a knowing and willful act concerning a political Web site that is committed with the intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site, and would cause a reasonable person, after reading the Web site, to believe the site actually represents the views of the proponent or opponent of a ballot measure. Political cyberfraud includes, but is not limited to, any of the following acts:

(A) Intentionally diverting or redirecting access to a political Web site to another person's Web site by the use of a similar domain name, meta-tags, or other electronic measures.

(B) Intentionally preventing or denying exit from a political Web site by the use of frames, hyperlinks, mousetrapping, popup screens, or other electronic measures.

(C) Registering a domain name that is similar to another domain name for a political Web site.

(D) Intentionally preventing the use of a domain name for a political Web site by registering and holding the domain name or by reselling it to another with the intent of preventing its use, or both.

(2) ''Domain name'' means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain registration authority as part of an electronic address on the Internet.

(3) ''Political Web site'' means a Web site that urges or appears to urge the support or opposition of a ballot measure.

18321. This article does not apply to a domain name registrar, registry, or registration authority.

18322. In addition to any other remedies available under law, a court may order the transfer of a domain name as part of the relief awarded for a violation of this article.

18323. Jurisdiction for actions brought pursuant to this article shall be in accordance with Section 410.10 of the Code of Civil Procedure.

SEC. 6. The provisions of this bill are severable. If any provision of this bill 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 278

An act to amend Sections 205.5 and 279 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

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

(1) The California Constitution allows the Legislature to establish an exemption from property taxes for the home of a disabled veteran or the spouse of a disabled veteran, including the unmarried surviving spouse of a disabled veteran.

(2) A disabled veteran is defined by law as a veteran who, because of an injury incurred in military service is blind in both eyes, has lost the use of two or more limbs, is totally disabled, or who, as a result of service-connected injury, died while in active military service.

(3) The Revenue and Taxation Code authorizes a property tax exemption for property owned by a disabled veteran, if that property constitutes the principal place of residence of the disabled veteran.

(4) The Revenue and Taxation Code also authorizes a property tax exemption for property owned by an unmarried surviving spouse of a

disabled veteran, if that property constitutes the principal place of residence of the unmarried surviving spouse.

(5) There are many disabled veterans who own property that qualifies for the disabled veterans' property tax exemption, but due to the fact that these disabled veterans are confined to hospitals or other medical institutions they are unable to occupy that property as their principal place of residence. In many cases the spouses of these disabled veterans continue to occupy the property as their principle place of residence.

(b) It is the intent of the Legislature in enacting this act to amend the Revenue and Taxation Code to conform with the California Constitution to further extend the disabled veterans' property tax exemption to property owned by the spouse of a living disabled veteran while that disabled veteran is confined to a hospital or other care facility and to extend the veterans' property tax exemption to an otherwise qualifying veteran who is unable to occupy that property as his or her principal place of residence because he or she is confined to a hospital or other care facility, provided that the property is not rented or leased to a third party.

SEC. 2. Section 205.5 of the Revenue and Taxation Code is amended to read:

205.5. (a) Property that constitutes the principal place of residence of a veteran, that is owned by the veteran, the veteran's spouse, or the veteran and the veteran's spouse jointly, is exempted from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars ($100,000), if the veteran is blind in both eyes, has lost the use of two or more limbs, or if the veteran is totally disabled as a result of injury or disease incurred in military service. The one-hundred-thousand-dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible veteran whose household income does not exceed the amount of forty thousand dollars ($40,000), as adjusted for the relevant assessment year as provided in subdivision (g).

(b) (1) For purposes of this section, ''veteran'' means either of the following:

(A) A veteran as specified in subdivision (o) of Section 3 of Article XIII of the California Constitution without regard to any limitation contained therein on the value of property owned by the veteran or the veteran's spouse.

(B) Any person who would qualify as a veteran pursuant to paragraph (1) except that he or she has, as a result of a service-connected injury or disease died while on active duty in military service. The United States Department of Veterans Affairs shall determine whether an injury or disease is service connected.

(2) For purposes of this section, property is deemed to be the principal place of residence of a veteran, disabled as described in subdivision (a),

who is confined to a hospital or other care facility, if that property would be that veteran's principal place of residence were it not for his or her confinement to a hospital or other care facility, provided that the residence is not rented or leased to a third party. A family member that resides at the residence is not considered to be a third party.

(c) (1) Property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a deceased veteran is exempt from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars ($100,000), in the case of a veteran who was blind in both eyes, had lost the use of two or more limbs, or was totally disabled provided that either of the following conditions is met:

(A) The deceased veteran during his or her lifetime qualified in all respects for the exemption or would have qualified for the exemption under the laws effective on January 1, 1977, except that the veteran died prior to January 1, 1977.

(B) The veteran died from a disease that was service connected as determined by the United States Department of Veterans Affairs.

The one-hundred-thousand-dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible unmarried surviving spouse whose household income does not exceed the amount of forty thousand dollars ($40,000), as adjusted for the relevant assessment year as provided in subdivision (g).

(2) Commencing with the 1994–95 fiscal year, property that is owned by, and that constitutes the principal place of residence of, the unmarried surviving spouse of a veteran as described in paragraph (2) of subdivision (b) is exempt from taxation on that part of the full value of the residence that does not exceed one hundred thousand dollars ($100,000). The one-hundred-thousand-dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible unmarried surviving spouse whose household income does not exceed the amount of forty thousand dollars ($40,000), as adjusted for the relevant assessment year as provided in subdivision (g).

(d) As used in this section, ''property that is owned by a veteran'' or ''property that is owned by the veteran's unmarried surviving spouse'' includes all of the following:

(1) Property owned by the veteran with the veteran's spouse as a joint tenancy, tenancy in common, or as community property.

(2) Property owned by the veteran or the veteran's spouse as separate property.

(3) Property owned with one or more other persons to the extent of the interest owned by the veteran, the veteran's spouse, or both the veteran and the veteran's spouse.

(4) Property owned by the veteran's unmarried surviving spouse with one or more other persons to the extent of the interest owned by the veteran's unmarried surviving spouse.

(5) So much of the property of a corporation as constitutes the principal place of residence of a veteran or a veteran's unmarried surviving spouse when the veteran, or the veteran's spouse, or the veteran's unmarried surviving spouse is a shareholder of the corporation and the rights of shareholding entitle one to the possession of property, legal title to which is owned by the corporation. The exemption provided by this paragraph shall be shown on the local roll and shall reduce the full value of the corporate property. Notwithstanding any provision of law or articles of incorporation or bylaws of a corporation described in this paragraph, any reduction of property taxes paid by the corporation shall reflect an equal reduction in any charges by the corporation to the person who, by reason of qualifying for the exemption, made possible the reduction for the corporation.

(e) For purposes of this section, being blind in both eyes means having a visual acuity of 5/200 or less, or concentric contraction of the visual field to 5 degrees or less; losing the use of a limb means that the limb has been amputated or its use has been lost by reason of ankylosis, progressive muscular dystrophies, or paralysis; and being totally disabled means that the United States Department of Veterans Affairs or the military service from which the veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation.

(f) An exemption granted to a claimant in accordance with the provisions of this section shall be in lieu of the veteran's exemption provided by subdivisions (o), (p), (q), and (r) of Section 3 of Article XIII of the California Constitution and any other real property tax exemption to which the claimant may be entitled. No other real property tax exemption may be granted to any other person with respect to the same residence for which an exemption has been granted under the provisions of this section; provided, that if two or more veterans qualified pursuant to this section coown a property in which they reside, each is entitled to the exemption to the extent of his or her interest.

(g) Commencing on January 1, 2002, and for each assessment year thereafter, the household income limit shall be compounded annually by an inflation factor that is the annual percentage change, measured from February to February of the two previous assessment years, rounded to the nearest one-thousandth of 1 percent, in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

SEC. 3. Section 279 of the Revenue and Taxation Code is amended to read:

279. (a) A claim for the disabled veterans' property tax exemption described in Section 205.5 filed by the owner of a dwelling, once granted, shall remain in continuous effect unless any of the following occurs:

(1) Title to the property changes.

(2) The owner does not occupy the dwelling as his or her principal place of residence on the lien date. For purposes of this paragraph, if a veteran is, on the lien date, confined to a hospital or other care facility but principally resided at a dwelling immediately prior to that confinement, the veteran will be deemed to occupy that same dwelling as his or her principal place of residence on the lien date, provided that the dwelling has not been rented or leased as described in Section 205.5.

(3) The property is altered so that it is no longer a dwelling.

(4) The veteran is no longer disabled as defined in Section 205.5.

(b) The assessor of each county shall verify the continued eligibility of each person receiving a disabled veterans' exemption, and shall provide for a periodic audit of, and establish a control system to monitor, disabled veterans' exemption claims.

SEC. 4. 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. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 279

An act to amend Section 3154 of the Civil Code, relating to lien claims.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 3154 of the Civil Code is amended to read:

3154. (a) At any time after the expiration of the time period specified by Section 3144 with regard to the period during which property is bound by a lien after recordation of a claim of lien, where no action has been brought to enforce that lien, the owner of the property

or the owner of any interest therein may petition the proper court for a decree to release the property from the lien.

(b) The petition shall be verified and shall allege all of the following:

(1) The date of recordation of the claim of lien.

(2) The legal description of the property affected by the claim of lien.

(3) That no action to foreclose the lien is pending, or that no extension of credit has been recorded, and that the time period during which suit can be brought to foreclose the lien has expired.

(4) That the lien claimant is unable or unwilling to execute a release of the lien or cannot with reasonable diligence be found.

(5) That the owner of the property or interest in the property has not filed for relief under any law governing bankruptcy, and that there exists no other restraint to prevent the lien claimant from filing to foreclose his or her lien. A certified copy of the claim of lien shall be attached to the petition. The petition shall be deemed controverted by the lien claimant.

(c) Upon the filing of the petition, and before any further proceedings are had, the clerk, or if there is no clerk, the judge shall set a date for the hearing not more than 30 days following the filing of the petition. The court may continue the hearing beyond the 30-day period, but good cause shall be shown for any continuance.

(d) A copy of the petition and the notice setting the date for the hearing shall be served upon the lien claimant at least 10 days prior to the date set for hearing, in the manner in which a summons is required to be served, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the lien claimant at the claimant's address as shown on any of the following:

(1) The preliminary 20-day notice served by the claimant pursuant to Section 3097.

(2) In the records of the registrar of contractors.

(3) The contract on which the lien is based.

(4) The claim of lien itself.

(e) When service is made by mail as provided in this section, service is complete on the fifth day following the day of the deposit of the mail. No decree shall issue in favor of the petitioner unless the petitioner proves that service of the petition and the order fixing the date for hearing was made in compliance with this subdivision. The issue of compliance with this subdivision shall be deemed controverted by the lien claimant.

(f) In the event judgment is rendered in favor of the petitioner, the decree shall indicate all of the following:

(1) The date the lien was recorded.

(2) The county and city, if any, in which the lien was recorded.

(3) The book and page of the place in the official records where the lien is recorded.

(4) The legal description of the property affected. Upon the recordation of a certified copy of the decree, the property described in the decree shall be released from the lien.

(g) The prevailing party shall be entitled to attorneys' fees not to exceed two thousand dollars ($2,000).

(h) Nothing in this section shall be construed to bar any other cause of action or claim for relief by the owner of the property or an interest in the property, nor shall a decree canceling a claimant's lien bar the lien claimant from bringing any other cause of action or claim for relief, other than an action foreclosing the lien. However, no other action or claim shall be joined with the claim for relief established by this section.

(i) The provisions of Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure do not apply to causes commenced pursuant to this section.

CHAPTER 280

An act to amend Sections 45102 and 88002 of the Education Code, relating to classified school employees.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 45102 of the Education Code is amended to read:

45102. (a) For the purposes of this section every classified employee shall be deemed to be employed for 12 months during each school year regardless of the number of months in which he or she is normally in paid status.

(b) If, during a school year, it is necessary to assign a regular classified employee to perform an assignment or service in addition to his or her regular assignment, a school district shall pay the classified employee on a pro rata basis for the additional assignment or service, not less than the compensation and benefits that are applicable to the classification of the additional assignment or service during the school year, unless the school district has negotiated a contract that allows for a lesser pay scale. A school district shall inform a classified employee of the compensation and benefits of the additional assignment or service before the employee commences the additional assignment or service.

(c) A school district that, in any school year, maintains school sessions at times other than during the regular September–June

academic year shall assign for service during those times regular classified employees of the district.

(d) If it is necessary to assign classified employees not regularly so assigned to serve between the end of one academic year and the commencement of another, that assignment shall be made on the basis of qualifications for employment in each classification of service that is required.

(1) A school district may not require a classified employee whose regular yearly assignment for service excludes all, or any part of, the period between the end of the academic year in June to the beginning of the next academic year in September to perform services during that period.

(2) A classified employee shall, for services performed as provided in this subdivision, receive, on a pro rata basis, not less than the compensation and benefits that are applicable to the classification of the additional assignment or service during the regular academic year.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

SEC. 2. Section 88002 of the Education Code is amended to read:

88002. (a) For the purposes of this section, every classified employee shall be deemed to be employed for 12 months during each college year regardless of the number of months in which he or she is normally in paid status.

(b) If, during a college year, it is necessary to assign a regular classified employee to perform an assignment or service in addition to his or her regular assignment, a community college district shall pay the classified employee on a pro rata basis for the additional assignment or service, not less than the compensation and benefits that are applicable to the classification of the additional assignment or service during the regular college year, unless the community college district has negotiated a contract that allows for a lesser pay scale. A community college district shall inform a classified employee of the compensation and benefits of the additional assignment or service before the employee commences the additional assignment or service.

(c) A community college district that, in any college year, maintains school sessions at times other than during the regular academic year shall assign for service, during those times, regular classified employees of the district.

(d) If it is necessary to assign classified employees not regularly so assigned to serve between the end of one academic year and the commencement of another, the assignment shall be made on the basis of qualifications for employment in each classification of service that is required.

(1) A community college district may not require a classified employee whose regular yearly assignment for service excludes all, or any part of, the period between the end of the academic year to the beginning of the next academic year to perform services during that period.

(2) A classified employee, for services performed as provided in this subdivision, shall receive, on a pro rata basis, not less than the compensation and benefits that are applicable to the classification of the additional assignment or service during the regular academic year.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

CHAPTER 281

An act to amend Section 13952 of the Government Code, relating to victims of crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 13952 of the Government Code is amended to read:

13952. (a) An application for compensation shall be filed with the board in the manner determined by the board.

(b) (1) The application for compensation shall be verified under penalty of perjury by the individual who is seeking compensation, who may be the victim or derivative victim, or an individual seeking reimbursement for burial, funeral, or crime scene cleanup expenses pursuant to subdivision (i) of Section 13957. If the individual seeking compensation is a minor or is incompetent, the application shall be verified under penalty of perjury or on information and belief by the parent with legal custody, guardian, conservator, or relative caregiver of the victim or derivative victim for whom the application is made. However, if a minor seeks compensation only for expenses for medical, medical related, psychiatric, psychological, or other mental health counseling related services and the minor is authorized by statute to consent to those services, the minor may verify the application for compensation under penalty of perjury.

(2) For purposes of this subdivision, ''relative caregiver'' means a relative as defined in subdivision (i) of Section 6550 of the Family Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent.

(c) (1) The board may require submission of additional information supporting the application that is reasonably necessary to verify the application and determine eligibility for compensation.

(2) The staff of the board shall determine whether an application for compensation contains all of the information required by the board. If the staff determines that an application does not contain all of the required information, the staff shall communicate that determination to the applicant with a brief statement of the additional information required. The applicant, within 30 calendar days of being notified that the application is incomplete, may either supply the additional information or appeal the staff's determination to the board, which shall review the application to determine whether it is complete.

(d) (1) The board may recognize an authorized representative of the victim or derivative victim, who shall represent the victim or derivative victim pursuant to rules adopted by the board.

(2) For purposes of this subdivision, an ''authorized representative'' means any of the following:

(A) An attorney.

(B) If the victim or derivative victim is a minor or an incompetent adult, the legal guardian or conservator, or an immediate family member, parent, or relative caregiver who is not the perpetrator of the crime that gave rise to the claim.

(C) A victim assistance advocate certified pursuant to Section 13835.10 of the Penal Code.

(D) An immediate family member of the victim or derivative victim, who has written authorization by the victim or derivative victim, and who is not the perpetrator of the crime that gave rise to the claim.

(E) Other persons who shall represent the victim or derivative victim pursuant to rules adopted by the board.

(3) Except for attorney's fees awarded under this chapter, no authorized representative described in paragraph (2) shall charge, demand, receive, or collect any amount for services rendered under 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 strengthen the protections afforded to victims of crime at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 282

An act to amend Section 52482 of, and to add Section 52489 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 52482 of the Food and Agricultural Code is amended to read:

52482. Except as otherwise provided in Section 52486, it is unlawful for any person to ship, deliver, transport, or sell any agricultural or vegetable seed within this state which is within any of the following classes:

(a) Is not labeled in accordance with the provisions of this chapter. This subdivision does not, however, apply to any seed which is described in Section 52451.

(b) Contains prohibited noxious weed seed, subject to tolerances and methods of determination prescribed in the regulations which are adopted pursuant to this chapter. This subdivision does not, however, apply to any of the seed which is described in subdivisions (a) or (b) of Section 52451.

(c) Has a false or misleading labeling, or pertaining to which there has been a false or misleading advertisement.

(d) Is represented to be certified seed or registered seed, unless it has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of a seed-certifying agency which is officially recognized under the provisions of this chapter, if produced in this state, or under the provisions of the Federal Seed Act (7 U.S.C., Sec. 1551, et seq.), as enacted, and rules and regulations which are adopted pursuant to that act, if produced outside of this state.

(e) Contains more than $1^1/_2$ percent by weight of all weed seeds. This subdivision does not, however, apply to any seed which is described in subdivision (a),(b), or (c) of Section 52451.

(f) To sell, by variety name, seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the United States Plant Variety Protection Act

(84 Stats 1542; 7 U.S.C. Sec. 2321, et seq.) specifies sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of the owner of the variety.

SEC. 2. Section 52489 is added to the Food and Agricultural Code, to read:

52489. It is unlawful for any person to violate the provisions of the United States Plant Variety Protection Act contained in Part J (commencing with Section 2531), Part K (commencing with Section 26510), or Part L (commencing with Section 2561) of Subchapter III of Chapter 57 of Title 7 of the United States Code, as enacted.

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 283

An act to amend Sections 27541, 27551, and 27553 of, and to add Sections 27503.5, 27519.5, 27680, 27681, 27682, 27683, 27684, 27685, 27686, 27687, 27688, 27688.5, 27689, and 27690 to, the Food and Agricultural Code, relating to eggs.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 27503.5 is added to the Food and Agricultural Code, to read:

27503.5. ''California egg'' means an egg produced in this state.

SEC. 2. Section 27519.5 is added to the Food and Agricultural Code, to read:

27519.5. ''Shipped egg'' means an egg that is produced outside the State of California and shipped into the state for purposes of resale or use by a direct user.

SEC. 3. Section 27541 of the Food and Agricultural Code is amended to read:

27541. Any person engaged in business in this state as an egg producer or egg handler, or any out-of-state egg handler or egg producer selling eggs into California, shall register with the secretary. A new registration shall be submitted if any current information changes.

SEC. 4. Section 27551 of the Food and Agricultural Code is amended to read:

27551. The following persons shall pay to the secretary a maximum fee of five cents ($0.05) for each 30 dozens of eggs sold as provided below:

(a) California egg handlers shall pay the fee on all egg sales from their own production, on eggs purchased or acquired from California egg producers, and on eggs processed into egg products. California egg handlers shall not pay a fee on eggs purchased from out-of-state egg handlers or egg producers.

(b) California egg producers shall pay the fee on all egg sales to anyone not registered under this chapter as an egg handler, to out-of-state purchasers, and to egg breaking plants.

(c) Out-of-state egg handlers and producers shall report and pay the fee on egg sales into California sold to a retailer, producer, handler, or breaking plant.

(d) Shipments of eggs which are accompanied by a United States Department of Agriculture certificate of grade and sold to the federal government or its agencies are exempt from these fees.

(e) Eggs sold to household consumers on the premises where produced from a total flock size of 500 hens or less are exempt from these fees.

(f) The assessment provided for in this section shall only be paid once on any particular egg.

SEC. 5. Section 27553 of the Food and Agricultural Code is amended to read:

27553. The secretary may, by regulation, prescribe the frequency of payment of assessments, the procedures for payment, the procedures for refunds of payment, and penalties for late payment. However, the department may triple the assessment for any eggs for which the required payment has not been made by the established due date. If a triple assessment is less than five hundred dollars ($500), the assessment shall be five hundred dollars ($500).

SEC. 6. Section 27680 is added to the Food and Agricultural Code, to read:

27680. If the grade determination and size determination required by this chapter or performed at a location outside of this state, the records relating to eggs of any person registered under this chapter at that location shall be subject to inspection by the department as the department considers necessary. The department may contract with

another agency of state government or with a state department of agriculture or other similar agency where the out-of-state registrant is domiciled to conduct the inspection.

SEC. 7. Section 27681 is added to the Food and Agricultural Code, to read:

27681. A registrant whose out-of-state location is inspected shall reimburse the department for actual and necessary expenses incurred during the inspection. If an out-of-state registrant fails to pay the expenses before the 11th day on which the registrant received an invoice from the department, the department may:

(a) Automatically cancel the person's registration.

(b) Deny a registration to any person who is connected with a person whose registration is canceled because of a violation of this section.

(c) Issue an order to stop the sale of all eggs shipped into California from the registrant.

SEC. 8. Section 27682 is added to the Food and Agricultural Code, to read:

27682. The actual and necessary expenses of the department for each inspection of an out-of-state location may not exceed either of the following:

(a) The actual and necessary expenses, not to exceed the state's per diem, for food, lodging, and local transportation of the inspector and the cost of the least expensive available space round-trip airfare from Sacramento to the location to be inspected.

(b) Any contract fees charged to perform the inspection by another state agency or an agricultural agency in the state where the registrant is domiciled.

SEC. 9. Section 27683 is added to the Food and Agricultural Code, to read:

27683. The department shall attempt to schedule as many out-of-state inspections as feasible within an area on each inspection trip. If more than one registrant is inspected in an area during an inspection trip, the expenses of the trip shall be divided proportionately among the registrants based upon the amount of time spent on each registrant's audit.

SEC. 10. Section 27684 is added to the Food and Agricultural Code, to read:

27684. The department shall perform sufficient inspections of the records of out-of-state registrants to ensure that out-of-state registrants selling eggs into California pay the appropriate fees as required by Section 27551.

SEC. 11. Section 27685 is added to the Food and Agricultural Code, to read:

27685. Before receiving a registration as required by this chapter, an applicant whose home office or principal place of business is outside of this state shall file with the department the name of an agent in this state who is authorized to receive service of process in actions by the state or the department in the enforcement of this chapter.

SEC. 12. Section 27686 is added to the Food and Agricultural Code, to read:

27686. All shipped eggs must be transported under refrigeration in compliance with California statutes and regulations.

SEC. 13. Section 27687 is added to the Food and Agricultural Code, to read:

27687. (a) If the department determines that eggs are not in compliance with this chapter or that they have been shipped without the handler or producer first securing the required registration and being current on the payment of the appropriate fees, the department shall issue and enforce an order to stop the sale of the eggs.

(b) A person may not sell eggs on which a stop-sale order has been issued until the department determines that the eggs and the handler or producer are in compliance with this chapter. Eggs that are in compliance with this chapter, but for which the handler or producer have not secured the required registration and paid the appropriate fees, may only be sold or moved under the specific direction of the secretary.

(c) With respect to eggs that are not in compliance with this chapter and on which a stop-sale order has been issued, the seller may submit the eggs for reinspection to an authorized state or county enforcement officer. If on reinspection the eggs fail to meet the specification of the grades with which they are labeled, the seller must remark or repackage the eggs to meet the specifications for their actual grades before calling for reinspection. Repackaged eggs must be labeled with the original sell by date.

SEC. 14. Section 27688 is added to the Food and Agricultural Code, to read:

27688. Each registrant shall submit a report as designated by the department and remit any fees due on a monthly basis. The report is due no later than the 30th day following the month of delivery to California. Each registrant shall keep a copy of this report on file at the registered facility for a period of three years.

SEC. 14.5. Section 27688.5 is added to the Food and Agricultural Code, to read:

27688.5. Any out-of-state registrant who fails to promptly submit required reports or pay required fees is subject to the criminal penalties specified in this chapter. A violation of this section is also subject to a civil or administrative penalty not to exceed five hundred dollars ($500) per violation. Each day a violation continues may be considered a

separate violation for purposes of penalty assessment. The department may also seek appropriate injunctive relief.

SEC. 15. Section 27689 is added to the Food and Agricultural Code, to read:

27689. The report required by Section 27688 shall give a complete breakdown of all sales of graded and ungraded eggs into California, listing the individual plant or person to whom eggs were sold and indicating whether these eggs were sold on a graded or ungraded basis. A check or money order in the amount of the fee as required by this chapter on all eggs shipped into California on a graded basis shall accompany the report.

SEC. 16. Section 27690 is added to the Food and Agricultural Code, to read:

27690. All brokers registered with California shall itemize in their reports a true and complete list of all eggs brokered into and in California. This list shall include the name and address of all persons from whom eggs were purchased, to whom they were sold, and the amount of eggs involved in each transaction. Furthermore, the broker shall indicate whether the eggs involved in the transaction were graded or ungraded.

SEC. 17. 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.

With respect to other duties imposed by this act, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for 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 the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 284

An act to amend Section 36 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275 of the Statutes of 1949), relating to water.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 36 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275 of the Statutes of 1949) is amended to read:

Sec. 36. Notwithstanding any other provisions of this act, the following shall apply with respect to the establishment, government, operation, and financing of any zone lying, in whole or in part, in Pleasanton or Murray Townships:

1. The board of supervisors shall have no authority to proceed with the establishment of any zone lying, in whole or in part, in Pleasanton or Murray Townships without first obtaining the approval thereof by a vote of a majority of the qualified electors voting at a regular or special election on the proposition. The election shall be held, as nearly as practicable, in accordance with the general election laws of the state, and the cost thereof shall be reimbursed to the district if a zone is established.

2. Any zone established by the board of supervisors under the provisions of this act lying, in whole or in part, in Pleasanton or Murray Townships, shall be governed and controlled by a board of seven directors elected by the qualified electors residing within the boundaries of the zone.

The term of directors shall be four years. Elections for directors shall be consolidated with the direct primary election in each even-numbered year. Terms of office shall commence July 1st of the year in which elected.

Vacancies in the membership of a board shall be filled for the unexpired term by appointment by a majority of the remaining members of the board.

The directors shall be elected at large and, except as provided herein, the election of the directors shall be conducted in substantially the same manner as provided by the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10 of the Elections Code), except that the time for the nomination of candidates and issuance of notices in connection therewith shall be at the times provided by general law for the nomination of candidates at the direct primary election.

The directors shall be residents of the proposed zone and qualified electors and owners of real property therein.

The board of directors may authorize each director to receive compensation not exceeding fifty dollars ($50) for each meeting of the board attended by the director, not exceeding four meetings in any

calendar month, and his or her actual and necessary expenses incurred in performance of official duties under this act, payable from the funds of the zone.

3. The board of directors of any zone in which directors have been elected as provided in this act shall have the power to make and enforce all needful rules and regulations for the administration and government of the zone. The zone board may appoint a chairperson, a secretary, and other officers, agents and employees for the zone board, or zone that, in its judgment, may be deemed necessary, prescribe their duties, and fix their compensation. The officers, agents, and employees shall be appointed under and pursuant to the civil service rules and regulations of the County of Alameda. However, the chairperson and secretary of the board, and experts, consultants, or technical or other advisers for particular purposes and laborers, employed for a temporary period, may be appointed by the zone board without reference to any classified civil service list.

4. Notwithstanding any other provision of this act, the zone board elected pursuant to this section shall govern and control, in accordance with this act and without further action by the district board, all matters that relate only to the zone established pursuant to this section. All matters that relate both to a zone established pursuant to this section and to another portion of the district shall be approved by both the zone board and the district board.

5. In any zone in which a board of directors has been elected, the tax or assessment for any purpose or purposes, other than administrative costs and expenses of the district, shall be based upon a budget or budgets prepared by, or under the direction of, the zone board of directors.

The taxes and assessments (other than the tax to pay the general administrative costs and expenses of the district and other than any taxes, assessments, or fees levied for improvement districts or pursuant to Sections 12.1, 12.2, and 16 of this act to pay bonds and interest thereon) levied by the board pursuant to Section 12 of this act upon any property in any zone lying, in whole or in part, in Pleasanton or Murray Townships shall not exceed in the aggregate the sum of fifteen cents ($0.15) on each one hundred dollars ($100) of assessed valuation unless a larger tax has been approved by a vote of not less than a majority of the qualified electors voting upon the proposition to increase the tax.

Notwithstanding any other provisions of this section, taxes and assessments may be levied by the board after approval by the zone board, pursuant to Sections 12 or 12.1 of this act, upon any property in the zone for the purpose of making payments to the State of California for the construction, maintenance, repair, and operation and all other costs of the zone's prorated share of state water facilities.

6. The amount of bonded indebtedness outstanding at any time shall not exceed 5 percent of the assessed valuation of all taxable property in any zone lying, in whole or in part, in Pleasanton or Murray Townships.

CHAPTER 285

An act to add Section 30607.7 to the Public Resources Code, relating to public resources.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 30607.7 is added to the Public Resources Code, to read:

30607.7. (a) A coastal development permit for sand replenishment requires the project applicant to provide onsite monitoring and supervision during the implementation of the permit.

(b) A permit subject to subdivision (a) may not be issued until the project applicant provides the issuing agency with a plan for onsite monitoring and supervision during the implementation of the permit.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 286

An act to amend Section 25247 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 25247 of the Health and Safety Code is amended to read:

25247. (a) The department shall review each plan submitted pursuant to Section 25246 and shall approve the plan if it finds that the plan complies with the regulations adopted by the department and complies with all other applicable state and federal regulations.

(b) The department shall not approve the plan until at least one of the following occurs:

(1) The plan has been approved pursuant to Section 13227 of the Water Code.

(2) Sixty days expire after the owner or operator of an interim status facility submits the plan to the department. If the department denies approval of a plan for an interim status facility, this 60-day period shall not begin until the owner or operator resubmits the plan to the department.

(3) The director finds that immediate approval of the plan is necessary to protect public health, safety, or the environment.

(c) Any action taken by the department pursuant to this section is subject to Section 25204.5.

(d) (1) To the extent consistent with the federal act, the department shall impose the requirements of a hazardous waste facility postclosure plan on the owner or operator of a facility through the issuance of an enforcement order, entering into an enforceable agreement, or issuing a postclosure permit.

(A) A hazardous waste facility postclosure plan imposed or modified pursuant to an enforcement order, a permit, or an enforceable agreement shall be approved in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) Before the department initially approves or significantly modifies a hazardous waste facility postclosure plan pursuant to this subdivision, the department shall provide a meaningful opportunity for public involvement, which, at a minimum, shall include public notice and an opportunity for public comment on the proposed action.

(C) For the purposes of subparagraph (B), a ''significant modification'' is a modification that the department determines would constitute a class 3 permit modification if the change were being proposed to a hazardous waste facilities permit. In determining whether the proposed modification would constitute a class 3 modification, the department shall consider the similarity of the modification to class 3 modifications codified in Appendix I of Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations. In determining whether the proposed modification would constitute a class 3 modification, the department shall also consider whether there is significant public concern about the proposed modification, and whether the proposed change is so substantial or

complex in nature that the modification requires the more extensive procedures of a class 3 permit modification.

(2) This subdivision does not limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety.

(3) If the department imposes a hazardous waste facility postclosure plan in the form of an enforcement order or enforceable agreement, in lieu of issuing or renewing a postclosure permit, the owner or operator who submits the plan for approval shall, at the time the plan is submitted, pay the same fee specified in subparagraph (F) of paragraph (1) of subdivision (d) of Section 25205.7, or enter into a cost reimbursement agreement pursuant to subdivision (a) of Section 25205.7 and upon commencement of the postclosure period shall pay the fee required by paragraph (9) of subdivision (c) of Section 25205.4. For purposes of this paragraph and paragraph (9) of subdivision (c) of Section 25205.4, the commencement of the postclosure period shall be the effective date of the postclosure permit, enforcement order, or enforceable agreement.

(4) In addition to any other remedy available under state law to enforce a postclosure plan imposed in the form of an enforcement order or enforcement agreement, the department may take any of the following actions:

(A) File an action to enjoin a threatened or continuing violation of a requirement of the enforcement order or agreement.

(B) Require compliance with requirements for corrective action or other emergency response measures that the department deems necessary to protect human health and the environment.

(C) Assess or file an action to recover civil penalties and fines for a violation of a requirement of an enforcement order or agreement.

(e) Subdivision (d) does not apply to a postclosure plan for which a final or draft permit has been issued by the department on or before December 31, 2003, unless the department and the facility mutually agree to replace the permit with an enforcement order or enforceable agreement pursuant to the provisions of subdivision (d).

(f) (1) Except as provided in paragraphs (2) and (3), the department may only impose postclosure plan requirements through an enforcement order or an enforceable agreement pursuant to subdivision (d) until January 1, 2007.

(2) This subdivision does not apply to an enforcement order or enforceable agreement issued prior to January 1, 2007, or an order or agreement for which a public notice is issued on or before January 1, 2007.

(3) This subdivision does not apply to the modification on or after January 1, 2007, of an enforcement order or enforceable agreement that meets the conditions in paragraph (2).

(g) If the department determines that a postclosure permit is necessary to enforce a postclosure plan, the department may, at any time, rescind and replace an enforcement order or an enforceable agreement issued pursuant to this section by issuing a postclosure permit for the hazardous waste facility, in accordance with the procedures specified in the department's regulations for the issuance of postclosure permits.

(h) Nothing in this section may be construed to limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety, or the environment.

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 287

An act to add Section 1788.18 to the Civil Code, relating to debt collection.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 1788.18 is added to the Civil Code, to read:

1788.18. (a) Upon receipt from a debtor of all of the following, a debt collector shall cease collection activities until completion of the review provided in subdivision (d):

(1) A copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt being collected by the debt collector.

(2) The debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector.

(b) The written statement described in paragraph (2) of subdivision (a) shall consist of any of the following:

(1) A Federal Trade Commission's Affidavit of Identity Theft.

(2) A written statement containing the content of the Identity Theft Victim's Fraudulent Account Information Request offered to the public by the California Office of Privacy Protection.

(3) A written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting the certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor. The statement shall contain or be accompanied by, the following, to the extent that an item listed below is relevant to the debtor's allegation of identity theft with respect to the debt in question:

(A) A statement that the debtor is a victim of identity theft.

(B) A copy of the debtor's driver's license or identification card, as issued by the state.

(C) Any other identification document that supports the statement of identity theft.

(D) Specific facts supporting the claim of identity theft, if available.

(E) Any explanation showing that the debtor did not incur the debt.

(F) Any available correspondence disputing the debt after transaction information has been provided to the debtor.

(G) Documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred.

(H) A telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.

(I) To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible.

(J) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.

(K) The certification required pursuant to this paragraph shall be sufficient if it is in substantially the following form:

"I certify the representations made are true, correct, and contain no material omissions of fact.

_____ _____"

(Date and Place) (Signature)

(c) If a debtor notifies a debt collector orally that he or she is a victim of identity theft, the debt collector shall notify the consumer, orally or

in writing, that the debtor's claim must be in writing. If a debtor notifies a debt collector in writing that he or she is a victim of identity theft, but omits information required pursuant to subdivision (a) or, if applicable, the certification required pursuant to paragraph (3) of subdivision (b), if the debt collector does not cease collection activities, the debt collector shall provide written notice to the debtor of the additional information that is required, or the certification required pursuant to paragraph (3) of subdivision (b), as applicable or send the debtor a copy of the Federal Trade Commission's Affidavit of Identity Theft form.

(d) Upon receipt of the complete statement and information described in subdivision (a), the debt collector shall review and consider all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor. The debt collector may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector's determination shall be made in a manner consistent with the provisions of 15 U.S.C. Sec. 1692f(1), as incorporated by Section 1788.17. The debt collector shall notify the consumer in writing of that determination and the basis for that determination before proceeding with any further collection activities. The debt collector's determination shall be based on all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor.

(e) No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, shall arise if the debt collector decides after the review described in subdivision (d) to cease or recommence the debt collection activities. The exercise or nonexercise of rights under this section is not a waiver of any other right or defense of the debtor or debt collector.

(f) The statement and supporting documents that comply with subdivision (a) may also satisfy, to the extent those documents meet the requirements of, the notice requirement of paragraph (5) of subdivision (c) of Section 1798.93.

(g) A debt collector who ceases collection activities under this section and does not recommence those collection activities, shall do all of the following:

(1) If the debt collector has furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information.

(2) Notify the creditor that debt collection activities have been terminated based upon the debtor's claim of identity theft.

(h) A debt collector who has possession of documents that the debtor is entitled to request from a creditor pursuant to Section 530.8 of the Penal Code is authorized to provide those documents to the debtor.

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 288

An act to amend Section 65865 of the Government Code, relating to development projects.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 65865 of the Government Code is amended to read:

65865. (a) Any city, county, or city and county, may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in this article.

(b) Any city may enter into a development agreement with any person having a legal or equitable interest in real property in unincorporated territory within that city's sphere of influence for the development of the property as provided in this article. However, the agreement shall not become operative unless annexation proceedings annexing the property to the city are completed within the period of time specified by the agreement. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

(c) Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the property owner or other person having a legal or equitable interest in the property.

(d) A city, county, or city and county may recover from applicants the direct costs associated with adopting a resolution or ordinance to establish procedures and requirements for the consideration of development agreements.

(e) For any development agreement entered into on or after January 1, 2004, a city, county, or city and county shall comply with Section 66006 with respect to any fee it receives or cost it recovers pursuant to this article.

CHAPTER 289

An act to amend Section 7031 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 7031 of the Business and Professions Code is amended to read:

7031. (a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

(c) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(d) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing in this subdivision shall require any person or entity

controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, notwithstanding subdivision (b) of Section 143, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, (3) did not know or reasonably should not have known that he or she was not duly licensed when performance of the act or contract commenced, and (4) acted promptly and in good faith to reinstate his or her license upon learning it was invalid.

(f) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (e) shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom, except that the amendments to subdivisions (e) and (f) enacted during the 1994 portion of the 1993–94 Regular Session of the Legislature shall not apply to either of the following:

(1) Any legal action or arbitration commenced prior to January 1, 1995, regardless of the date on which the parties entered into the contract.

(2) Any legal action or arbitration commenced on or after January 1, 1995, if the legal action or arbitration was commenced prior to January 1, 1995, and was subsequently dismissed.

SEC. 2. The Legislature finds and declares that the changes made by this act do not constitute a change in, but are declaratory of, existing law.

CHAPTER 290

An act to amend Section 714 of the Civil Code, relating to solar energy.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also 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.

(d) For the purposes of this section:

(1) ''Significantly'' means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(2) ''Solar energy system'' has the same meaning as defined in Section 801.5.

(e) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages

occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from such a grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

CHAPTER 291

An act to amend Sections 3033, 3951, 4181, 12000, 12002.2, and 12155.5 of, and to add Section 3952 to, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 3033 of the Fish and Game Code is amended to read:

3033. (a) The department shall, upon application and payment of a fee, issue a reduced fee hunting license, that authorizes the licensee to take any bird or mammal as otherwise authorized pursuant to this code and regulations adopted pursuant thereto, to a disabled veteran, as defined in subdivision (b), who has not been convicted of any violation of this code. The base license fee for a reduced fee hunting license shall be four dollars ($4) for the hunting license year beginning on July 1, 1995, and, for the following years, this license fee may be annually reviewed and adjusted in accordance with Section 713.

(b) ''Disabled veteran'' means a person having a 50 percent or greater service-connected disability and an honorable discharge from military service. The person shall be eligible upon presentation of proof of an honorable discharge from military service and proof of the disability. Proof of the disability shall be by certification from the United States Department of Veterans Affairs or by presentation of a license issued pursuant to this section in the preceding license year.

SEC. 2. Section 3951 of the Fish and Game Code is amended to read:

3951. The commission may authorize the taking of tule elk pursuant to Section 332. When relocating tule elk, the department shall relocate the elk in areas suitable to them in the state and shall cooperate to the maximum extent possible with federal and local agencies and private property owners in relocating tule elk in suitable areas under their jurisdiction or ownership. When property or environmental damage occurs, emphasis shall be placed on managing each tule elk herd at a biologically sound level through the use of relocation, regulated hunting, or other appropriate methods, individually or in combination, as determined by the department in accordance with the statewide elk management plan developed pursuant to Section 3952, after consulting with local landowners.

The number of tule elk in the Owens Valley shall not be permitted to increase beyond 490, or any greater number hereafter determined by the department to be the Owens Valley's holding capacity in accordance with game management principles.

SEC. 3. Section 3952 is added to the Fish and Game Code, to read:

3952. The department shall develop a statewide elk management plan, consistent with the state's wildlife policy as set forth in Section 1801. The statewide elk management plan shall emphasize maintaining sufficient elk populations in perpetuity, while considering all of the following:

(a) Characteristics and geographic range of each elk subspecies within the state, including Roosevelt elk, Rocky Mountain elk, and tule elk.

(b) Habitat conditions and trends within the state.

(c) Major factors affecting elk within the state, including, but not limited to, conflicts with other land uses.

(d) Management activities necessary to achieve the goals of the plan and to alleviate property damage.

(e) Identification of high priority areas for elk management.

(f) Methods for determining population viability and the minimum population level needed to sustain local herds.

(g) Description of the necessary contents for individual herd management plans prepared for high priority areas.

SEC. 4. Section 4181 of the Fish and Game Code is amended to read:

4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, or gray squirrels, may apply to the department for a permit to kill the mammals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the

taking and disposition of the mammals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Mammals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.

(b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following facts:

(1) Why the issuance of the permit was necessary.

(2) What efforts were made to solve the problem without killing the bears.

(3) What corrective actions should be implemented to prevent reoccurrence.

(c) With respect to wild pigs, the department shall provide an applicant for a depredation permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of Section 4181.1 with written information that sets forth available options for wild pig control, including, but not limited to, depredation permits, allowing periodic access to licensed hunters, and holding special hunts authorized pursuant to Section 4188. The department may maintain and make available to these persons lists of licensed hunters interested in wild pig hunting and lists of nonprofit organizations that are available to take possession of depredating wild pig carcasses.

(d) With respect to elk, the following procedures shall apply:

(1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all of the following:

(A) Verify the actual or immediately threatened damage or destruction.

(B) Provide a written summary of corrective measures necessary to immediately alleviate the problem.

(C) Determine the viability of the local herd, and determine the minimum population level needed to maintain the herd.

(D) Ensure the permit will not reduce the local herd below the minimum.

(E) Work with affected landowners to develop measures to achieve long-term resolution, while maintaining viability of the herd.

(2) After completing the statewide elk management plan pursuant to Section 3952, the department shall use the information and methods

contained in the plan to meet the requirements of subparagraphs (C), (D), and (E) of paragraph (1).

SEC. 5. Section 12000 of the Fish and Game Code is amended to read:

12000. (a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor.

(b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations, as those statutes or regulations read on January 1, 2003, is guilty of an infraction punishable by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000), or of a misdemeanor:

(1) Subdivision (a) of Section 6596.

(2) Section 7149.8.

(3) Section 7360.

(4) Section 1.74 of Title 14 of the California Code of Regulations.

(5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations.

(6) Sections 27.56, 27.65, and 27.70 of Title 14 of the California Code of Regulations.

(7) Sections 27.85 to 30.10, inclusive, of Title 14 of the California Code of Regulations.

(8) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations.

(9) Sections 550 to 553, inclusive, of Title 14 of the California Code of Regulations.

(10) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations.

SEC. 6. Section 12002.2 of the Fish and Game Code is amended to read:

12002.2. (a) Notwithstanding any other provision of law, a violation of Section 7145 or of a regulation requiring a license to be displayed is an infraction, punishable by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000) for a first offense. If a person is convicted of a violation of Section 7145 or of a regulation requiring a license to be displayed within five years of a separate offense resulting in a conviction of a violation of Section 7145 or of a regulation requiring a license to be displayed, that person shall be punished by a fine of not less than two hundred fifty dollars ($250) or more than one thousand dollars ($1,000).

(b) If a person is convicted of a violation of Section 7145 or of a regulation requiring a license to be displayed and produces in court a license issued pursuant to Section 7145 and valid at the time of the person's arrest, and if the taking was otherwise lawful with respect to

season, limit, time, and area, the court may reduce the fine imposed for the violation of Section 7145 or of the regulation requiring a license to be displayed to twenty-five dollars ($25).

(c) If a person is charged with a violation of Section 7145 or of a regulation requiring a license to be displayed, and produces in court a lifetime sport fishing license or lifetime sportsman's license issued in his or her name pursuant to Section 714, and if the taking was otherwise lawful, in terms of season, limit, time, and area, the court may dismiss the charge.

(d) A person shall not be charged or convicted for both a violation of Section 7145 and a regulation requiring a license to be displayed for the same act.

SEC. 7. Section 12155.5 of the Fish and Game Code is amended to read:

12155.5. (a) The commission shall adopt regulations and procedures governing the revocation or suspension of hunting or sport fishing privileges. The regulations shall provide for notice and opportunity for a hearing.

(b) Any person, whose license was revoked pursuant to Section 12154, 12155, or 12156, may appeal to the commission for reissuance of the license and termination of the prohibition against the taking of fish, reptiles, amphibia, or birds or mammals.

(c) After a public hearing at which the person has appeared in person, the commission may terminate the prohibition and authorize the issuance of a license if it finds that there are sufficient mitigating circumstances to warrant that action.

(d) It is unlawful for a person whose hunting or sport fishing privileges have been revoked or suspended to obtain or attempt to obtain, or to possess a hunting or sport fishing license, permit, or tag during that suspension or revocation period.

(e) Any person who violates subdivision (d) is guilty of an infraction punishable by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000), or of a misdemeanor.

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 292

An act to amend Sections 35021.5 and 72330 of the Education Code, to amend Section 18124 of the Health and Safety Code, to amend Section 830.6 of the Penal Code, and to amend Sections 2806, 4453.6, 4460, 22855, 27900, 34507.5, 35790.1, and 40600 of the Vehicle Code, relating to peace officers.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 35021.5 of the Education Code is amended to read:

35021.5. (a) The governing board of a school district may establish a school police reserve officer corps to supplement a police department established pursuant to Section 38000. Any person deputized by a school district as a school police reserve officer shall complete the training prescribed by Section 832.2 of the Penal Code.

(b) It is the intent of the Legislature to allow school districts to use volunteer school police reserve officers to the extent necessary to provide a safe and secure school environment.

SEC. 2. Section 72330 of the Education Code is amended to read:

72330. (a) The governing board of a community college district may establish a community college police department under the supervision of a community college chief of police and, in accordance with Chapter 4 (commencing with Section 88000) of Part 51, may employ personnel as necessary to enforce the law on or near the campus of the community college and on or near other grounds or properties owned, operated, controlled, or administered by the community college or by the state acting on behalf of the community college. Each campus of a multicampus community college district may designate a chief of police.

(b) The governing board of a community college district that establishes a community college police department under subdivision (a) may also establish a police reserve officer program to supplement that police department.

(c) Persons employed and compensated as members of a community college police department, when so appointed and duly sworn, are peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(d) The governing board of a community college district that establishes a community college police department shall set minimum qualifications of employment for the community college chief of police,

including, but not limited to, prior employment as a peace officer or completion of any peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or chief of police shall be required to comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or chief of police by the community college district, whichever occurs later. This subdivision may not be construed to require the employment by a community college district of any additional personnel.

SEC. 3. Section 18124 of the Health and Safety Code is amended to read:

18124. The department, the Department of the California Highway Patrol, or any regularly employed and salaried police officer or deputy sheriff, or any reserve police officer or reserve deputy sheriff, may take possession of any certificate, card, permit, transportation decal, or registration decal issued under this part which has expired, been revoked, canceled, or suspended; which is fictitious, or which has been unlawfully or erroneously issued or affixed.

This section shall not be applicable to any insignia issued pursuant to Section 18026 or to any manufactured home or mobilehome label issued pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.).

Any document or decal seized shall be expeditiously delivered to the department with a brief written explanation of the circumstances.

SEC. 4. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a regional park district or of a transit district, a reserve park ranger, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve deputy of the Department of Fish and Game, a reserve special agent of the Department of Justice, a reserve officer of a community service district which is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, a reserve officer of a school district police department under Section 35021.5 of the Education Code, a reserve officer of a community college police department under Section 72330, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section 832.6. The authority of a person designated as a peace officer

pursuant to this paragraph extends only for the duration of the person's specific assignment. A reserve park ranger or a transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve park ranger, a reserve police officer of a regional park district, transit district, community college district, or school district, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve officer of a community service district that is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1. A transit, harbor, or port district reserve police officer, or a city or county reserve peace officer who is not provided with the powers and duties authorized by Section 830.1, has the powers and duties authorized in Section 830.33, or in the case of a reserve park ranger, the powers and duties that are authorized in Section 830.31, and a school district reserve police officer or a community college district reserve police officer has the powers and duties authorized in Section 830.32.

(b) Whenever any person designated by a Native American tribe recognized by the United States Secretary of the Interior is deputized or appointed by the county sheriff as a reserve or auxiliary sheriff or a reserve deputy sheriff, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by the county sheriff, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer as provided by Section 830.1.

(c) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person is vested with the powers of a peace officer that are expressly delegated to him or her by the summoning

officer or that are otherwise reasonably necessary to properly assist the officer.

SEC. 5. Section 2806 of the Vehicle Code is amended to read:

2806. Any regularly employed and salaried police officer or deputy sheriff, or any reserve police officer or reserve deputy sheriff listed in Section 830.6 of the Penal Code, having reasonable cause to believe that any vehicle or combination of vehicles is not equipped as required by this code or is in any unsafe condition as to endanger any person, may require the driver to stop and submit the vehicle or combination of vehicles to an inspection and those tests as may be appropriate to determine the safety to persons and compliance with the code.

SEC. 6. Section 4453.6 of the Vehicle Code is amended to read:

4453.6. On request of any member of the California Highway Patrol, any regularly employed and salaried police officer or deputy sheriff, or any reserve police officer or reserve deputy sheriff listed in Section 830.6 of the Penal Code, or any employee or officer of the department specified in Section 1655, who is conducting an investigation of a public offense, the lessor of a vehicle shall furnish the name and address of the lessee of a vehicle if that information does not appear on the registration card.

SEC. 7. Section 4460 of the Vehicle Code is amended to read:

4460. (a) The Department of Motor Vehicles, the Traffic Adjudication Board, and the Department of the California Highway Patrol, any regularly employed and salaried police officer or deputy sheriff or any reserve police officer or reserve deputy sheriff listed in Section 830.6 of the Penal Code may take possession of any certificate, card, placard, permit, license, or license plate issued under this code, upon expiration, revocation, cancellation, or suspension thereof or which is fictitious or which has been unlawfully or erroneously issued. Any license plate which is not attached to the vehicle for which issued, when and in the manner required under this code, may be seized, and attachment to the proper vehicle may be made or required.

(b) Any document, placard, or license plate seized shall be delivered to the Department of Motor Vehicles.

SEC. 8. Section 22855 of the Vehicle Code is amended to read:

22855. The following persons shall have the authority to make appraisals of the value of vehicles for purposes of this chapter, subject to the conditions stated in this chapter:

(a) Any peace officer of the Department of the California Highway Patrol designated by the commissioner.

(b) Any regularly employed and salaried deputy sheriff, any reserve deputy sheriff listed under Section 830.6 of the Penal Code, or any other employee designated by the sheriff of any county.

(c) Any regularly employed and salaried police officer, any reserve police officer listed under Section 830.6 of the Penal Code, or any other employee designated by the chief of police of any city.

(d) Any officer or employee of the Department of Motor Vehicles designated by the director of that department.

(e) Any regularly employed and salaried police officer, or reserve police officer, or other employee of the University of California Police Department designated by the chief of the department.

(f) Any regularly salaried employee of a city, county, or city and county designated by a board of supervisors or a city council pursuant to subdivision (a) of Section 22669.

(g) Any regularly employed and salaried police officer, or reserve police officer, or other employee of the police department of a California State University designated by the chief thereof.

(h) Any regularly employed and salaried security officer or other employee of a transit district security force designated by the chief thereof.

(i) Any regularly employed and salaried peace officer, or reserve peace officer, or other employee of the Department of Parks and Recreation designated by the director of that department.

SEC. 9. Section 27900 of the Vehicle Code is amended to read:

27900. (a) Every motor vehicle or combination of vehicles used to carry the property of others for hire or used to carry passengers for hire, any truck or truck tractor having three or more axles or any truck tractor with a semitrailer, and all commercial motor vehicles, as defined in subdivision (c) of Section 34601, shall have displayed on both sides of each vehicle or on both sides of one of the vehicles in each combination of vehicles the name or trademark of the person under whose authority the vehicle or combination of vehicles is being operated.

(b) A vehicle or combination of vehicles listed in subdivision (a) that is operated under a rental agreement with a term of not more than 30 calendar days shall meet all of the following requirements:

(1) Have displayed on both sides of each vehicle or on both sides of one of the vehicles in each combination of vehicles the name or trademark of the lessor.

(2) Have displayed on both sides of each vehicle or on both sides of one of the vehicles in each combination of vehicles any of the following numbers issued to the lessor:

(A) The carrier identification number issued by the United States Department of Transportation.

(B) A valid operating authority number.

(C) A valid motor carrier of property number.

(3) (A) Have in the vehicle or combination of vehicles a copy of the rental agreement entered into by the lessor and the vehicle operator.

(B) The rental agreement shall be available for inspection immediately upon the request of any authorized employee of the department or any regularly employed and salaried police officer or deputy sheriff, or any reserve police officer or reserve deputy sheriff listed in Section 830.6 of the Penal Code.

(C) If the rented vehicle or combination of vehicles is operated in conjunction with a commercial enterprise, the rental agreement shall include the operator's carrier identification number or motor carrier of property permit number.

(c) A vehicle or combination of vehicles that is in compliance with Section 390.21 of Title 49 of the Code of Federal Regulations shall be deemed to be in compliance with subdivision (b).

(d) All names, trademarks, and other identifiers for companies no longer in business, no longer operating with the same name, or no longer operating under the same operating authority, shall be removed from or covered over on every motor vehicle or combination of vehicles listed in subdivision (a), within 60 days from the change of company ownership or operation. Those vehicles or combinations of vehicles shall be remarked pursuant to subdivision (a) before they may be operated on the highways.

SEC. 10. Section 34507.5 of the Vehicle Code is amended to read:

34507.5. (a) Every motor carrier, as defined in Section 408, and every motor carrier of property, and for-hire motor carrier of property, as defined in Section 34601, shall obtain a carrier identification number from the department. Application for a carrier identification number shall be on forms furnished by the department. Information provided in connection with applications for carrier identification numbers shall be updated by motor carriers upon request from the department.

(b) The carrier identification number assigned to the motor carrier under whose operating authority or motor carrier permit the vehicle or combination of vehicles is being operated shall be displayed on both sides of each vehicle, or on both sides of at least one motor vehicle in each combination of the following vehicles while engaged in intrastate commerce:

(1) Each vehicle set forth in Section 34500.

(2) Any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating.

(3) Any other motortruck or motor vehicle used to transport property for compensation.

(c) A vehicle or combination of vehicles listed in subdivision (b) that is operated under a rental agreement with a term of not more than 30 calendar days shall meet all of the following requirements:

(1) Have displayed on both sides of each vehicle or on both sides of one of the vehicles in each combination of vehicles the name or trademark of the lessor.

(2) Have displayed on both sides of each vehicle or on both sides of one of the vehicles in each combination of vehicles any of the following numbers issued to the lessor:

(A) The carrier identification number issued by the United States Department of Transportation.

(B) A valid operating authority number.

(C) A valid motor carrier of property number.

(3) (A) Have in the vehicle or combination of vehicles a copy of the rental agreement entered into by the lessor and the vehicle operator.

(B) The rental agreement shall be available for inspection immediately upon the request of any authorized employee of the department or any regularly employed and salaried police officer or deputy sheriff, or any reserve police officer or reserve deputy sheriff listed under Section 830.6 of the Penal Code.

(C) If the rented vehicle or combination of vehicles is operated in conjunction with a commercial enterprise, the rental agreement shall include the operator's carrier identification number or motor carrier of property permit number.

(d) A vehicle or combination of vehicles that is in compliance with Section 390.21 of Title 49 of the Code of Federal Regulations shall be deemed to be in compliance with subdivision (c).

(e) This section does not apply to any of the following vehicles:

(1) Vehicles described in subdivision (f) of Section 34500, which are operated by a private carrier as defined in subdivision (d) of Section 34601, if the gross vehicle weight rating of the towing vehicle is 10,000 pounds or less, or the towing vehicle is a pickup truck, as defined in Section 471. This exception does not apply to vehicle combinations described in subdivision (k) of Section 34500.

(2) Vehicles described in subdivision (g) of Section 34500, which are operated by a private carrier as defined in subdivision (d) of Section 34601, if the hazardous material transportation does not require the display of placards pursuant to Section 27903, a license pursuant to Section 32000.5, or hazardous waste hauler registration pursuant to Section 25163 of the Health and Safety Code.

(3) Historical vehicles, as described in Section 5004, and vehicles that display special identification plates in accordance with Section 5011.

(4) Implements of husbandry as defined in Chapter 1 (commencing with Section 36000) of Division 16.

(5) Vehicles owned or operated by an agency of the federal government.

(6) Pickup trucks, as defined in Section 471, and two-axle daily rental trucks with gross vehicle weight ratings of less than 26,001 pounds, when operated in noncommercial use.

(f) Subdivision (b) does not apply to the following:

(1) Vehicles that display a valid operating authority or identification number assigned by the former Interstate Commerce Commission, or the Federal Highway Administration, of the United States Department of Transportation.

(2) Vehicles that are regulated by, and that display a valid operating authority number issued by, the Public Utilities Commission, including household goods carriers as defined in Section 5109 of the Public Utilities Code.

(3) For-hire motor carriers of passengers.

(g) The display of the carrier identification number shall be in sharp contrast to the background, and shall be of a size, shape, and color that it is readily legible during daylight hours from a distance of 50 feet.

(h) The carrier identification number for companies no longer in business, no longer operating with the same name, or no longer operating under the same operating authority, identification number, or motor carrier permit shall be removed before sale, transfer, or other disposal of any vehicle marked pursuant to this section.

SEC. 11. Section 35790.1 of the Vehicle Code is amended to read:

35790.1. In addition to the requirements and conditions contained in Section 35790 and notwithstanding any other provision of law, all of the following conditions and specifications shall be complied with to move any manufactured home, as defined in Section 18007 of the Health and Safety Code, that is in excess of 14 feet in total width, but not exceeding 16 feet in total width, exclusive of lights and devices provided for in Sections 35109 and 35110, upon any highway under the jurisdiction of the entity granting the permit:

(a) For the purposes of width requirements under this code, the overall width of manufactured housing specified in this section shall be the overall width, including roof overhang, eaves, window shades, porch roofs, or any other part of the manufactured house that cannot be removed for the purposes of transporting upon any highway.

(b) Unless otherwise exempted under this code, all combinations of motor vehicles and manufactured housing shall be equipped with service brakes on all wheels. Service brakes required under this subdivision shall be adequate, supplemental to the brakes on the towing vehicle, to enable the combination of vehicles to comply with the stopping distance requirements of Section 26454.

(c) In addition to the requirements contained in Section 26304, the breakaway brake device on any manufactured housing unit equipped with electric brakes shall be powered by a wet cell rechargeable battery

that is of the same voltage rating as the brakes and has sufficient charge to hold the brakes applied for not less than 15 minutes.

(d) Notwithstanding any other provision of this code, the weight imposed upon any tire, wheel, axle, drawbar, hitch, or other suspension component on a manufactured housing unit shall not exceed the manufacturer's maximum weight rating for the item or component.

(e) In addition to the requirements in subdivision (d), the maximum allowable weight upon one manufactured housing unit axle shall not exceed 6,000 pounds, and the maximum allowable weight upon one manufactured housing unit wheel shall not exceed 3,000 pounds.

(f) Manufactured housing unit tires shall be free from defects, have at least $^{2}/_{32}$ of an inch tread depth, as determined by tire tread wear indicators, and shall comply with specifications and requirements contained in Section 3280.904(b)(8) of Title 24 of the Code of Federal Regulations.

(g) Manufactured housing unit manufacturers shall provide transporters with a certification of compliance document, certifying the manufactured housing unit complies with the specifications and requirements contained in subdivisions (d), (e), and (f). Each certification of compliance document shall identify, by serial or identification number, the specific manufactured housing unit being transported and shall be signed by a representative of the manufacturer. Each transporter of manufactured housing units shall have in his or her immediate possession a copy of the certification of compliance document and shall make the document available upon request by any member of the Department of the California Highway Patrol, any authorized employee of the Department of Transportation, or any regularly employed and salaried municipal police officer or deputy sheriff.

(h) Manufactured housing unit dealers shall provide transporters with a certification of compliance document, specifying that all modifications, equipment additions, or loading changes by the dealer have not exceeded the gross vehicle weight rating of the manufactured housing unit or the axle and wheel requirements contained in subdivisions (d), (e), and (f). Each certification of compliance document shall identify, by serial or identification number, the specific manufactured housing unit being transported and shall be signed by a representative of the dealer. Each transporter of manufactured housing units shall have in his or her immediate possession a copy of the certification of compliance document and shall make the document available upon request by any member of the Department of the California Highway Patrol, any authorized employee of the Department of Transportation, any regularly employed and salaried municipal police

officer or deputy sheriff, or any reserve police officer or reserve deputy sheriff listed under Section 830.6 of the Penal Code.

(i) Transporters of manufactured housing units shall not transport any additional load in, or upon, the manufactured housing unit that has not been certified by the manufactured housing unit's manufacturer or dealer.

(j) Every hitch, coupling device, drawbar, or other connections between the towing unit and the towed manufactured housing unit shall be securely attached and shall comply with Subpart J of Part 3280 of Title 24 of the Code of Federal Regulations.

(k) Manufactured housing units shall be equipped with an identification plate, specifying the manufacturer's name, the manufactured housing unit's serial number, the gross vehicle weight rating of the manufactured housing unit, and the gross weight of the cargo that may be transported in or upon the manufactured housing unit without exceeding the gross vehicle weight rating. The identification plate shall be permanently attached to the manufactured housing unit and shall be positioned adjacent to, and meet the same specifications and requirements applicable to, the certification label required by Subpart A of Part 3280 of Title 24 of the Code of Federal Regulations.

(*l*) Manufactured housing units shall be subject to all lighting requirements contained in Sections 24603, 24607, 24608, and 24951. When transported during darkness, manufactured housing units shall additionally be subject to Sections 24600 and 25100.

(m) Manufactured housing units shall have all open sides covered by plywood, hard board, or other rigid material, or by other suitable plastics or flexible material. Plastic or flexible side coverings shall not billow or flap in excess of six inches in any one place. Units that are opened on both sides may be transported empty with no side coverings.

(n) Transporters of manufactured housing units shall make available all permits, licenses, certificates, forms, and any other relative document required for the transportation of manufactured housing upon request by any member of the Department of the California Highway Patrol, any authorized employee of the Department of Transportation, any regularly employed and salaried municipal police officer or deputy sheriff, or any reserve police officer or reserve deputy sheriff listed under Section 830.6 of the Penal Code.

(o) The Department of Transportation, in cooperation with the Department of the California Highway Patrol, or the local authority, shall require pilot car or special escort services for the movement of any manufactured housing unit pursuant to this section, and may establish additional reasonable permit regulations, including special routing requirements, as necessary in the interest of public safety and consistent with this section.

(p) The Department of Transportation shall not issue a permit to move a manufactured home that is in excess of 14 feet in total width unless that department determines that all of the conditions and specifications set forth in this section have been met.

SEC. 12. Section 40600 of the Vehicle Code is amended to read:

40600. (a) Notwithstanding any other provision of law, a peace officer who has successfully completed a course or courses of instruction, approved by the Commission on Peace Officer Standards and Training, in the investigation of traffic accidents may prepare, in triplicate, on a form approved by the Judicial Council, a written notice to appear when the peace officer has reasonable cause to believe that any person involved in a traffic accident has violated a provision of this code not declared to be a felony or a local ordinance and the violation was a factor in the occurrence of the traffic accident.

(b) A notice to appear shall contain the name and address of the person, the license number of the person's vehicle, if any, the name and address, when available, of the registered owner or lessee of the vehicle, the offense charged, and the time and place when and where the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

(c) The preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(d) For purposes of this article, a peace officer has reasonable cause to issue a written notice to appear if, as a result of the officer's investigation, the officer has evidence, either testimonial or real, or a combination of testimonial and real, that would be sufficient to issue a written notice to appear if the officer had personally witnessed the events investigated.

(e) As used in this section, ''peace officer'' means any person specified under Section 830.1 or 830.2 of the Penal Code, or any reserve police officer or reserve deputy sheriff listed in Section 830.6 of the Penal Code, with the exception of members of the California National Guard.

(f) A written notice to appear prepared on a form approved by the Judicial Council and issued pursuant to this section shall be accepted by any court.

CHAPTER 293

An act to amend Section 68115 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. 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 location or locations within a county, 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 transfer may 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) Declare that a date or dates on which an emergency condition, as described in this section, substantially interfered with the public's ability to file papers in a court facility or facilities be deemed a holiday for purposes of computing the time for filing papers with the court under Sections 12 and 12a. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(d) Declare that a date on which an emergency condition, as described in this section, prevented the court from conducting proceedings governed by Section 825 of the Penal Code, or Section 313, 315, 631, 632, 637, or 657 of the Welfare and Institutions Code, be deemed a holiday for purposes of computing time under those statutes. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(e) 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.

(f) 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.

(g) 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.

(h) 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 313, 315, 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.

(i) 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 Sections 334 and 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition shall be held by not more than 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. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to improve, as soon as possible, court procedures applicable in states of emergency, it is necessary that this act take effect immediately.

CHAPTER 294

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. This act shall be known and may be cited as the Second Validating Act of 2003.

SEC. 2. As used in this act:

(a) ''Public body'' means the state and all departments, agencies, boards, commissions, and authorities of the state. ''Public body'' also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.
County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.

Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
School facilities improvement districts.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Special municipal tax districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.

Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) ''Bonds'' means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) ''Hereafter'' means any time subsequent to the effective date of this act.

(d) ''Heretofore'' means any time prior to the effective date of this act.

(e) ''Now'' means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the detachment, withdrawal, or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are

hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act.

(d) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(e) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, detachment or exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 295

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. This act shall be known and may be cited as the Third Validating Act of 2003.

SEC. 2. As used in this act:

(a) ''Public body'' means the state and all departments, agencies, boards, commissions, and authorities of the state. ''Public body'' also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.

Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
School facilities improvement districts.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Special municipal tax districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.

Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) ''Bonds'' means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) ''Hereafter'' means any time subsequent to the effective date of this act.

(d) ''Heretofore'' means any time prior to the effective date of this act.

(e) ''Now'' means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the detachment, withdrawal, or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall

include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act.

(d) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(e) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, detachment or exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 296

An act to amend Section 10511 of the Elections Code, to amend Sections 1752, 7902, 12463.1, 16429.1, 25210.3a, 25210.3b, 26922, 30056, 38638, 43002, 50060.5, 53316.2, 55863, 56381, 61601.27, 61601.28, 65048, 66031, 66474.4, and 67657 of, to amend the heading of Chapter 11.5 (commencing with Section 8855) of Division 1 of Title 2 of, to add Section 25210.9d to, and to repeal Sections 38301, 43006, and 51282.2 of, the Government Code, to amend Sections 4730.65,

6512.7, 13812, 13845, and 40708 of the Health and Safety Code, to amend Section 1203.7 of the Penal Code, to amend Section 2854 of the Probate Code, to amend Sections 22010, 22012, 22017, and 22038 of the Public Contract Code, to amend Sections 5506.3, 5506.5, 5506.10, 5539.4, 5539.9, 35121, 49050, and 49195 of, and to repeal Division 32 (commencing with Section 60000) and Division 32.5 (commencing with Section 60200) of, the Public Resources Code, to amend Sections 15961.5, 19014, 100500, and 105303 of the Public Utilities Code, to amend Sections 6736, 6737, and 6738 of, and to repeal Section 2287 of, the Revenue and Taxation Code, to amend Section 35565.4 of, and to repeal Sections 21267, 30505, 35565.5, 35565.6, 35565.7, and 40501 of, the Water Code, and to add Section 5.20 to Chapter 283 of the Statutes of 1973, relating to local government.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. (a) This act shall be known and may be cited as the Local Government Omnibus Act of 2003.

(b) The Legislature finds and declares that Californians desire their government to be run efficiently and economically, and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to control its own operating costs by reducing the number of separate bills. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to local government into a single measure.

SEC. 2. Section 10511 of the Elections Code is amended to read:

10511. The declaration of candidacy shall be in substantially the following form:

I, _____, do hereby declare myself as a candidate for election to the office of _____. (__ Initial here if the office for which you are running is for the balance of an unexpired term.) I am a registered voter.
If elected, I will qualify and accept the office of _____ and serve to the best of my ability. I request my name be placed on the official ballot of the district for the election to be held on the ___ day of _____, 20__, and that my name appear on the ballot as follows:

_____
(Print name above)
My current residence address is

_____
and my telephone number is_____.

I desire the following occupational designation to appear on the ballot under my name:

_____
(Print desired designation, if any, above)
This occupational designation is true and in conformance with Section 13107 of the Elections Code.

I am aware that any person who files or submits for filing a declaration of candidacy knowing that it or any part of it has been made falsely is punishable by a fine or imprisonment, or both, as set forth in Section 18203 of the Elections Code.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 20__,
at _____ (Place)

_____
(Signature of Candidate)

SEC. 3. Section 1752 of the Government Code is amended to read:

1752. (a) Except as provided in subdivision (b), no person elected or appointed to the governing body of any city, county, or district having an elected governing body, shall be appointed to fill any vacancy on that governing body during the term for which he or she was elected or appointed.

(b) With respect to a general law city, if a vacancy in the elected office of mayor occurs, the council may fill that vacancy by appointing a member of the council to the office of mayor. Any person appointed to fill the vacancy shall hold the office of mayor for the unexpired term of the former mayor. Any vacancy created in the membership of a city

council as the result of an appointment of a member to the office of mayor shall be filled in accordance with Section 36512.

SEC. 4. Section 7902 of the Government Code is amended to read:

7902. (a) For the 1980–81 fiscal year, the appropriations limit of the state and of each local jurisdiction shall be determined as follows:

(1) Multiply the total amount of appropriations subject to limitation of each such entity for the 1978–79 fiscal year by the lesser of the change in cost of living for the 1979 calendar year or the change in California per capita personal income for the 1978 calendar year, and multiply this product by the change in population of each such entity for the 1978 calendar year.

(2) Multiply the product determined pursuant to paragraph (1) by the lesser of the change in cost of living for the 1980 calendar year or the change in California per capita personal income for the 1979 calendar year, and multiply this product by the change in population of each entity for the 1979 calendar year. The resulting product, as adjusted for other changes required or permitted by Article XIII B of the California Constitution, shall be the appropriations limit of each entity for fiscal year 1980–81.

(b) For the 1981–82 fiscal year and each year thereafter, the appropriations limit of the state and of each local jurisdiction shall equal the appropriations limit for the prior fiscal year multiplied by the product of the change in cost of living, as defined in paragraph (2) of subdivision (e) of Section 8 of Article XIII B of the California Constitution, and the change in population of the local jurisdiction for the calendar year preceding the beginning of the fiscal year for which the appropriations limit is to be determined, and adjusted for other changes required or permitted by Article XIII B of the California Constitution.

(c) For the purposes of this division, if a local agency's fiscal year begins on January 1, the agency shall base its appropriations limit on its appropriations subject to limitation for the 1979 calendar year. For that agency, the 1981 calendar year shall be the first year for which the appropriations limit shall apply. For purposes of the computations required by this section, that agency shall use the change in population, cost-of-living, and per capita personal income factors that it would have used had its fiscal year begun on the previous July 1.

SEC. 5. The heading of Chapter 11.5 (commencing with Section 8855) of Division 1 of Title 2 of the Government Code is amended to read:

CHAPTER 11.5. CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION

SEC. 5.5. Section 12463.1 of the Government Code is amended to read:

12463.1. (a) The Controller shall appoint an advisory committee consisting of seven local governmental officers to assist him or her in developing complete and adequate records.

(b) Whenever, in the opinion of the advisory committee and the Controller, the public welfare demands that the reports of the financial transactions of a district other than a school district be published, the Controller shall notify the district that reports of its financial transactions are required to be furnished to him or her pursuant to Article 9 (commencing with Section 53890) of Chapter 4 of Part 1 of Division 2 of Title 5. A public entity, agency, board, transportation planning agency designated by the Secretary of the Business, Transportation, and Housing Agency pursuant to Section 29532, or commission provided for by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, and a nonprofit corporation as defined in subdivision (d), shall be deemed a district within the meaning of this section. The Controller shall compile and publish these reports pursuant to Section 12463.

(c) The Controller shall make available annually, in a separate report, published in an electronic format on the Controller's Web site, certain financial information about selected special districts. The information provided in this report shall be published no later than June 30 following the end of the annual reporting period. This report may be included whenever the Controller publishes a report pursuant to this section. The Controller shall include in his or her report information that best illustrates the assets, liabilities, and equity of selected districts. Specifically, the Controller shall include in this report a breakdown of each special district's (1) fund balance, which shall include the reserved and unreserved funds, typical for a nonenterprise district; (2) retained earnings, which shall include the reserved and unreserved funds, typical for enterprise districts; (3) fixed assets; and (4) cash and investments. The Controller may also include separate line items for ''total revenues'' and ''total expenditures.'' This report shall cover the 250 special districts with the largest total revenues for that reporting period. When the report is available, the Controller shall notify the Legislature, in writing, within one week of its publication.

(d) For purposes of this section, ''nonprofit corporation'' means any nonprofit corporation (1) formed in accordance with the provisions of a joint powers agreement to carry out functions specified in the agreement; (2) that issued bonds, the interest on which is exempt from federal

income taxes, for the purpose of purchasing land as a site for, or purchasing or constructing, a building, stadium, or other facility, that is subject to a lease or agreement with a local public entity; or (3) wholly owned by a public agency.

SEC. 6. Section 16429.1 of the Government Code is amended to read:

16429.1. (a) There is in trust in the custody of the Treasurer the Local Agency Investment Fund, which fund is hereby created. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

(b) Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(c) Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(d) Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

(e) The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

(f) The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

(g) The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

(h) The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

(i) The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(j) Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

(k) All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

(*l*) Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of one-half of 1 percent of the earnings of this fund, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies, including the Treasurer, the Controller, and the Department of Finance, having incurred costs in carrying out the provisions of this section.

(m) The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

(n) As used in this section, ''local agency,'' ''local governmental unit,'' and "local governmental official'' includes a campus or other unit and an official, respectively, of the California State University who deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

SEC. 7. Section 25210.3a of the Government Code is amended to read:

25210.3a. No proceedings for the establishment of a county service area may be instituted until the approval of the local agency formation commission is first obtained pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5.

SEC. 8. Section 25210.3b of the Government Code is amended to read:

25210.3b. Territory may be annexed to, or detached from, a county service area and a county service area may be dissolved, consolidated, or reorganized. All proceedings therefor shall be taken under and pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5.

SEC. 8.5. Section 25210.9d is added to the Government Code, to read:

25210.9d. The board of supervisors, in its capacity as the governing authority of a county service area, may contract with any state or federal agency to finance any improvements relating to any extended services or miscellaneous extended services that the county service area is authorized to provide. If the contract obligates the county service area to repay all or part of any amount so financed, the board may dedicate to the repayment of that debt all or part of the revenue from revenue sources of the county service area established for the support of the authorized service to which the improvement relates.

SEC. 9. Section 26922 of the Government Code is amended to read:

26922. The auditor shall file a copy of the quarterly report prepared pursuant to paragraph (3) of subdivision (a) of Section 26920 and a copy of the annual audit report prepared pursuant to subdivision (b) of Section 26920 in the office of the clerk of the board of supervisors. The auditor shall post and maintain another copy of the quarterly report and another copy of the annual audit report in his or her office for at least one quarter.

SEC. 10. Section 30056 of the Government Code is amended to read:

30056. (a) Notwithstanding any other provision of this chapter, commencing with the 1994–95 fiscal year, except as provided in subdivision (c), any county, city and county, or city, including any charter city, that funds all combined public safety services within its respective jurisdiction from existing local financial resources, in an amount for the fiscal year that is less than the base amount for that local agency, shall have its total fiscal year allocations from the Public Safety Augmentation Fund reduced by the difference between those amounts. Any amount not allocated to a county as a result of this paragraph shall be allocated to cities in that county in proportion to the total fiscal year allocations otherwise received by those cities pursuant to Section 30054, and any amount not allocated to a city or cities as a result of this paragraph shall be allocated to the county. For purposes of applying this subdivision, the amount of funding within a local jurisdiction for combined public safety services for each fiscal year shall be determined in accordance with the budget adopted by that jurisdiction for that fiscal

year. For any city that is subject to a final arbitration decision, that is rendered on or before December 31, 1994, pursuant to binding labor arbitration as required by that city's charter as approved by the voters on November 4, 1980, the amount of funding for combined public safety services for the 1994–95 fiscal year shall be determined in accordance with any amended budget adopted by that city for the 1994–95 fiscal year.

(b) For the purposes of this section:

(1) ''Local financial resources'' means local general fund appropriations for operational expenses and allocations from the Public Safety Augmentation Fund, but shall not include any of the following amounts:

(A) Grant funds received by a county, city and county, or city, including any charter city, from any source.

(B) Revenues received by a county or city and county for the child support-related activities of the district attorney performed pursuant to Part D Subchapter 4 of the Social Security Act (42 U.S.C. 301 et seq.).

(C) Asset forfeiture revenues received by a county, city and county, or city, including any charter city.

(D) Revenues appropriated by a county, city and county, or city, including any charter city, for capital outlay expenditures.

(E) Revenues appropriated by a county, city and county, or city, including any charter city, for one-time expenditures.

(F) Any amount that is attributable to a decrease in appropriations by a county, city and county, or city, including any charter city, for retirement costs or workers' compensation costs that do not result in a change in benefit levels.

(G) Revenues received by a county, city and county, or city, including a charter city, pursuant to a contract under which that county, city and county, or city provides public safety services for another jurisdiction.

(H) Revenues that were not appropriated by a county, city and county, or city, including any charter city, for public safety services in the base year, but are so appropriated in the current fiscal year as a result of a change of organization or reorganization that became effective pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5) subsequent to the base year.

(I) Revenues received by a county or city and county pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3 of Title 2, or any other reimbursement by the state for homicide trial costs, including, but not limited to, Chapter 1649 of the Statutes of 1990 and its successors.

(J) Revenues derived from any source by a county, city and county, or city, including any charter city, to respond to a state of emergency

declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2).

(2) ''Base year'' means, for each county, city and county, or city, the 1992–93 fiscal year.

(3) ''Base amount for that local agency'' means an amount, equal to the amount of the adopted budget for all combined public safety services within its respective jurisdiction for the base year, that is adjusted as follows:

(A) For the 1994–95 fiscal year only, that amount shall be increased or decreased in accordance with the positive or negative difference between the amount allocated for the 1994–95 fiscal year to that local agency from the Public Safety Augmentation Fund and the corresponding amount allocated to that local agency for the 1993–94 fiscal year. For purposes of this subparagraph, the amount to be allocated to the local agency from the Public Safety Augmentation Fund for the 1994–95 fiscal year shall be estimated based on the allocations to that agency determined over the first six months of that fiscal year.

(B) For the 1995–96 fiscal year and each fiscal year thereafter, that amount shall be increased or decreased in accordance with the positive or negative difference between (i) the amount allocated to the local agency from the Public Safety Augmentation Fund in the immediately preceding fiscal year, and (ii) the corresponding amount allocated to the local agency in the next preceding fiscal year. Notwithstanding any other provision of this subparagraph, in no event shall the base amount for a local agency be less than the amount of funding for all combined public safety services within the jurisdiction of that local agency for the base year.

(4) The amount of funding for all combined public safety services within the jurisdiction of a local agency for the base year does not include any of the following amounts:

(A) Grant funds from any source expended by a county, city and county, or city, including any charter city, during the base year for public safety services.

(B) Revenues received by a county or city and county for the child support-related activities of the district attorney performed pursuant to Part D of Subchapter 4 of the Social Security Act (42 U.S.C. 301 et seq.).

(C) Asset forfeiture revenues expended by a county, city and county, or city, including any charter city, during the base year for public safety services.

(D) Capital outlay funds expended by a county, city and county, or city, including any charter city, during the base year for public safety.

(E) Any amount expended by a city and county during the base year to fund retirement costs that are not attributable to any change in benefit levels.

(F) Any amount expended by a county, city and county, or city, including any charter city, during the base year to fund one-time expenditures for public safety services.

(G) Any amount expended during the base year by a county, city and county, or city pursuant to a contract under which that county, city and county, or city provides public safety services for another jurisdiction.

(H) Amounts expended by a county, city and county, or city, including any charter city, in the base year for public safety services that are not appropriated for similar expenditure in the current fiscal year as a result of a change of organization or reorganization that became effective pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5) subsequent to the base year.

(I) Any amount expended during the base year for homicide trial costs that are reimbursable pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3 of Title 2 or any other program, including, but not limited to, Chapter 1649 of the Statutes of 1990 and its successors.

(J) Any amount expended during the base year to provide public safety services during a state of emergency declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2).

(c) This section shall not be applicable to any of the following jurisdictions:

(1) With respect to a specific fiscal year, any county, city and county, or city whose legislative body has entered into a memorandum of understanding or other binding agreement on or before the adoption of the budget of the county, city, or city and county for that fiscal year with all local public safety entities that relates to those entities' respective shares of the local agency's allocation from the county's Public Safety Augmentation Fund.

(2) Any city for which the amount of the reduction calculated under Section 97.035 of the Revenue and Taxation Code is zero.

(d) Officials of a county, city and county, or city, including any charter city, shall, upon request, provide the county auditor any information that the auditor needs to make the determinations required by this section. In carrying out the requirements of this section, the auditor may, but is not required to, audit the information provided by a county, city and county, or city, including any charter city.

(e) It is the intent of the Legislature that this section shall apply to all cities, including charter cities. The Legislature finds and declares that the

allocation of the Public Safety Augmentation Fund is a matter of statewide concern and is not merely a municipal affair or a matter of local interest.

SEC. 11. Section 38301 of the Government Code is repealed.

SEC. 12. Section 38638 of the Government Code is amended to read:

38638. The mayor or other officer in control of the police force in a city shall direct a sufficient number of peace officers to attend and keep order at any public meeting in the city at which, in his or her opinion, a breach of the peace may occur.

SEC. 12.1. Section 43002 of the Government Code is amended to read:

43002. Tax liens attach as of 12:01 a.m. on the first day of January of each year.

SEC. 12.3. Section 43006 of the Government Code is repealed.

SEC. 13. Section 50060.5 of the Government Code is amended to read:

50060.5. (a) A local agency may, by ordinance or by resolution adopted after notice and hearing, establish a district to provide for the improvement or maintenance of natural habitat. The local agency may perform those functions or contract with the state, another local agency, or a special district to perform those functions. If a local agency establishes a district, it may provide for the levy of assessments for not more than 30 years to pay the cost and incidental expenses of implementing a long-term natural habitat maintenance plan approved by the Department of Fish and Game pursuant to Section 2901 of the Fish and Game Code. Any assessments levied pursuant to this section shall be levied only in accordance with a plan for the conservation of natural habitat approved by the Department of Fish and Game. No plan shall be approved by the Department of Fish and Game unless it contains provisions for the recovery of all costs incurred by the department in its review of the plan for the conservation of natural habitat.

(b) The legislative body of the local agency establishing a district shall serve as the legislative body of the district.

(c) Notwithstanding any other provision of this article, assessments levied pursuant to this article shall not be reduced or terminated if doing so would interfere with the implementation of an approved plan for the conservation of natural habitat.

(d) This article applies only to the implementation of a long-term natural habitat maintenance plan by a district, and does not alter, limit, or otherwise affect any other district that has been, or may be, established pursuant to law, including, but not limited to, any other district relating to wildlife habitat.

(e) The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5, does not apply to a district formed pursuant to this article.

SEC. 13.5. Section 51282.2 of the Government Code is repealed.

SEC. 14. Section 53316.2 of the Government Code is amended to read:

53316.2. (a) A community facilities district may finance facilities to be owned or operated by an entity other than the agency that created the district, or services to be provided by an entity other than the agency that created the district, or any combination, only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to this section.

(b) At any time prior to the adoption of the resolution of formation creating a community facilities district or a resolution of change to alter a district, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to this section and Sections 53316.4 and 53316.6 or into a joint exercise of powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) to exercise any power authorized by this chapter with respect to the community facilities district being created or changed if the legislative body of each entity adopts a resolution declaring that the joint agreement would be beneficial to the residents of that entity.

(c) Notwithstanding the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1), a contracting party may use the proceeds of any special tax or charge levied pursuant to this chapter or of any bonds or other indebtedness issued pursuant to this chapter to provide facilities or services which that contracting party is otherwise authorized by law to provide, even though another contracting party does not have the power to provide those facilities or services.

(d) Notwithstanding subdivision (b), nothing in this section shall prevent entry into or amendment of a joint community facilities agreement or a joint exercise of powers agreement, after adoption of a resolution of formation, if the new agreement or amendment is necessary, as determined by the legislative body, for either of the following reasons:

(1) To allow an orderly transition of governmental facilities and finances in the case of any change in governmental organization approved pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(2) To allow participation in the agreement by a state or federal agency that could or would not otherwise participate, including, but not limited to, the California Department of Transportation.

(e) Notwithstanding any other provision of this chapter, no local agency which is party to a joint exercise of powers agreement or joint community facilities agreement shall have primary responsibility for formation of a district or an improvement area within a district, or for an extension of authorized facilities and services or a change in special taxes pursuant to Article 3, unless that local agency is one or more of the following:

(1) A city, a county, or a city and county.

(2) An agency created pursuant to a joint powers agreement that is separate from the parties to the agreement, is responsible for the administration of the agreement, and is subject to the notification requirement of Section 6503.5.

(3) An agency that is reasonably expected to have responsibility for providing facilities or services to be financed by a larger share of the proceeds of special taxes and bonds of the district or districts created or changed pursuant to the joint exercise of powers agreement or the joint community facilities agreement than any other local agency.

SEC. 15. Section 55863 of the Government Code is amended to read:

55863. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000)) shall not apply to the authority.

SEC. 15.5. 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 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 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 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.

(iv) As used in this subparagraph ''net from operations'' means total operating revenue less total operating expenses.

(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. 16. Section 61601.27 of the Government Code is amended to read:

61601.27. Formation of the Mountain House Community Services District, and any powers that may be exercised by the district, shall be subject to approval by the local agency formation commission for San Joaquin County in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5), following the submittal of a resolution of application.

SEC. 17. Section 61601.28 of the Government Code is amended to read:

61601.28. In addition to the powers which may be exercised pursuant to Section 61600 and after approval by the local agency

formation commission for Ventura County in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5), whenever the board of directors of the Ahmanson Ranch Community Services District determines by resolution, entered into the minutes, that it is feasible, economically sound, and in the public interest, the board of directors may adopt by resolution and thereafter the powers of the district may be exercised for the purposes of: coordinating affordable housing programs; maintaining and repairing bicycle and multipurpose trails; slope maintenance on slopes adjacent to public or private rights-of-way; the maintenance, operation, and capital replacement of community facilities including, but not limited to, government buildings such as a town hall and a community maintenance facility that provides capabilities for servicing the equipment used to maintain public areas; maintaining community entry and monument lighting; installing or planting and maintaining landscaping within public street rights-of-way or easements within the district; modifying wildfire fuel on publicly owned lands; providing library services; and providing transportation programs, including school busing.

SEC. 17.5. Section 65048 of the Government Code is amended to read:

65048. (a) The State Environmental Goals and Policy Report shall be revised, updated, and transmitted by the Governor to the Legislature every four years. Any revision on and after January 1, 2004, shall be consistent with the state planning priorities specified pursuant to Section 65041.1. The Governor may, at any time, inform and seek advice of the Legislature on proposed changes in state environmental goals, objectives, and policies.

(b) The Office of Planning and Research shall report to the Governor and the Legislature annually on or before January 1 regarding the implementation of the State Environmental Goals and Policy Report. The office shall give priority to the preparation of this report, but shall fund the report only out of its existing resources.

SEC. 18. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party

to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

SEC. 19. Section 66474.4 of the Government Code is amended to read:

66474.4. (a) The legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it finds that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, and if the legislative body finds that the land is subject to any of the following:

(1) A contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5), including an easement entered into pursuant to Section 51256.

(2) An open-space easement entered into pursuant to the Open-Space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5).

(3) An agricultural conservation easement entered into pursuant to Chapter 4 (commencing with Section 10260) of Division 10.2 of the Public Resources Code.

(4) A conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Part 2 of Division 2 of the Civil Code.

(b) (1) For purposes of this section, land shall be conclusively presumed to be in parcels too small to sustain their agricultural use if the land is (A) less than 10 acres in size in the case of prime agricultural land, or (B) less than 40 acres in size in the case of land that is not prime agricultural land.

(2) For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (A) at least 10 acres in size in the case of prime agricultural land, or (B) at least 40 acres in size in the case of land that is not prime agricultural land.

(c) A legislative body may approve a subdivision with parcels smaller than those specified in this section if the legislative body makes either of the following findings:

(1) The parcels can nevertheless sustain an agricultural use permitted under the contract or easement, or are subject to a written agreement for joint management pursuant to Section 51230.1 and the parcels that are jointly managed total at least 10 acres in size in the case of prime agricultural land or 40 acres in size in the case of land that is not prime agricultural land.

(2) One of the parcels contains a residence and is subject to Section 428 of the Revenue and Taxation Code; the residence has existed on the property for at least five years; the landowner has owned the parcels for at least 10 years; and the remaining parcels shown on the map are at least 10 acres in size if the land is prime agricultural land, or at least 40 acres in size if the land is not prime agricultural land.

(d) No other homesite parcels as described in paragraph (2) of subdivision (c) may be created on any remaining parcels under contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5) for at least 10 years following the creation of a homesite parcel pursuant to this section.

(e) This section shall not apply to land that is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5) when any of the following has occurred:

(1) A local agency formation commission has approved the annexation of the land to a city and the city will not succeed to the contract as provided in Sections 51243 and 51243.5.

(2) Written notice of nonrenewal of the contract has been served, as provided in Section 51245, and, as a result of that notice, there are no more than three years remaining in the term of the contract.

(3) The board or council has granted tentative approval for cancellation of the contract as provided in Section 51282.

(f) This section shall not apply during the three-year period preceding the termination of a contract described in paragraph (1) of subdivision (a).

(g) This section shall not be construed as limiting the power of legislative bodies to establish minimum parcel sizes larger than those specified in subdivision (a).

(h) This section does not limit the authority of a city or county to approve a tentative or parcel map with respect to land subject to an easement described in this section for which agriculture is the primary purpose if the resulting parcels can sustain uses consistent with the intent of the easement.

(i) This section does not limit the authority of a city or county to approve a tentative or parcel map with respect to land subject to an easement described in this section for which agriculture is not the primary purpose if the resulting parcels can sustain uses consistent with the purposes of the easement.

(j) Where an easement described in this section contains language addressing allowable land divisions, the terms of the easement shall prevail.

(k) The amendments to this section made in the 2002 portion of the 2001–02 Regular Session of the Legislature shall apply only with respect to contracts or easements entered into on or after January 1, 2003.

SEC. 20. Section 67657 of the Government Code is amended to read:

67657. (a) The authority is a public corporation of the State of California that is independent of the agencies from which its board is appointed. Notwithstanding any other provision of law, the powers and duties of the authority are those granted or imposed by this title.

(b) The jurisdiction of the authority shall be the territory of Fort Ord. The jurisdiction of the authority is subject to the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(c) The Legislature finds and declares that the planning, financing, and management of the reuse of Fort Ord is a matter of statewide importance, and that the powers and duties granted to the authority by this title shall prevail over those of any local entity, including any city or county, whether formed under the general laws of the State of California or pursuant to a charter, and any joint powers authority.

SEC. 21. Section 4730.65 of the Health and Safety Code is amended to read:

4730.65. (a) Notwithstanding Sections 4730, 4730.1 and 4730.2, or any other provision of law, a sanitation district in Orange County, that has been created by the consolidation, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), of one or more sanitation districts, originally established pursuant to Section 4730, and one or more sanitation districts, originally established pursuant to Section 4730.1, shall be referred to, for purposes of this section only, as a consolidated sanitation district and the governing body shall be constituted in accordance with subdivision (b).

(b) The governing body of the consolidated sanitation district shall be a board of directors composed of all of the following:

(1) One member of the city council of each city located wholly or partially within the district's boundaries provided, however, a city within the consolidated district, the sewered portion of which city lies entirely within another sanitary district, shall have no representation on the board.

(2) One member of the county board of supervisors.

(3) One member of the governing body of each sanitary district, the whole or part of which is included in the consolidated sanitation district.

(4) One member of the governing body of a public agency empowered to and engaged in the collection, transportation, treatment,

or disposal of sewage and which was a member agency of a sanitation district consolidated into a consolidated sanitation district.

(c) The governing body of the county and each city, sanitary district, and public agency that is a member agency having a representative on the board of directors of the consolidated sanitation district, may designate one of its members to act in the place of its regular member in his or her absence or his or her inability to act.

(d) No action shall be taken at any meeting of the consolidated district's board of directors unless a majority of all authorized members of the board of directors is in attendance.

(e) A majority of the members of the board of directors present shall be required to approve or otherwise act on any matter except as otherwise required by law.

SEC. 22. Section 6512.7 of the Health and Safety Code is amended to read:

6512.7. (a) Notwithstanding Section 6512 and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), for the purpose of furnishing water in the district for any present or future beneficial use, the Montara Sanitary District may, pursuant to subdivision (b), exercise any of the powers of a county water district, including the power to acquire, operate, finance, and control water rights, works, property, rights and privileges useful or necessary to convey, supply, store or make use of water for any useful purpose, all in the same manner as county water districts formed under the County Water District Law (Division 12 (commencing with Section 30000) of the Water Code). The Montara Sanitary District shall otherwise continue to be governed in all respects as a sanitary district under this part, and the provisions of this section are intended only to vest additional powers in the district which the district may elect to exercise.

(b) If the governing body of the Montara Sanitary District determines, by resolution, entered in the minutes, that it is feasible, economically sound, and in the public interest for the district to exercise the powers specified in subdivision (a), the governing body shall submit to the electors of the district the question of whether the district should adopt those additional powers. The question submitted to the electors shall be in substantially the following form: ''Shall the Montara Sanitary District exercise the powers of a county water district for the purpose of furnishing water in the district?'' The district may exercise those powers only if a majority of the voters voting on the proposition vote in favor of the question. The costs of that election, including any additional costs incurred by the County of San Mateo for purposes of meeting legal requirements directly associated with the conduct of the election, shall be borne by the district.

(c) If the electors of the district authorize the district to exercise the powers specified in subdivision (a), the district shall include in any revenue plan developed as part of its exercise of those powers an item to reimburse the County of San Mateo the sum of one hundred eighteen thousand dollars ($118,000) for costs incurred with respect to its effort to acquire the existing water system serving the Montara Sanitary District service area. Reimbursement to the county shall occur within 180 days after the district receives any revenues from the sale of bonds, the levy of assessments, or the receipt of any other revenues to be used by the district in the exercise of its powers pursuant to this section.

(d) If the Montara Sanitary District assumes authority to exercise the powers of a county water district pursuant to this section, thereafter the district shall be 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).

(e) In enacting this section it is the intent of the Legislature that any service by the Montara Sanitary District not affect the approval or development of a project that includes units for lower income persons, as defined in Section 50079.5, and persons and families of moderate income, as defined in Section 50093.

(f) Upon request of the governing body of the Montara Sanitary District, the County of San Mateo shall provide the district with all books, papers, records, documents and other information, including all writings as defined in Section 250 of the Evidence Code, resulting from, or produced by, the expenditure of funds by the county to determine if the acquisition of the existing water system serving the Montara Sanitary District service area is feasible.

SEC. 23. Section 13812 of the Health and Safety Code is amended to read:

13812. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code) shall govern any change of organization or reorganization of a district.

SEC. 24. Section 13845 of the Health and Safety Code is amended to read:

13845. (a) Except in the case where a county board of supervisors or a city council has appointed itself as the district board, the number of members of a district board may be increased or decreased if a majority of the voters voting on the question are in favor of the question at a general district or special election. The question shall specify the resulting number of members of the district board.

(b) The district board may adopt a resolution placing the question on the ballot. Alternatively, upon receipt of a petition signed by at least 25

percent of the registered voters of the district, the district board shall adopt a resolution placing the question on the ballot.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 12115 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and the ballot shall contain a statement of the question.

(d) If the voters approve of increasing the number of directors, the new members shall be elected or appointed pursuant to this chapter. If the district board is elected, the additional members may be elected at the same election.

(e) If the voters approve of decreasing the number of directors, the members of the district board continue to serve until the end of their current terms.

(f) The number of members of a district board may be changed by the local agency formation commission as a term and condition of approval by the commission of any change of organization or reorganization. Unless the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, otherwise requires voter approval, the change ordered by the commission does not require approval by the voters of the district.

SEC. 25. Section 40708 of the Health and Safety Code is amended to read:

40708. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, shall not be applicable to the districts.

SEC. 25.1. Section 1203.7 of the Penal Code is amended to read:

1203.7. (a) Either at the time of the arrest for a crime of any person over 16 years of age, or at the time of the plea or verdict of guilty, the probation officer of the county of the jurisdiction of the crime shall, when so directed by the court, inquire into the antecedents, character, history, family environment and offense of that person. The probation officer shall report that information to the court and file a written report in the records of the court. The report shall contain his or her recommendation for or against the release of the person on probation.

(b) If that person is released on probation and committed to the care of the probation officer, the officer shall keep a complete and accurate record of the history of the case in court and of the name of the probation officer, and his or her acts in connection with the case. This information shall include the age, sex, nativity, residence, education, habits of temperance, marital status, and the conduct, employment, occupation, parents' occupation, and the condition of the person committed to his or

her care during the term of probation, and the result of probation. This record shall constitute a part of the records of the court and shall at all times be open to the inspection of the court or any person appointed by the court for that purpose, as well as of all magistrates and the chief of police or other head of the police, unless otherwise ordered by the court.

(c) Five years after termination of probation in any case subject to this section, the probation officer may destroy any records and papers in his or her possession relating to the case.

(d) The probation officer shall furnish to each person released on probation and committed to his or her care, a written statement of the terms and conditions of probation, and shall report to the court or judge appointing him or her, any violation or breach of the terms and conditions imposed by the court on the person placed in his or her care.

SEC. 25.5. Section 2854 of the Probate Code is amended to read:

2854. (a) This chapter does not apply to any public conservator, public guardian, or to any conservator or guardian who is related to the conservatee or ward by blood, marriage, or adoption. This chapter does not apply to any person who is not required to file information with the clerk of the court pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including a supervised financial institution.

(b) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

(c) This chapter does not apply to a nonrelated guardian of the person of a minor appointed by the court as the result of the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

SEC. 25.7. Section 2854 of the Probate Code is amended to read:

2854. (a) This chapter does not apply to any public conservator, public guardian, or to any conservator , guardian, or trustee who is related to the conservatee , ward, trustor, or vested beneficiary by blood, marriage, or adoption. This chapter does not apply to any conservator or guardian who is not required to file information with the clerk of the court pursuant to Section 2340, to any person or entity subject to the

oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including an attorney licensed to practice law in the State of California who acts as trustee of only attorney client trust accounts, as defined in Section 6211 of the Business and Professions Code.

(b) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

(c) This chapter does not apply to a nonrelated guardian of the person of a minor appointed by the court as the result of the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

(d) This chapter does not apply to a trustee who is any of the following:

(1) Trust companies, as defined in Section 83.

(2) FDIC insured institutions, their holding companies, subsidiaries, or affiliates. For the purposes of this paragraph, ''affiliate'' means any entity that shares an ownership interest with or that is under the common control of, the FDIC insured institution.

(3) Employees of any entity listed in paragraph (1) or (2) while serving as trustees in the scope of their duties.

SEC. 26. Section 22010 of the Public Contract Code is amended to read:

22010. There is hereby created the California Uniform Construction Cost Accounting Commission. The commission is comprised of 14 members.

(a) Thirteen of the members shall be appointed by the Controller as follows:

(1) Two members who shall each have at least 10 years of experience with, or providing professional services to, a general contracting firm engaged, during that period, in public works construction in California.

(2) Two members who shall each have at least 10 years of experience with, or providing professional services to, a firm or firms engaged, during that period, in subcontracting for public works construction in California.

(3) Two members who shall each be a member in good standing of, or have provided professional services to, an organized labor union with at least 10 years of experience in public works construction in California.

(4) Seven members who shall each be experienced in, and knowledgeable of, public works construction under contracts let by public agencies; two each representing cities, counties, respectively, and two representing school districts (one with an average daily attendance over 25,000 and one with an average daily attendance under 25,000), and one member representing a special district. At least one of the two county representatives shall be a county auditor or his or her designee.

(b) The member of the Contractors' State License Board who is a general engineering contractor as that term is defined in Section 7056 of the Business and Professions Code shall serve as an ex officio voting member.

SEC. 27. Section 22012 of the Public Contract Code is amended to read:

22012. At least one commission member of the seven representing the construction industry and at least one of the seven representing public agencies shall have previous accounting experience.

SEC. 28. Section 22017 of the Public Contract Code is amended to read:

22017. The commission shall do all of the following:

(a) After due deliberation and study, recommend for adoption by the Controller, uniform construction cost accounting procedures for implementation by public agencies in the performance of, or in contracting for, construction on public projects. The procedures shall, to the extent deemed feasible and practicable by the commission, incorporate, or be consistent with construction cost accounting procedures and reporting requirements utilized by state and federal agencies on public projects, and be uniformly applicable to all public agencies which elect to utilize the uniform procedures. As part of its deliberations and review, the commission shall take into consideration relevant provisions of Office of Management and Budget Circular A-76.

(b) After due deliberation and study, recommend for adoption by the Controller cost accounting procedures designed especially for implementation by California cities with a population of less than 75,000. The procedures shall incorporate cost accounting and reporting requirements deemed practicable and applicable to all cities under 75,000 population which elect to utilize the uniform procedures. For purposes of these cost accounting procedures, the following shall apply:

(1) Cities with a population of less than 75,000 shall assume an overhead rate equal to 20 percent of the total costs of a public project, including the costs of material, equipment, and labor.

(2) Cities with a population of more than 75,000 may either calculate an actual overhead rate or assume an overhead rate equal to 30 percent of the total costs of a public project, including the costs of material, equipment, and labor.

(c) Recommend for adoption by the Controller, procedures and standards for the periodic evaluation and adjustment, as necessary, of the monetary limits specified in Section 22032.

(d) The commission shall make an annual report to the Legislature with respect to its activities and operations, together with those recommendations as it deems necessary.

SEC. 29. Section 22038 of the Public Contract Code is amended to read:

22038. (a) In its discretion, the public agency may reject any bids presented, if the agency, prior to rejecting all bids and declaring that the project can be more economically performed by employees of the agency, furnishes a written notice to an apparent low bidder. The notice shall inform the bidder of the agency's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the agency intends to reject the bid. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the public agency shall have the option of either of the following:

(1) Abandoning the project or readvertising for bids in the manner described by this article.

(2) By passage of a resolution by a four-fifths vote of its governing body declaring that the project can be performed more economically by the employees of the public agency, may have the project done by force account without further complying with this article.

(b) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the public agency may accept the one it chooses.

(c) If no bids are received through the formal or informal procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract without further complying with this article.

SEC. 30. Section 5506.3 of the Public Resources Code is amended to read:

5506.3. (a) (1) The Legislature hereby finds and declares that the population of San Diego County continues to grow at an increasing rate, and already the county is far behind other urban areas in the state in providing adequate park, recreational, and open-space facilities for its residents. Formation of a regional district with boundaries coterminous with those of San Diego County is critical to help address the growing and unmet park and recreational needs in San Diego County.

(2) Proceedings for the formation of a regional park and open-space district or a regional open-space district with boundaries coterminous with those of San Diego County may be initiated by resolution of the Board of Supervisors of the County of San Diego after a hearing noticed in accordance with Section 6064 of the Government Code, in lieu of the petition and proceedings related to the petition specified in this article.

(b) As used in this section and Sections 5538.3 and 5539.3:

(1) ''Regional district'' means a district formed pursuant to this section that contains all of the territory within San Diego County, including all incorporated cities.

(2) ''Capital outlay project'' means the acquisition or improvement of real property, but, for purposes of subdivision (c), includes the servicing of bonds issued pursuant to Section 5539.3.

(c) The resolution specified in subdivision (a) shall do all of the following:

(1) Name the proposed regional district and state the reasons for forming it.

(2) Specify that the Board of Supervisors of the County of San Diego shall act, ex officio, as the governing body of the regional district. The provisions of this article pertaining to district directors do not apply, and all powers and authority of the regional district shall be vested in the board of supervisors in its capacity as the governing body of the regional district.

(3) Describe the territory to be included in the regional district.

(4) Describe the methods by which the regional district will be financed.

(5) (A) Specify that all revenue generated by the regional district, including the proceeds from the issuance of any bonds, shall be allocated among all affected public agencies within the territory of the district, for expenditure consistent with the purposes of this article, to adequately address the needs specified in subdivision (a) of Section 5539.3.

(B) For the purposes of this paragraph, ''all affected public agencies'' means the County of San Diego, all incorporated cities within the county, and any joint powers authority or agency established for the purpose of acquiring land for park, recreational, open-space, and conservation purposes.

(6) (A) Call and give notice of an election to be held in the proposed regional district for the purpose of determining whether the regional district shall be formed.

(B) Notwithstanding Section 5518, the County Counsel of the County of San Diego shall prepare the language in the ballot label. The proposition shall specify the matters set forth in the resolution, except for subparagraph (A). The analysis and review of the measure shall be carried out pursuant to Section 9160 of the Elections Code.

(7) State that, in the first 20 years after the date that an assessment is levied pursuant to Section 5539.3, a minimum of 80 percent of all proceeds of assessments levied by the regional district shall be used for capital outlay projects.

(8) Include an expenditure plan consisting of a list of capital outlay projects, including acquisition areas, and a general description of proposed outlays for operation and maintenance, to be funded, over a 20-year period from the date on which the assessment is first levied, with proceeds of assessments levied by the regional district.

(9) State the proposed rate and method of apportionment to be used in levying annual assessments for all categories of property.

(10) Include any other matters determined to be necessary by the board of supervisors.

(d) (1) The formation of the regional district is not subject to Section 5517.1 or to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

(2) The regional district shall be formed if a majority of voters voting on the proposition vote in favor of formation of the regional district.

(e) (1) No proceeds from any bonds issued pursuant to Section 5539.3 shall be expended for operation and maintenance. Bond proceeds may be expended to pay all costs incidental to the preparation and issuance of the bonds.

(2) The regional district may use the proceeds from the levy of assessments for the operation and maintenance of capital outlay projects.

(f) The San Diego Association of Governments, serving as the Regional Planning and Growth Management Review Board, should review the expenditure plan for consistency with the open-space element of the Regional Growth Management Strategy.

SEC. 31. Section 5506.5 of the Public Resources Code is amended to read:

5506.5. (a) If the exterior boundaries of a proposed district are coterminous with the exterior boundaries of the County of Marin or the County of Sonoma, proceedings for formation of that district may, in lieu of a petition, be initiated by resolution of the board of supervisors of the county.

(b) The resolution may specify that the board of supervisors shall act, ex officio, as the governing body for a district formed in Marin County. For a district formed in Sonoma County, the board of supervisors shall act, ex officio, as the governing body of the district. In those cases, the provisions of this article pertaining to the election of district directors shall not apply and all powers and authority of the district shall be vested in the board of supervisors of the county in its capacity as the governing body of the district.

(c) The resolution adopted by the Board of Supervisors of the County of Sonoma shall do all of the following:

(1) Name the district, and state the reasons for forming it.

(2) Describe the methods by which the district will be financed.

(3) Call, and give notice of, an election to be held in the proposed district for the purpose of determining whether the district shall be created and established. The formation of the 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).

(4) Include any other matters necessary to the formation of the district.

SEC. 32. Section 5506.10 of the Public Resources Code is amended to read:

5506.10. (a) (1) The Legislature hereby finds and declares that the population of Sacramento County continues to grow at an increasing rate, and already the county is far behind in providing adequate park, recreational, and open-space facilities for its residents. Formation of a regional district with boundaries coterminous with those of Sacramento County is critical to help address the growing and unmet park and recreational needs in Sacramento County.

(2) Proceedings for the formation of a regional park and open-space district or a regional open-space district with boundaries coterminous with those of Sacramento County may be initiated by resolution of the Board of Supervisors of the County of Sacramento after a hearing noticed in accordance with Section 6064 of the Government Code, in lieu of the petition and proceedings related to the petition specified in this article.

(b) As used in this section:

(1) ''Regional district'' means a district formed pursuant to this section that contains all of the territory within Sacramento County, including all incorporated cities.

(2) ''Capital outlay project'' means the acquisition or improvement of real property, but, for purposes of subdivision (c) includes the servicing of bonds issued pursuant to Section 5539.10.

(3) ''Maintenance'' means both of the following:

(A) Those purposes listed in Section 22531 of the Streets and Highways Code.

(B) Security for park, recreational, and open-space lands and improvements, including, but not limited to, park rangers and park security personnel.

(c) The resolution specified in subdivision (a) shall do all of the following:

(1) Name the proposed regional district and state the reasons for forming it.

(2) Specify that the Board of Supervisors of the County of Sacramento shall act, ex officio, as the governing body of the regional district. The provisions of this article pertaining to district directors do not apply, and all powers and authority of the regional district shall be vested in the board of supervisors in its capacity as the governing body of the regional district.

(3) Describe the territory to be included in the regional district.

(4) Describe the methods by which the regional district will be financed.

(5) (A) Specify that all revenue generated by the regional district, including the proceeds from the issuance of any bonds, shall be allocated among all affected public agencies within the territory of the district, for expenditure consistent with the purposes of this article, to adequately address the needs specified in subdivision (a) of Section 5539.10.

(B) For the purposes of this paragraph, ''all affected public agencies'' means the County of Sacramento, all incorporated cities within the county, and any park district or county service area established for the purpose of acquiring, improving, and managing land or improvements for park, recreational, open-space, or conservation purposes which is included within the territory of the district.

(6) (A) Call and give notice of an election to be held in the proposed regional district for the purpose of determining whether the regional district shall be formed.

(B) Notwithstanding Section 5518, the County Counsel of the County of Sacramento shall prepare the language in the ballot label. The proposition shall specify the matters set forth in the resolution, except for subparagraph (A). The analysis and review of the measure shall be carried out pursuant to Section 9160 of the Elections Code.

(7) State that in the first 20 years after the date that an assessment is levied pursuant to Section 5539.10, a minimum of 75 percent of all proceeds of assessments levied by the regional district shall be used for capital outlay projects on a nonannualized basis.

(8) Include an expenditure plan consisting of a list of capital outlay projects, including acquisition areas, and a general description of proposed outlays for operation and maintenance to be funded, over a 20-year period from the date on which the assessment is first levied, with proceeds of assessments levied by the regional district. No funds shall be allocated for capital outlay projects or for the operation and maintenance of any lands or facilities that are not located within the boundaries of the regional district.

(9) State the proposed rate and method of apportionment to be used in levying annual assessments for all categories of property.

(10) Include any other matters determined to be necessary or desirable by the board of supervisors.

(d) (1) The formation of the regional district is not subject to Section 5517.1 or to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

(2) The regional district shall be formed if a majority of voters voting on the proposition vote in favor of formation of the regional district.

(e) (1) No proceeds from any bonds issued pursuant to Section 5539.10 shall be expended for operation and maintenance. Bond proceeds may be expended to pay all costs incidental to the preparation and issuance of the bonds.

(2) The regional district may use the proceeds from the levy of assessments for the operation and maintenance of capital outlay projects and any lands acquired and improvements made to park, recreational, and open-space lands of the regional district.

SEC. 33. Section 5539.4 of the Public Resources Code is amended to read:

5539.4. The formation of a district with boundaries coterminous with those of Napa County 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).

SEC. 34. Section 5539.9 of the Public Resources Code is amended to read:

5539.9. (a) In addition to the authority conferred in Section 5539.5, the Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code), except Sections 22605, 22609, and 22610 of, and Chapter 3 (commencing with Section 22620) of Part 2 of Division 15 of, the Streets and Highways Code, is, to the extent not inconsistent with or superseded by this section, applicable to a regional district created and established in Los Angeles County, except as follows:

(1) Article 2 (commencing with Section 22605) of Chapter 2 of Part 2 of Division 15 of the Streets and Highways Code shall not apply.

(2) No changes shall be made pursuant to Chapter 3 of Part 2 of Division 15 of the Streets and Highways Code or Section 5572 of this code with respect to the rate and method of apportionment of assessments, the use of proceeds of assessments, the use of proceeds of bonds, and the territory included within the district, except that the governing body may correct errors in assessments, rule on appeals of assessments against particular parcels, and annually adjust the assessments levied against particular parcels of real property to reflect changes in the uses of those parcels.

(3) No changes shall be made to the rate and method of apportionment of any assessment approved by the voters and levied pursuant to this section.

(4) Article 4 (commencing with Section 22565) of Chapter 1 of Part 2 of Division 15 of the Streets and Highways Code shall apply to a regional district created pursuant to Section 5506.9, and, in addition to the items listed in that article, the annual report shall include all of the following:

(A) Changes in the total number of parcels assessed and changes in the number of parcels with respect to use code.

(B) Amount of funds to be generated by the regional district in the next fiscal year.

(C) The proposed allocation of funds for maintenance and servicing for the next fiscal year.

(D) The disposition of funds generated by the regional district in the current fiscal year. Whenever the public interest or convenience requires, the regional district may, at the discretion of its governing body, use any or all provisions of that act to carry out any purpose of the regional district.

(b) For the purposes of the regional district, any notice required to be published pursuant to the Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code) or pursuant to Section 5511 shall be published pursuant to Section 6064 of the Government Code.

(c) Notwithstanding subdivision (a), the governing body of the regional district shall not levy any assessment pursuant to the Landscaping and Lighting Act of 1972 unless a proposition authorizing the regional district to levy the assessments is first approved by a majority of the voters voting on the proposition. The Board of Supervisors of Los Angeles County may consolidate a proposition submitted to the voters pursuant to this subdivision into a single ballot measure with the proposal to determine whether to create and establish a regional district pursuant to paragraph (6) of subdivision (c) of Section 5506.9. Notwithstanding Section 5518, the County Counsel of the County of Los Angeles shall prepare the language in the ballot label. The proposition shall specify the matters set forth in the resolution adopted pursuant to subdivision (c) of Section 5506.9, except paragraph (6) thereof. Notwithstanding any other provision in the Landscaping and Lighting Act of 1972, any assessments proposed pursuant to that act shall be deemed levied upon approval of a majority of the voters voting on the proposition.

(d) (1) Notwithstanding any other provisions in the Landscaping and Lighting Act of 1972, all proceeds of assessments levied or bonds issued

by the regional district shall be allocated in accordance with paragraphs (5) and (8) of subdivision (c) of Section 5506.9.

(2) No levy of any additional assessments pursuant to this section, including any levy of any assessment beyond the maximum time periods for which assessments are authorized pursuant to Section 5506.9, may be authorized unless a proposition, including the provisions specified in paragraphs (5), (8), and (9) of subdivision (c) of Section 5506.9, is approved by a majority of the voters in the regional district voting on the proposition. Any future expenditure plan shall include a division of funds between capital outlay and maintenance and servicing, and a list of capital outlay projects and acquisition areas. No future expenditure plan shall contain any provision that could impair the payment of debt service on bonds or other evidence of indebtedness previously issued pursuant to this section. Notwithstanding any provision of the Landscaping and Lighting Act of 1972, any assessment levied pursuant to this section may include an annual amount to pay the costs of maintenance and servicing of the capital outlay projects funded pursuant to Section 5506.9, and may be collected in annual installments.

(e) Prior to the election required by subdivision (c), the Board of Supervisors of Los Angeles County may undertake proceedings on behalf of the proposed regional district in accordance with Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code to create an assessment district with the same boundaries as the proposed regional district. Hearings required pursuant to Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code may be consolidated with those required pursuant to this division. Those proceedings shall be deemed to be the proceedings required by Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code.

(f) The governing body may exempt from the assessment any uninhabited parcel substantially used in agriculture and any parcel enforceably restricted as open-space land during the time in which the parcel is so used or restricted, if the governing body determines that these parcels will not benefit from the expenditure of the proceeds of assessments.

(g) The formation of a regional district with boundaries coterminous with those of Los Angeles County is not subject to Section 5517.1 or to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

(h) Notwithstanding any other provision in the acts specified in Section 5539.5 and in subdivision (a), the net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method that fairly distributes the net amount among all

assessable lots or parcels in proportion to the estimated benefits to be received by each lot or parcel from the improvements.

(i) Analysis and review of the measure submitted to the voters pursuant to subdivision (c) shall be carried out pursuant to Section 9160 of the Elections Code.

(j) The Legislature hereby finds and declares that the land acquisition, improvements, and services provided by the regional district, if created and established, will specially benefit the properties assessed and the persons paying the assessments authorized in this section in at least the following respects:

(1) Enhanced recreational opportunities and expanded access to recreational facilities for all residents throughout the district.

(2) Improved quality of life for all communities in the district by protecting, restoring, and improving the district's irreplaceable beach, wildlife, park, and open-space land.

(3) Preservation of mountains, foothills, and canyons, and development of public access to these lands throughout the district.

(4) Protection of historical and cultural assets of the region.

(5) Increased economic activity and expanded employment opportunities within the regional district.

(6) Increased property values, resulting from the effects specified in this subdivision.

(7) Provision of benefits to all properties within the county, including positive impacts on air and water quality, capacity of roads, transportation and other public infrastructure systems, schools, and public utilities.

(k) The Legislature also finds and declares the following:

(1) The expansion, restoration, and improvement of park, recreation, beach, and open-space lands throughout Los Angeles County benefits all residents in the county.

(2) Protection, restoration, and improvement of these lands are vital to the quality of life for all residents in Los Angeles County.

(3) Increased park and recreation opportunities in the densely populated and heavily urbanized areas of Los Angeles County are vital to the health and well-being of all residents in the county, and providing these opportunities is a high priority.

(4) The protection and enhancement of the recreational opportunities provided by Los Angeles County's beaches, shoreline, and mountains must be included within the expenditure plan specified in subdivision (c) of Section 5506.9 in order to provide benefits to each resident of the county. The Legislature also finds and declares that, consistent with Division 23 (commencing with Section 33000), the Santa Monica Mountains Conservancy is a unique and valuable environmental, educational, and recreational resource; that as the last large undeveloped

area within the greater Los Angeles metropolitan region it provides essential relief from the urban environment; and that the preservation and protection of this resource is in the public interest; and the Legislature further finds and declares that the acquisition of open-space lands by the conservancy provides a necessary benefit to each and every resident of Los Angeles County.

(5) The population of Los Angeles County continues to grow at an increasing rate, and already is far behind other urban areas in the state in providing adequate park, recreation, and open-space facilities for its residents. Creation of a regional park and open-space district with boundaries coterminous with those of Los Angeles County is critical to help address the growing and unmet park and recreation needs in Los Angeles County. It is therefore vital that Los Angeles County act immediately to address these issues.

SEC. 35. Section 35121 of the Public Resources Code is amended to read:

35121. (a) If, after the establishment of the authority's boundaries pursuant to Section 35120, territory within the authority is annexed to a city which is outside the authority, that territory may be detached from the authority pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

(b) If, after the establishment of the authority's boundaries pursuant to Section 35120, a city which is outside the authority's jurisdiction desires to be included within the authority's jurisdiction, the city shall adopt a resolution as provided in Section 35120. Following the adoption of the resolution, the territory within the city may be annexed to the authority pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code). If the authority levies a special tax or an assessment and proposes to extend that special tax or assessment to the territory proposed to be annexed, the annexation shall not be complete until the authority complies with the procedures for levying the special tax or the assessment in that territory, including notice, hearing, and an election, in that territory, when required.

SEC. 36. Section 49050 of the Public Resources Code is amended to read:

49050. The boundaries of any district may be altered, and outlying districts or territory, whether incorporated or unincorporated, and whether contiguous or noncontiguous, may be annexed pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code). However, no parcel of noncontiguous territory that

contains less than 10 privately owned acres may be annexed to any district.

SEC. 37. Section 49195 of the Public Resources Code is amended to read:

49195. The boundaries of any district may be altered, and outlying contiguous territory, whether incorporated or unincorporated, may be annexed pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

SEC. 38. Division 32 (commencing with Section 60000) of the Public Resources Code is repealed.

SEC. 39. Division 32.5 (commencing with Section 60200) of the Public Resources Code is repealed.

SEC. 40. Section 15961.5 of the Public Utilities Code is amended to read:

15961.5. (a) Notwithstanding any other provision of the division, the candidates for director of any district that is wholly or partially within the County of Placer may be elected at large, by wards, or from wards upon adoption of a resolution or ordinance to that effect by the board of directors of the district, subject to approval of the board of supervisors, or as a part of a change of organization or a reorganization conducted pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code.

(b) A resolution or ordinance that divides a district into wards adopted pursuant to subdivision (a) shall describe the boundaries of the wards so that the wards shall be as nearly equal in population as may be.

(c) As used in this section:

(1) ''By wards'' means the election of members of the board of directors by voters of the ward alone.

(2) ''From wards'' means the election of members of the board of directors who are residents of the ward from which they are elected by the voters of the entire district.

SEC. 41. Section 19014 of the Public Utilities Code is amended to read:

19014. The district may be dissolved pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code.

SEC. 42. Section 100500 of the Public Utilities Code is amended to read:

100500. The district may be dissolved pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of

2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

SEC. 42.1. Section 105303 of the Public Utilities Code is amended to read:

105303. The secretary of the district shall compare the signatures in the petition with the affidavits of registration on file with the county election official. The secretary of the district also shall certify to the sufficiency or insufficiency of the petition.

SEC. 42.3. Section 2287 of the Revenue and Taxation Code is repealed.

SEC. 42.5. Section 6736 of the Revenue and Taxation Code is amended to read:

6736. If any amount required to be paid to the state under this part is not paid when due, the board may, within 10 years after the amount is due, file in the office of the Clerk of the Superior Court of Sacramento County, or any county, a certificate specifying the amount required to be paid, interest and penalty due, the name and address as it appears on the records of the board of the person liable, the compliance of the board with this part in relation to the determination of the amount required to be paid, and a request that judgment be entered against the person in the amount required to be paid, together with interest and penalty as set forth in the certificate.

SEC. 42.7. Section 6737 of the Revenue and Taxation Code is amended to read:

6737. The clerk of the court immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the person in the amount required to be paid, together with interest and penalty as set forth in this certificate. The clerk of the court may file the judgment in a loose-leaf book entitled, ''Special Judgments for State Retail Sales or Use Tax.''

SEC. 42.9. Section 6738 of the Revenue and Taxation Code is amended to read:

6738. An abstract of the judgment or a copy of the judgment may be filed for record with the county recorder of any county. From the time of the filing, the amount required to be paid, together with the interest and penalty set forth constitutes a lien upon all the real property in the county owned by the person liable until the lien acquired by that person expires. The lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the date of the judgment so entered by the clerk of the court unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the judgment, or within 10 years from the date of the last extension of the lien, be extended by filing for record in the office of the county recorder of any county an abstract or copy of the judgment. From the time of filing the lien shall be

extended to the property in the county for 10 years unless sooner released or otherwise discharged.

SEC. 43. Section 21267 of the Water Code is repealed.

SEC. 44. Section 30505 of the Water Code is repealed.

SEC. 45. Section 35565.4 of the Water Code is amended to read:

35565.4. (a) For the purpose of providing mosquito abatement and vector control services to the lands and inhabitants of the district, and in addition to the powers contained in this division, the district may exercise any of the powers of a mosquito abatement district or vector control district pursuant to the Mosquito Abatement and Vector Control District Law, Chapter 1 (commencing with Section 2200) of Division 3 of the Health and Safety Code.

(b) For the purpose of providing park and recreation facilities and services, the district may exercise any of the powers of a recreation and park district pursuant to the Recreation and Park District Law, Chapter 4 (commencing with Section 5780) of Division 5 of the Public Resources Code.

(c) For the purpose of providing landscaping and lighting facilities and services, the district may exercise the powers of the Landscaping and Lighting Act of 1972, Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code.

(d) For the purposes of providing for the collection or disposal of garbage or refuse matter, the district may exercise the powers of a community services district pursuant to the Community Services District Law, Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

(e) The district shall not exercise any of the powers set forth in subdivisions (a), (b), (c), and (d) in the territory within the Borrego Springs Community Services District until the San Diego Local Agency Formation Commission has approved the exercise of that power.

(f) Any new special taxes, assessments, and fees or charges that the district needs to implement the powers as set forth in subdivisions (b), (c), and (d) may be levied or raised after complying with Articles XIII C and XIII D of the California Constitution.

SEC. 46. Section 35565.5 of the Water Code is repealed.

SEC. 47. Section 35565.6 of the Water Code is repealed.

SEC. 48. Section 35565.7 of the Water Code is repealed.

SEC. 49. Section 40501 of the Water Code is repealed.

SEC. 50. Section 5.20 is added to the North Delta Water Agency Act, Chapter 283 of the Statutes of 1973, to read:

Sec. 5.20. The board may raise revenue in the same manner as reclamation districts, pursuant to Part 7 (commencing with Section 51200) of Division 15 of the Water Code, and in conformance with Section 53753 of the Government Code.

SEC. 51. Section 25.7 of this bill incorporates amendments to Section 2854 of the Probate Code proposed by both this bill and SB 294. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 2854 of the Probate Code, and (3) this bill is enacted after SB 294, in which case Section 25.5 of this bill shall not become operative.

CHAPTER 297

An act to amend Section 1029 of the Government Code, and to amend Sections 13503, 13506, and 13510.1 of, and to add Section 13510.7 to, the Penal Code, relating to peace officers.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 1029 of the Government Code is amended to read:

1029. (a) Except as provided in subdivision (b), (c), or (d), each of the following persons is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer:

(1) Any person who has been convicted of a felony.

(2) Any person who has been convicted of any offense in any other jurisdiction which would have been a felony if committed in this state.

(3) Any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a felony. This paragraph shall apply regardless of whether, pursuant to subdivision (b) of Section 17 of the Penal Code, the court declares the offense to be a misdemeanor or the offense becomes a misdemeanor by operation of law.

(4) Any person who has been charged with a felony and adjudged by a superior court to be mentally incompetent under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code.

(5) Any person who has been found not guilty by reason of insanity of any felony.

(6) Any person who has been determined to be a mentally disordered sex offender pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(7) Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution as provided in Section 3051 of the Welfare and Institutions Code.

(b) (1) A plea of guilty to a felony pursuant to a deferred entry of judgment program as set forth in Sections 1000 to 1000.4, inclusive, of the Penal Code shall not alone disqualify a person from being a peace officer unless a judgment of guilty is entered pursuant to Section 1000.3 of the Penal Code.

(2) A person who pleads guilty or nolo contendere to, or who is found guilty by a trier of fact of, an alternate felony-misdemeanor drug possession offense and successfully completes a program of probation pursuant to Section 1210.1 of the Penal Code shall not be disqualified from being a peace officer solely on the basis of the plea or finding if the court deems the offense to be a misdemeanor or reduces the offense to a misdemeanor.

(c) Any person who has been convicted of a felony, other than a felony punishable by death, in this state or any other state, or who has been convicted of any offense in any other state which would have been a felony, other than a felony punishable by death, if committed in this state, and who demonstrates the ability to assist persons in programs of rehabilitation may hold office and be employed as a parole officer of the Department of Corrections or the Department of the Youth Authority, or as a probation officer in a county probation department, if he or she has been granted a full and unconditional pardon for the felony or offense of which he or she was convicted. Notwithstanding any other provision of law, the Department of Corrections or the Department of the Youth Authority, or a county probation department, may refuse to employ that person regardless of his or her qualifications.

(d) Nothing in this section shall be construed to limit or curtail the power or authority of any board of police commissioners, chief of police, sheriff, mayor, or other appointing authority to appoint, employ, or deputize any person as a peace officer in time of disaster caused by flood, fire, pestilence or similar public calamity, or to exercise any power conferred by law to summon assistance in making arrests or preventing the commission of any criminal offense.

(e) Nothing in this section shall be construed to prohibit any person from holding office or being employed as a superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, if at the time of the person's hire a prior conviction of a felony was known to the person's employer, and the class of office for which the person was hired was not declared by law to be

a class prohibited to persons convicted of a felony, but as a result of a change in classification, as provided by law, the new classification would prohibit employment of a person convicted of a felony.

SEC. 2. Section 13503 of the Penal Code is amended to read:

13503. In carrying out its duties and responsibilities, the commission shall have all of the following powers:

(a) To meet at those times and places as it may deem proper.

(b) To employ an executive secretary and, pursuant to civil service, those clerical and technical assistants as may be necessary.

(c) To contract with other agencies, public or private, or persons as it deems necessary, for the rendition and affording of those services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities.

(d) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions.

(e) To develop and implement programs to increase the effectiveness of law enforcement and when those programs involve training and education courses to cooperate with and secure the cooperation of state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs.

(f) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government.

(g) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it.

(h) The commission shall not have the authority to adopt or carry out a regulation that authorizes the withdrawal or revocation of a certificate previously issued to a peace officer pursuant to this chapter.

(i) Except as specifically provided by law, the commission shall not have the authority to cancel a certificate previously issued to a peace officer pursuant to this chapter.

SEC. 3. Section 13506 of the Penal Code is amended to read:

13506. The commission may adopt those regulations as are necessary to carry out the purposes of this chapter. The commission shall not have the authority to adopt or carry out a regulation that authorizes the withdrawal or revocation of a certificate previously issued to a peace officer pursuant to this chapter. Except as specifically provided by law, the commission shall not have the authority to adopt regulations providing for the cancellation of a certificate.

SEC. 4. Section 13510.1 of the Penal Code is amended to read:

13510.1. (a) The commission shall establish a certification program for peace officers specified in Sections 13510 and 13522 and for the California Highway Patrol. Certificates of the commission established pursuant to this section shall be considered professional certificates.

(b) Basic, intermediate, advanced, supervisory, management, and executive certificates shall be established for the purpose of fostering professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officer members of city police departments, county sheriffs' departments, districts, university and state university and college departments, or by the California Highway Patrol.

(c) (1) Certificates shall be awarded on the basis of a combination of training, education, experience, and other prerequisites, as determined by the commission.

(2) In determining whether an applicant for certification has the requisite education, the commission shall recognize as acceptable college education only the following:

(A) Education provided by a community college, college, or university which has been accredited by the department of education of the state in which the community college, college, or university is located or by a recognized national or regional accrediting body.

(B) Until January 1, 1998, educational courses or degrees provided by a nonaccredited but state-approved college that offers programs exclusively in criminal justice.

(d) Persons who are determined by the commission to be eligible peace officers may make application for the certificates, provided they are employed by an agency which participates in the Peace Officer Standards and Training (POST) program.

(e) The commission shall have the authority to cancel any certificate that has been obtained through misrepresentation or fraud or that was issued as the result of an administrative error on the part of the commission or the employing agency.

SEC. 5. Section 13510.7 is added to the Penal Code, to read:

13510.7. (a) Whenever any person holding a certificate issued pursuant to Section 13510.1 is determined to be disqualified from holding office or being employed as a peace officer for the reasons set forth in subdivision (a) of Section 1029 of the Government Code, and the person has exhausted or waived his or her appeal, pursuant to Section 1237 or Section 1237.5, from the conviction or finding that forms the basis for or accompanies his or her disqualification, the commission shall cause the following to be entered in the commission's training record for that person: ''THIS PERSON IS INELIGIBLE TO BE A

PEACE OFFICER IN CALIFORNIA PURSUANT TO GOVERNMENT CODE SECTION 1029(a).''

(b) Whenever any person who is required to possess a basic certificate issued by the commission pursuant to Section 832.4 or who is subject to subdivision (a) of Section 13510.1 is determined to be disqualified from holding office or being employed as a peace officer for the reasons set forth in subdivision (a) of Section 1029 of the Government Code, the commission shall notify the law enforcement agency that employs the person that the person is ineligible to be a peace officer in California pursuant to subdivision (a) of Section 1029 of the Government Code. The person's basic certificate shall be null and void and the commission shall enter this information in the commission's training record for that person.

(c) After the time for filing a notice of appeal has passed, or where the remittitur has been issued following the filing of a notice of appeal, in a criminal case establishing the ineligibility of a person to be a peace officer as specified in subdivision (c), the commission shall reinstate a person's basic certificate in the event a conviction of the offense requiring or accompanying ineligibility is subsequently overturned or reversed by the action of a court of competent jurisdiction.

(d) Upon request of a person who is eligible for reinstatement pursuant to paragraph (2) of subdivision (b) of Section 1029 of the Government Code because of successful completion of probation pursuant to Section 1201.1 of the Penal Code, the court having jurisdiction over the matter in which probation was ordered pursuant to Section 1201.1 shall notify the commission of the successful completion and the misdemeanor nature of the person's conviction. The commission shall thereupon reinstate the person's eligibility. Reinstatement of eligibility in the person's training record shall not create a mandate that the person be hired by any agency.

CHAPTER 298

An act to add Section 12077.5 to the Penal Code, relating to firearms.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 12077.5 is added to the Penal Code, to read:

12077.5. (a) An individual may request that the Department of Justice perform a firearms eligibility check for that individual. The

applicant requesting the eligibility check shall provide the information required by subdivision (c) of Section 12077 to the department, in an application specified by the department.

(b) The department shall charge a fee of twenty dollars ($20) for performing the eligibility check authorized by this section, but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged may increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(c) An applicant for the eligibility check pursuant to subdivision (a) shall complete the application, have it notarized by any licensed California Notary Public, and submit it by mail to the department. Upon receipt of a notarized application and fee, the department shall do all of the following:

(1) Examine its records, and the records it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) Notify the applicant by mail of its determination of whether the applicant is a person described in Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code. The department's notification shall state either ''eligible to possess firearms as of the date the check was completed'' or ''ineligible to possess firearms as of the date the check was completed.''

(d) If the department determines that the information submitted to it in the application contains any blank spaces, or inaccurate, illegible, or incomplete information, preventing identification of the applicant, or if the required fee is not submitted, the department shall not be required to perform the firearms eligibility check.

(e) The department shall make applications to conduct a firearms eligibility check as described in this section available to licensed firearms dealers and on the department's Web site.

(f) The department shall be immune from any liability arising out of the performance of the firearms eligibility check, or any reliance upon the firearms eligibility check.

(g) No person or agency may require or request another person to obtain a firearms eligibility check or notification of a firearms eligibility check pursuant to this section. A violation of this subdivision is a misdemeanor.

(h) The department shall include on the application specified in subdivision (a) and the notification of eligibility specified in subdivision (c) the following statements:

''No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility check pursuant to Section 12077.5 of the Penal Code. A violation of these provisions is a misdemeanor.''

''If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.''

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 299

An act to relating to public trust lands.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. The parcel to which this act is applicable is described as follows, and shall be referred to in this act as the ''Kaiser Steel development area'':

LAND DESCRIPTION

All of that land situated in the City of Vallejo, County of Solano, State of California, within the area described as follows:

BEGINNING AT A POINT, said point being the intersection of the southeasterly line of Solano Boulevard with the centerline of Sonoma Boulevard, thence southwesterly along the southeasterly line of Solano Boulevard and the extension of said southeasterly line, S 54°21′37″W, 960.03 feet; Thence leaving said southeasterly line S 35°53′08″E, 296.83 feet; Thence S 52°27′37″W, 471.04 feet to the U.S. Pierhead and Bulkhead Line as shown on the Map of the Grant to the City of Vallejo, Chapter 63, Statutes of 1963, filed in

Book 8, of Surveys, at Page 90 in the Office of the Solano County Recorder; Thence along said U.S. Pierhead and Bulkhead Line N 39°38′08″W, 2473.08 feet; Thence leaving said U.S. Pierhead and Bulkhead Line, N 50°21′52″E, 336 feet more or less, to the centerline of Curtola Parkway; Thence southeasterly along the centerline of Curtola Parkway to the intersection of the centerline of Sonoma Boulevard; Thence S 49°41′53″E along the centerline of Sonoma Boulevard to the intersection of southeasterly line of Solano Boulevard and the True Point of Beginning.

Basis of Bearing is the Record of Survey, Recorded March 26, 1997 in Book 22 of Surveys at Page 23.

END OF DESCRIPTION

SEC. 2. As used in this act, the following definitions apply:

(a) ''City'' means the City of Vallejo, a municipal corporation of the State of California, in Solano County.

(b) ''Kaiser Steel development area'' means the land described in Section 1 of this act.

(c) ''Public trust'' means the public trust for commerce, navigation, and fisheries, water-oriented recreation, preservation of land in a natural state, and other public trust purposes.

(d) ''Redevelopment agency'' means the Vallejo Redevelopment Agency, a public body, corporate and politic.

(e) ''Vallejo Granted Lands Trust'' means the statutory trust created by the grant of tidelands and submerged lands to the City of Vallejo in Chapter 310 of the Statutes of 1913, as amended.

SEC. 3. The Legislature hereby finds and declares all of the following:

(a) Certain of the land within the Kaiser Steel development area were included within the perimeter descriptions of state sales of land to private parties by patents issued in 1867, 1868, and 1872. One patent states that it was issued pursuant to authority contained in Chapter 235 of the Statutes of 1858 and Chapter 314 of the Statutes of 1859. Two of the patents state that they were issued pursuant to authority contained in Chapter 397 of the Statutes of 1863.

(b) Any and all remaining state public trust interests within tidelands patents issued to private parties within the Kaiser Steel development area, whether in fee or public trust easement, have been granted to the city subject to the public trust and certain other restrictions by the Vallejo Granted Lands Trust.

(c) In the 1920's, the city initiated litigation entitled City of Vallejo v. Smith, et al. (Solano County Superior Court; Case No. 7241) against private claimants of the tidelands patents within the Kaiser Steel development area, and alleged, among other things, that the patents were invalid because they included submerged land below ordinary low tide, and that title to that land could not and did not pass with state patents, and that title was held by the city pursuant to the Vallejo Granted Lands Trust. The State of California was not named a party in the City of Vallejo v. Smith, et al.

(d) There are unresolved issues concerning the geographic extent and boundaries of public trust and nonpublic trust title within the Kaiser Steel development area, the validity of state-issued patents there, and whether land within the Kaiser Steel development area remains subject to the public trust and to the Vallejo Granted Lands Trust.

(e) This uncertainty of title limits the potential development of inland areas of the Kaiser Steel development area for nonpublic trust uses, and renders uncertain the creation of desirable public access, commercial recreation facilities, and other public trust uses near and along this portion of the city waterfront.

(f) It is intended that the resolution of these disputes and the consolidation of public and private ownerships will be accomplished by and through a settlement and exchange of lands within the Kaiser Steel development area. The settlement and exchange shall be for the purpose of allowing nonpublic trust uses of lands no longer necessary for public trust purposes, while also establishing secure public trust title within the Kaiser Steel development area of land to be used for the purposes of the Vallejo Granted Lands Trust.

(g) The settlement and exchange contemplated by this act would maximize the benefits to the public trust without interfering with trust purposes, and would resolve legal uncertainties to the overall benefit of the public trust, provided that the State Lands Commission makes the findings set forth in Section 4 of this act as part of a settlement and exchange agreement.

SEC. 4. The Legislature hereby authorizes the city, the redevelopment agency, and the State Lands Commission to enter into an agreement for the settlement of conflicting claims of ownership and for an exchange of lands that shall terminate the public trust over certain filled tidelands and submerged lands within the Kaiser Steel development area as described in the agreement. The commission may approve the exchange of any public trust lands only after the commission makes the following findings:

(a) That the value of any land or interest in land to be conveyed and established through the exchange to be subject to the public trust equals or exceeds the value of the land to be conveyed free of the public trust

and in which the public trust is terminated pursuant to a settlement and exchange agreement. If equal or greater economic value to the public trust is not achieved through a land exchange confirming public trust land within the Kaiser Steel development area, the value necessary in addition to that provided by the land exchange may be met by a contribution to the fund established by the Kapiloff Land Bank Act (Division 7 (commencing with Section 8600) of the Public Resources Code) for the purchase of other land to be made subject to the public trust.

(b) That the portion of lands over which the public trust will be terminated within the Kaiser Steel development area have been filled and reclaimed, those parcels consisting entirely of dry land lying above the present mean high tide line, and are no longer available, useful, or necessary for the purposes of the public trust, or for purposes of the Vallejo Granted Lands Trust.

(c) That the land over which the public trust will be terminated is not waterfront land.

(d) That streets in or serving the Kaiser Steel development area have provided, and will continue to provide, public pedestrian and vehicular access to the waterfront and to the public trust use areas established through the exchange.

(e) That the lands over which the public trust will be terminated constitute a relatively small portion of the tidelands and submerged lands granted to the city under Chapter 310 of the Statutes of 1913, as amended.

(f) That the lands over which the public trust will be terminated are no longer needed or required to further public trust purposes or the purposes of the Vallejo Granted Lands Trust, and the land to be acquired within the Kaiser Steel development area through the exchange will serve public trust purposes and needs.

(g) That the land exchange is in the best interest of the state.

SEC. 5. (a) Any party to a settlement and exchange agreement entered into pursuant to this act may bring an action under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure to quiet title and to confirm the validity of that agreement as if the agreement had been entered into pursuant to Section 6307 or 6357 of the Public Resources Code. Any action shall be brought no later than 90 days after the recording of the executed agreement.

(b) Notwithstanding subdivision (b) of Section 764.080 of the Code of Civil Procedure, a person not a party to a settlement and exchange agreement entered into pursuant to this act seeking to bring an action challenging the validity of the agreement shall file that action no later than 180 days after the recording of the executed agreement.

(c) Any settlement and exchange agreement entered into pursuant to this act shall be conclusively presumed to be valid, unless held invalid in an appropriate proceeding in a court of competent jurisdiction commenced within the time limits specified in this section.

SEC. 6. For purposes of effectuating a settlement and exchange referred to in Section 2 of this act, the State Lands Commission may do all of the following:

(a) Convey to the city or the redevelopment agency, by patent, any and all of the right, title, and interest held by the state by virtue of its sovereign trust title to tidelands and submerged lands, including any public trust interest, in and to all of the historic tidelands and submerged lands within the Kaiser Steel development area that are no longer waterfront lands, are above the mean high tide line, and are not necessary for public trust purposes, subject to the reservations that the commission determines to be appropriate. That patent and conveyance shall forever terminate the public trust over those lands so conveyed, subject to any reservations which may be made by the commission.

(b) Receive and accept on behalf of the state in its sovereign capacity any land or any interest in land, conveyed to the state in its sovereign capacity pursuant to this act and pursuant to a settlement and exchange agreement authorized by this act, including any contribution to the Kapiloff Land Bank Fund (Section 8610 of the Public Resources Code) for the purchase of public trust lands to be owned by the state and administered by the State Lands Commission.

(c) Convey to the city by patent all of the state's right, title, and interest held by virtue of its sovereignty in and to the tidelands and submerged lands within the Kaiser Steel development area, including those lands conveyed to the state pursuant to a settlement and exchange agreement entered into pursuant to this act, subject to the Vallejo Granted Lands Trust, the public trust, and the terms, conditions, and reservations that the State Lands Commission determines are necessary to meet the requirements of this act, the public trust, and the Vallejo Granted Lands Trust. Upon that conveyance, the city shall be responsible for administering the public trust with respect to those lands conveyed through a settlement and exchange agreement entered into pursuant to this act.

CHAPTER 300

An act to amend Sections 309.5 and 1802 of, and to add Section 1802.3 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 3, 2003. Filed with
Secretary of State September 4, 2003.]

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

SECTION 1. Section 309.5 of the Public Utilities Code is amended to read:

309.5. (a) There is within the commission a division to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the division shall primarily consider the interests of residential and small commercial customers. The amendments made to this section by Chapter 440 of the Statutes of 2001 are not intended to expand the representation and responsibilities of the division.

(b) The director of the division shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions. Personnel and resources shall be provided to the division at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee or his or her representative. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the

Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) On or before January 10 of each year, the commission shall provide to the chairperson of the fiscal committee of each house of the Legislature and to the Joint Legislative Budget Committee all of the following information:

(1) The number of personnel years assigned to the Office of Ratepayer Advocates.

(2) The total dollars expended by the Office of Ratepayer Advocates in the prior year, the estimated total dollars expended in the current year, and the total dollars proposed for appropriation in the following budget year.

(3) Workload standards and measures for the Office of Ratepayer Advocates.

(h) The division shall agree to meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the division in a complaint. The meet and confer process shall be utilized as an informal means of attempting to reach resolution or consensus on issues raised by the division regarding any regulated entity in the complaint proceeding.

SEC. 2. Section 1802 of the Public Utilities Code is amended to read:

1802. As used in this article:

(a) ''Compensation'' means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) ''Customer'' means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(2) ''Customer'' does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local

government entity for the purpose of participating in a commission proceeding.

(c) ''Expert witness fees'' means recorded or billed costs incurred by a customer for an expert witness.

(d) ''Other reasonable costs'' means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) ''Party'' means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) ''Proceeding'' means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(g) ''Significant financial hardship'' means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) ''Small commercial customer'' means any nonresidential customer with a maximum peak demand of less than 50 kilowatts. The commission may establish rules to modify or change the definition of ''small commercial customer,'' including use of criteria other than a peak demand threshold, if the commission determines that the modification or change will promote participation in proceedings at the commission by organizations representing small businesses, without incorporating large commercial and industrial customers.

(i) ''Substantial contribution'' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

SEC. 3. Section 1802.3 is added to the Public Utilities Code, to read:

1802.3. A representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation shall not be eligible for an award of

compensation pursuant to this article if the representative has a conflict arising from prior representation before the commission. This conflict may not be waived.

SEC. 4. The Legislature finds and declares all of the following:

(a) The intervenor compensation program allows for participation by organizations representing small businesses so that those businesses have a voice at the commission.

(b) The commission will evaluate and may revise the 50 kilowatt peak demand threshold, if doing so will further the purposes of the act adding this section.

(c) If the commission revises the threshold for a small commercial customer, it may consider criteria other than electricity demand, including number of employees.

(d) When the commission evaluates implementation of this expanded program, the commission should ensure that large commercial and industrial customers are not inadvertently included in the program.

(e) The act adding this section does not alter the commission's implementation of the requirement of intervenor compensation that may be granted only if the participation resulted in a substantial contribution to the proceeding, and only if intervention without an award of fees or costs imposes a significant financial hardship.

CHAPTER 301

An act to add Section 27337 to the Government Code, relating to veterans.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 27337 is added to the Government Code, to read:

27337. If any military veteran requests the recordation in any county in this state of any military discharge document, including a veteran's service form DD214, the county recorder shall require the veteran to sign a form stating the following:

"I, the undersigned, hereby acknowledge that I am informed that by recording the attached military discharge document, all information referenced within it becomes part of the official record of this

county, and that this information is open to inspection by any person.''

Print Name	Signature	Date

SEC. 2. Section 27337 is added to the Government Code, to read:

27337. (a) If any military veteran requests the recordation in any county in this state of any military discharge document, including a veteran's service form DD214, the county recorder shall require the veteran to sign a form stating the following:

''I, the undersigned, hereby acknowledge that I am informed that by recording the attached military discharge document, all information referenced within it becomes part of the official record of this county, and that this information is open to inspection by any person.''

Print Name	Signature	Date

(b) No copy of a recorded military discharge document may be issued except as provided by Section 6107.

SEC. 3. Section 2 of this act shall only become operative if Assembly Bill 1179 of the 2003–04 Regular Session is enacted and takes effect, and that bill amends Section 6107 of the Government Code, in which case Section 1 of this act 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 302

An act to amend Section 3042 of the Penal Code, relating to parole.

[Approved by Governor September 3, 2003. Filed with Secretary of State September 4, 2003.]

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

SECTION 1. Section 3042 of the Penal Code is amended to read:

3042. (a) At least 30 days before the Board of Prison Terms meets to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney who represented the defendant at trial, the district attorney of the county in which the offense was committed, the law enforcement agency that investigated the case, and where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder.

(b) The Board of Prison Terms shall record all those hearings and transcribe recordings of those hearings within 30 days of any hearing. Those transcripts, including the transcripts of all prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any hearing, the presiding hearing officer shall state his or her findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of the hearing, unless the material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his or her conduct since his or her last hearing.

(f) (1) The written notice to the judge of the superior court before whom the prisoner was tried and convicted shall be sent by certified mail with return receipt requested.

(2) The judge receiving this written notice may forward to the parole board any unprivileged information from the trial or sentencing proceeding regarding the prisoner, witnesses, or victims, or other relevant persons, or any other information, that is pertinent to the question of whether the parole board should grant parole or under what conditions parole should be granted. The judge may also, in his or her discretion, include information given to him or her by victims, witnesses, or other persons that bear on the question of the prisoner's suitability for parole.

(3) The parole board shall review and consider all information received from the judge or any other person and shall consider adjusting

the terms or conditions of parole to reflect the comments or concerns raised by this information, as appropriate.

(g) Nothing in this section shall be construed as limiting the type or content of information the judge or any other person may forward to the parole board for consideration under any other provision of law.

(h) Any person who receives notice under subdivision (a) who is authorized to forward information for consideration in a parole suitability hearing or the setting of a parole date for a person sentenced to a life sentence under this section, may forward that information either by facsimile or electronic mail. The Department of Corrections shall establish procedures for receiving the information by facsimile or electronic mail pursuant to this subdivision.

CHAPTER 303

An act to amend Section 27602 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 27602 of the Vehicle Code is amended to read:

27602. (a) A person may not drive a motor vehicle if a television receiver, a video monitor, or a television or video screen, or any other, similar means of visually displaying a television broadcast or video signal that produces entertainment or business applications, is operating and is located in the motor vehicle at any point forward of the back of the driver's seat, or is operating and visible to the driver while driving the motor vehicle.

(b) Subdivision (a) does not apply to the following equipment when installed in a vehicle:

(1) A vehicle information display.

(2) A global positioning display.

(3) A mapping display.

(4) A visual display used to enhance or supplement the driver's view forward, behind, or to the sides of a motor vehicle for the purpose of maneuvering the vehicle.

(5) A television receiver, video monitor, television or video screen, or any other, similar means of visually displaying a television broadcast or video signal, if that equipment has an interlock device that, when the

motor vehicle is driven, disables the equipment for all uses except as a visual display as described in paragraphs (1) to (4), inclusive.

(c) Subdivision (a) does not apply to a mobile, digital terminal installed in an authorized emergency vehicle or to a motor vehicle providing emergency road service or roadside assistance.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 304

An act to amend Sections 1513, 1520, 1530, and 1577 of, and to add Section 1515.5 to, the Code of Civil Procedure, relating to escheat.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 1513 of the Code of Civil Procedure is amended to read:

1513. Subject to Sections 1510 and 1511, the following property held or owing by a business association escheats to this state:

(a) Except as provided in subdivision (f), any demand, savings, or matured time deposit, or account subject to a negotiable order of withdrawal, made with a banking organization, together with any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges that may lawfully be withheld and that do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(1) Increased or decreased the amount of the deposit, cashed an interest check, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

(2) Corresponded electronically or in writing with the banking organization concerning the deposit.

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization.

A deposit or account shall not, however, escheat to the state if, during the previous three years, the owner has owned another deposit or account with the banking organization and, with respect to that deposit or account, the owner has done any of the acts described in paragraph (1), (2), or (3), and the banking organization has communicated electronically or in writing with the owner, at the address to which communications regarding that deposit or account are regularly sent, with regard to the deposit or account that would otherwise escheat under this subdivision. For purposes of this subdivision, ''communications'' means account statements or statements of interest paid for federal and state income tax purposes.

No banking organization may discontinue any interest or dividends on any savings deposit because of the inactivity contemplated by this section.

(b) Except as provided in subdivision (f), any demand, savings, or matured time deposit, or matured investment certificate, or account subject to a negotiable order of withdrawal, or other interest in a financial organization or any deposit made therewith, and any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges that may lawfully be withheld and that do not (where made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(1) Increased or decreased the amount of the funds or deposit, cashed an interest check, or presented an appropriate record for the crediting of interest or dividends.

(2) Corresponded electronically or in writing with the financial organization concerning the funds or deposit.

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

A deposit or account shall not, however, escheat to the state if, during the previous three years, the owner has owned another deposit or account with the financial organization and, with respect to that deposit or account, the owner has done any of the acts described in paragraph (1), (2), or (3), and the financial organization has communicated electronically or in writing with the owner, at the address to which communications regarding that deposit or account are regularly sent, with regard to the deposit or account that would otherwise escheat under this subdivision. For purposes of this subdivision, ''communications''

means account statements or statements of interest paid for federal and state income tax purposes.

No financial organization may discontinue any interest or dividends on any funds paid toward purchase of shares or other interest, or on any deposit, because of the inactivity contemplated by this section.

(c) Any sum payable on a traveler's check issued by a business association that has been outstanding for more than 15 years from the date of its issuance, when the owner, for more than 15 years, has not corresponded in writing with the business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association.

(d) Any sum payable on any other written instrument on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, any draft or certified check, that has been outstanding for more than three years from the date it was payable, or from the date of its issuance if payable on demand, when the owner, for more than three years, has not corresponded electronically or in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization.

(e) Any sum payable on a money order issued by a business association (including a banking or financial organization), that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any reasonable service charges that may lawfully be withheld and that do not, when made in this state, exceed those set forth in schedules filed by the business association from time to time with the Controller, when the owner, for more than seven years, has not corresponded electronically or in writing with the business association, banking, or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the business association. For the purposes of this subdivision, ''reasonable service charge'' means a service charge that meets all of the following requirements:

(1) It is uniformly applied to all of the issuer's money orders.

(2) It is clearly disclosed to the purchaser at the time of purchase and to the recipient of the money order.

(3) It does not begin to accrue until three years after the purchase date, and it stops accruing after the value of the money order escheats.

(4) It is permitted by contract between the issuer and the purchaser.

(5) It does not exceed 25 cents ($0.25) per month or the aggregate amount of twenty-one dollars ($21).

(f) Any funds held by a business association in an individual retirement account or under a retirement plan for self-employed

individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state, when the owner, for more than three years after the funds become payable or distributable, has not done any of the following:

(1) Increased or decreased the principal.

(2) Accepted payment of principal or income.

(3) Corresponded electronically or in writing concerning the property or otherwise indicated an interest.

These funds are not payable or distributable within the meaning of this subdivision unless, under the terms of the account or plan, distribution of all or a part of the funds would then be mandatory.

(g) Any wages or salaries that have remained unclaimed by the owner for more than one year after the wages or salaries become payable.

(h) For purposes of this section ''service charges'' means service charges imposed because of the inactivity contemplated by this section.

SEC. 2. Section 1515.5 is added to the Code of Civil Procedure, to read:

1515.5. Property distributable in the course of a demutualization or related reorganization of an insurance company is deemed abandoned as follows:

(a) On the date of the demutualization or reorganization, if the instruments or statements reflecting the distribution are not mailed to the owner because the address on the books and records for the holder is known to be incorrect.

(b) Two years after the date of the demutualization or reorganization, if instruments or statements reflecting the distribution are mailed to the owner and returned by the post office as undeliverable and the owner has done neither of the following:

(1) Communicated in writing with the holder or its agent regarding the property.

(2) Otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

(c) Three years after the date of the demutualization or reorganization, if instruments or statements reflecting the distribution are mailed to the owner and not returned by the post office as undeliverable and the owner has done neither of the following:

(1) Communicated in writing with the holder or its agent regarding the property.

(2) Otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

SEC. 3. Section 1520 of the Code of Civil Procedure, as amended by Section 3 of Chapter 813 of the Statutes of 2002, 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, 1515.5, 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. Section 1530 of the Code of Civil Procedure is amended to read:

1530. (a) Every person holding funds or other property escheated to this state under this chapter shall report to the Controller as provided in this section.

(b) The report shall be on a form prescribed or approved by the Controller and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of at least fifty dollars ($50) escheated under this chapter.

(2) In the case of escheated funds of life insurance corporations, the full name of the insured or annuitant, and his or her last known address, according to the life insurance corporation's records.

(3) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the Controller. The report shall set forth any amounts owing to the holder for unpaid rent or storage charges and for the cost of opening the safe deposit box or other safekeeping repository, if any, in which the property was contained.

(4) The nature and identifying number, if any, or description of any intangible property and the amount appearing from the records to be due, except that items of value under fifty dollars ($50) each may be reported in aggregate.

(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

(6) Other information which the Controller prescribes by rule as necessary for the administration of this chapter.

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, he or she shall file with his or her report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 or fiscal yearend next preceding, but the report of life insurance corporations, and the report of all insurance corporation demutualization proceeds subject to Section 1515.5, shall be filed before May 1 of each year as of December 31 next preceding. The initial report for property subject to Section 1515.5 shall be filed on or before May 1, 2004, with respect to conditions in effect on December 31, 2003, and all property shall be determined to be reportable under Section 1515.5 as if that section were in effect on the date of the insurance company demutualization or related reorganization. The Controller may postpone the reporting date upon his or her own motion or upon written request by any person required to file a report.

(e) The report, if made by an individual, shall be verified by the individual; if made by a partnership, by a partner; if made by an unincorporated association or private corporation, by an officer; and if

made by a public corporation, by its chief fiscal officer or other employee authorized by the holder.

SEC. 5. Section 1577 of the Code of Civil Procedure is amended to read:

1577. In addition to any damages, penalties, or fines for which a person may be liable under other provisions of law, any person who fails to report or pay or deliver unclaimed property within the time prescribed by this chapter, unless that failure is due to reasonable cause, shall pay to the State Controller interest at the rate of 12 percent per annum on that property or value thereof from the date the property should have been reported or paid or delivered.

CHAPTER 305

An act to amend Section 1569.616 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 1569.616 of the Health and Safety Code is amended to read:

1569.616. (a) (1) An administrator of a residential care facility for the elderly shall be required to successfully complete a department approved certification program prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, or a licensed nursing home administrator, the individual shall comply with the requirements of this section unless he or she qualifies for one of the exemptions provided for in subdivision (b).

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility where an individual is functioning as the administrator. The licensee shall notify the department within 30 days of any change in administrators.

(b) Individuals seeking exemptions under paragraph (2) of subdivision (a) shall meet the following criteria and fulfill the required portions of the certification program, as the case may be:

(1) An individual designated as the administrator of a residential care facility for the elderly who holds a valid license as a nursing home administrator issued in accordance with Chapter 8.5 (commencing with Section 3901) of Division 2 of the Business and Professions Code shall be required to complete the areas in the uniform core of knowledge

required by this section that pertain to the law, regulations, policies, and procedural standards that impact the operations of residential care facilities for the elderly, the use, misuse, and interaction of medication commonly used by the elderly in a residential setting, and resident admission, retention, and assessment procedures, equal to 12 hours of classroom instruction. An individual meeting the requirements of this paragraph shall not be required to take a written test.

(2) In those cases where the individual was both the licensee and administrator on or before July 1, 1991, the individual shall be required to complete all the areas specified for the certification program but shall not be required to take the written test required by this section. Those individuals exempted from the written test shall be issued a conditional certification that is valid only for the administrator of the facility for which the exemption was granted.

(A) As a condition to becoming an administrator of another facility, the individual shall be required to pass the written test provided for in this section.

(B) As a condition to applying for a new facility license, the individual shall be required to pass the written test provided for in Section 1569.23.

(c) (1) The administrator certification program shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of residential care facilities for the elderly.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the elderly.

(E) Community and support services.

(F) Physical needs for elderly persons.

(G) Use, misuse, and interaction of medication commonly used by the elderly.

(H) Resident admission, retention, and assessment procedures.

(I) Training focused specifically on serving clients with dementia. This training shall be for at least four hours.

(2) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit the documentation required by subdivision (d) to the department within 30 days of being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation of passing the written test or of qualifying for an exemption pursuant to subdivision (b).

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current criminal record clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a residential care facility for the elderly. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in paragraph (1) of subdivision (c). No more than one-half of the required 40 hours of continuing education necessary to renew the certificate may be satisfied through online courses. For purposes of this section, individuals who hold a valid license as a nursing home administrator issued in accordance with Chapter 8.5 (commencing with Section 3901) of Division 2 of the Business and Professions Code and meet the requirements of paragraph (1) of subdivision (b) shall only be required to complete 20 hours of continuing education.

(2) Every certified administrator of a residential care facility for the elderly is required to renew his or her certificate and shall complete the continuing education requirements of this subdivision whether he or she is certified according to subdivision (a) or (b). On and after January 1, 2002, at least eight hours of the 40-hour continuing education requirement for a certified administrator of a residential care facility for the elderly shall include instruction on serving clients with dementia, including, but not limited to, instruction related to direct care, physical environment, and admissions procedures and assessment.

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after January 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date

two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The department may revoke a certificate issued under this section for any of the following:

(1) Procuring a certificate by fraud or misrepresentation.

(2) Knowingly making or giving any false statement or information in conjunction with the application for issuance of a certificate.

(3) Criminal conviction unless an exemption is granted pursuant to Section 1569.17.

(h) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1569.50.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1569.58.

(i) (1) The department shall establish, by regulation, the program content, the testing instrument, the process for approving certification programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification programs and continuing education courses. These regulations shall be developed in consultation with provider and consumer organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person that has not provided satisfactory evidence of their ability to meet the requirements of vendorization set out in the regulations adopted pursuant to subdivision (j).

(2) (A) A vendor of online programs for continuing education shall ensure that each online course contains both of the following:

(i) An interactive portion where the participant receives feedback, through online communication, based on input from the participant.

(ii) Required use of a personal identification number or personal identification information to confirm the identity of the participant.

(B) Nothing in this subdivision shall prohibit the department from approving online programs for continuing education that do not meet the requirements of clauses (i) and (ii) of subparagraph (A) if the vendor demonstrates to the department's satisfaction that, through advanced technology, the course and the course delivery meet the requirements of this section.

(C) A vendor that offers online continuing education programs shall conduct, annually, a random 10 percent sampling of participants in order to ensure quality control.

(3) The department may authorize vendors to conduct the administrator certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(4) The department shall prepare and maintain an updated list of approved training vendors.

(5) The department may inspect training programs, continuing education courses, and online courses, at no charge to the department, in order to determine if content and teaching methods comply with paragraphs (1) and (2), if applicable, and with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(6) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(7) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee not to exceed one hundred dollars ($100) every two years for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(j) This section shall be operative upon regulations being adopted by the department to implement the administrator certification program as provided for in this section.

(k) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

CHAPTER 306

An act to add Section 361.1 to the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 361.1 is added to the Welfare and Institutions Code, to read:

361.1. (a) If a child is removed from the physical custody of a parent or guardian on the ground that the child may come within the jurisdiction of the juvenile court pursuant to Section 300, the child shall be returned to the physical custody of that parent or guardian immediately after a finding by the juvenile court that the child is not a person described in Section 300, but, in any case, not more than two working days following the date of that finding, unless the parent or guardian and the agency with custody of the child agree to a later date for the child's release. Nothing in this section shall affect a parent or guardian's remedies when a child is not returned immediately, as those remedies existed prior to enactment of this section.

(b) The Judicial Council shall adopt a rule of court to ensure proper notice to a parent or guardian regarding the circumstances and the timeframe in which a child is required to be released from custody pursuant to this section.

CHAPTER 307

An act to add Section 103265 to the Health and Safety Code, relating to vital statistics.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. This act shall be known and may be cited as the Riverside County Deputies Jenkins and Lee Act.

SEC. 2. Section 103265 is added to the Health and Safety Code, to read:

103265. An amended certificate of death of an individual who is a peace officer pursuant to Section 830 of the Penal Code, who was killed in the line of duty, shall be processed immediately upon acceptance for filing and shall be issued by the State Registrar or local registrar no later than 10 business days following acceptance for filing.

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 308

An act to amend Sections 5241, 17000, 17600, 17602, 17702, and 17704 of, and to add Section 17701 to, the Family Code, relating to child support.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

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

(a) The Child Support Program plays a critical role in ensuring the self-sufficiency of families and the well-being of children.

(b) Prior to 1998, the Child Support Program was a compliance-based program, focusing on local agency compliance with case processing

requirements as the measurement of program success, without regard to program performance or outcomes.

(c) The federal Child Support Performance and Incentive Act of 1998 changed the program by establishing a structure which emphasizes performance to achieve program goals. This structure includes the establishment of incentive payments and financial penalties for states, based on their performance in five performance measures.

(d) The enactment of the Child Support Performance and Incentive Act of 1998 establishes the importance of California improving the delivery of program services and increasing program performance. This ensures that the state will have maximum access to federal incentive funding and avoid federal program penalties.

(e) The delivery of effective child support services in California necessitates that the program be implemented in a uniform manner, requiring the application of a focused, structured approach to performance improvement strategies.

SEC. 2. Section 5241 of the Family Code is amended to read:

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee, including any interest thereon.

(b) If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee. In addition, the employer is liable to the obligee for any interest incurred as a result of the employer's failure to timely forward the withheld support pursuant to an assignment earnings order.

(c) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(d) If an employer withholds support, as required by the assignment order, but fails to forward the support to the obligee, the local child support agency shall take appropriate action to collect the withheld sums from the employer. The child support obligee or the local child support agency upon application may obtain an order requiring payment of support by electronic transfer from the employer's bank account if the employer has willfully failed to comply with the assignment order or if the employer has failed to comply with the assignment order on three separate occasions within a 12-month period. Where a court finds that an employer has willfully failed to comply with the assignment order or has otherwise failed to comply with the assignment order on three

separate occasions within a 12-month period, the court may impose a civil penalty, in addition to any other penalty required by law, of up to 50 percent of the support amount that has not been received by the obligee.

(e) To facilitate employer awareness, the local child support agency shall make reasonable efforts to notify any employer subject to an assignment order pursuant to this chapter of the electronic fund transfer provision and enhanced penalties provided by this act.

(f) Notwithstanding any other provision of law, any penalty payable pursuant to this subdivision shall be payable directly to the obligee. The local child support agency shall not be required to establish or collect this penalty on behalf of the obligee. The penalty shall not be included when determining the income of the obligee for the purpose of determining the eligibility of the obligee for benefits payable pursuant to state supplemental income programs. A court may issue the order requiring payment of support by electronic transfer from the employer's bank account and impose the penalty described in this subdivision, after notice and hearing. This provision shall not be construed to expand or limit the duties and obligations of the Labor Commissioner, as set forth in Section 200 and following of the Labor Code.

SEC. 3. Section 17000 of the Family Code is amended to read:

17000. The definitions contained in this section, and definitions applicable to Division 9 (commencing with Section 3500), shall govern the construction of this division, unless the context requires otherwise.

(a) ''Child support debt'' means the amount of money owed as child support pursuant to a court order.

(b) ''Child support order'' means any court order for the payment of a set or determinable amount of support by a parent or a court order requiring a parent to provide for health insurance coverage. ''Child support order'' includes any court order for spousal support or for medical support to the extent these obligations are to be enforced by a single state agency for child support under Title IV-D.

(c) ''Court'' means any superior court of this state and any court or tribunal of another state that has jurisdiction to determine the liability of persons for the support of another person.

(d) ''Court order'' means any judgment, decree, or order of any court of this state that orders the payment of a set or determinable amount of support by a parent. It does not include any order or decree of any proceeding in which a court did not order support.

(e) ''Department'' means the Department of Child Support Services.

(f) ''Dependent child'' means any of the following:

(1) Any person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) Any unmarried person who is at least 18 years of age but who has not reached his or her 19th birthday, is not emancipated, and is a student regularly attending high school or a program of vocational or technical training designed to train that person for gainful employment.

(g) ''Director'' means the Director of Child Support Services or his or her authorized representative.

(h) ''Local child support agency'' means the new county department of child support services created pursuant to this chapter and with which the department has entered into a cooperative agreement, to secure child and spousal support, medical support, and determine paternity. Local child support agency includes county programs in multiple counties that have been consolidated into a single agency pursuant to subdivision (a) of Section 17304.

(i) ''Parent'' means the natural or adoptive father or mother of a dependent child, and includes any person who has an enforceable obligation to support a dependent child.

(j) ''Public assistance'' means any amount paid under the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), or any Medi-Cal benefit, for the benefit of any dependent child or the caretaker of a child.

(k) ''Public assistance debt'' means any amount paid under the California Work Opportunity and Responsibility to Kids Act, contained in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, for the benefit of any dependent child or the caretaker of a child for whom the department is authorized to seek recoupment under this division, subject to applicable federal law.

(*l*) ''Title IV-D'' or ''IV-D'' means Part D of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).

SEC. 4. 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) Except as provided in this subdivision 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, monthly 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:

(1) 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:

(A) 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.

(B) 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 calendar year.

(2) 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.

(3) 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.

(4) 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.

(5) 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.).

(6) 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.

(c) 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 for each federal fiscal year, and shall report semiannually on all of the following performance measurements:

(1) The percentage of cases with collections of current support. This percentage shall be calculated by dividing the number of cases with an order for current support by the number of those cases with collections of current support. The number of cases with support collected shall include only the number of cases actually receiving a collection, not the number of payments received. Cases with a medical support order that do not have an order for current support may not be counted.

(2) The average amount collected per case for all cases with collections.

(3) The percentage 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.

(4) 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.

(5) In addition, the local child support agency shall report monthly on measurements developed by the department that provide data on the following:

(A) Locating obligors.

(B) Obtaining and enforcing medical support.

(C) Providing customer service.

(D) Any other measurements that the director determines to be an appropriate determination of a local child support agency's performance.

(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) For each federal fiscal year, department shall provide the information for all participating counties 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 on or before June 30, of each fiscal year. The department shall provide data semiannually, based on the federal fiscal year, on or before December 31, of each 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. 5. Section 17602 of the Family Code is amended to read:

17602. (a) The department shall adopt the federal minimum standards as the baseline standard of performance for the local child support agencies and work in consultation with the local child support

agencies to develop program performance targets on an annual federal fiscal year basis. The performance measures shall include, at a minimum, the federal performance measures and the state performance measures, as described in subdivision (c) of Section 17600. The program performance targets shall represent ongoing improvement in the performance measures for each local child support agency, as well as the department's statewide performance level.

(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. 6. Section 17701 is added to the Family Code, to read:

17701. (a) There is established within California's child support program a quality assurance and performance improvement program, pursuant to which local child support agencies, in partnership with the Department of Child Support Services, shall monitor and measure program performance and compliance, and ensure the implementation of actions necessary to meet state and federal requirements and to continuously improve the quality of child support program services.

(b) Under the direction and oversight of the department, each local child support agency shall implement a quality assurance and performance improvement program that shall include, at a minimum, all of the following:

(1) An annual planning process that incorporates statewide standards and requirements, and establishes local performance goals that the department and local agency agree are appropriate.

(2) The inclusion of local performance goals and other performance-related measures in the local child support agency's Plan of Cooperation agreement with the department.

(3) Implementation of actions necessary to promote the delivery of enhanced program services and improved performance.

(4) An ongoing self-assessment process that evaluates progress in achieving performance improvement and compliance with program requirements.

(5) Regular and ongoing oversight by the department, including onsite reviews and the provision of technical assistance.

(c) The department shall promulgate regulations to implement this section.

SEC. 7. Section 17702 of the Family Code is amended to read:

17702. (a) The department shall assess, at least once every three years, each county's compliance with federal and state child support laws and regulations in effect for the time period being reviewed, using a statistically valid sample of cases. Counties found to be out of compliance shall be assessed annually, until they are found to be in compliance. The information for the assessment shall be based on reviews conducted and reports produced by either state or county staff, as determined by the department.

In addition, in order to meet federal self-assessment requirements, the department shall conduct an annual assessment of the state's compliance, using a statistically valid statewide sample of cases.

(b) A county shall be eligible for the state incentives under Section 17704 only if the department determines that the county is in compliance with all federal and state laws and regulations or if the county has a corrective action plan in place that has been certified by the department pursuant to this subdivision. If a county is determined not to be in compliance the county shall develop and submit a corrective action plan

to the department. The department shall certify a corrective action plan if the department determines that the plan will put the county into compliance with federal and state laws and regulations. A county shall be eligible for state incentives under Section 17704 only for any quarter the county remains in compliance with a corrective action plan that has been certified by the department.

(c) Counties under a corrective action plan shall be assessed on a quarterly basis until the department determines that they are in compliance with federal and state child support program requirements.

SEC. 8. 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. 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) 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.

(d) 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. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school

districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 309

An act to add and repeal Section 7155.7 of the Health and Safety Code, relating to dead bodies.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 7155.7 is added to the Health and Safety Code, to read:

7155.7. (a) On request from a qualified procurement organization, the county medical examiner or coroner may permit the removal of organs that constitute an anatomical gift from a decedent who died under circumstances requiring an inquest by the medical examiner or coroner.

(b) If no autopsy is required, the organs to be removed may be released to the qualified procurement organization.

(c) If an autopsy is required and the county medical examiner or coroner determines that the removal of the organs will not interfere with the subsequent course of an investigation or autopsy, the organs may be released for removal. The autopsy shall be performed following the removal of the organs.

(d) Except in cases where there is no known next of kin or when a person dies in the custody of a law enforcement agency, if the medical examiner or coroner is considering withholding one or more organs of a potential donor for any reason, the medical examiner or coroner, or his or her designee, upon request from a qualified organ procurement organization, shall be present during the procedure to remove the organs. The medical examiner or coroner, or his or her designee, may request a biopsy of those organs or deny removal of the organs if necessary. If the county medical examiner or coroner, or his or her designee, denies removal of the organs, the county medical examiner or coroner may do both of the following:

(1) In the investigative report, explain in writing the reasons for the denial.

(2) Provide the explanation to the qualified organ procurement organization.

(e) If the county medical examiner or coroner, or his or her designee, is present during the removal of the organs, the qualified procurement organization requesting the removal of the organ shall reimburse the county of the medical examiner or coroner, or his or her designee, for the actual costs incurred in performing the duty specified in subdivision (d), if reimbursement is requested by the county medical examiner or coroner. The payment shall be applied to the additional costs incurred by the county medical examiner's or coroner's office in performing the duty specified in subdivision (d).

(f) The health care professional removing organs from a decedent who died under circumstances requiring an inquest shall file with the county medical examiner or coroner a report detailing the condition of the organs removed and their relationship, if any, to the cause of death.

(g) 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. Neither Section 7155.7 of the Health and Safety Code nor the repeal of Section 7155.7 of the Health and Safety Code shall preclude a coroner or medical examiner from permitting the removal of organs that constitute an anatomical gift under any other provision of law.

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 310

An act to add Section 12969 to the Insurance Code, relating to the Department of Insurance.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 12969 is added to the Insurance Code, to read:

12969. Any order or pleading posted on the department's Internet Web site that is related to a disciplinary proceeding or enforcement action against a person licensed pursuant to Chapter 5 (commencing

with Section 1621) or 7 (commencing with Section 1800) of Part 2 of Division 1, or that is related to a restricted license, shall be removed from the site 10 years from the date the disciplinary or enforcement action becomes final or the date the restriction on the license is removed, whichever is later, unless other disciplinary proceedings, enforcement actions, or restrictions are active or pending, or have been finalized within the previous 10 years, against the licensee. This section does not apply to any order or pleading related to an enforcement action resulting in a suspended or revoked license. This section is intended to apply solely to the department's Internet Web site and shall not be construed to require the department to permanently remove any information from its public record.

CHAPTER 311

An act to amend Section 3502.5 of the Government Code, relating to employer-employee relations.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 3502.5 of the Government Code is amended to read:

3502.5. (a) Notwithstanding Section 3502 or 3502.6, or any other provision of this chapter, or any other law, rule, or regulation, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, ordinances, and enactments, in accordance with this chapter. As used in this chapter, ''agency shop'' means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization.

(b) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the public agency and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and

an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after the recognized employee organization has requested the public agency to negotiate on an agency shop arrangement and, beginning seven working days after the public agency 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 public agency and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that is in effect, the recognized employee organization shall indemnify and hold the public agency harmless against any liability arising from any claims, demands, or other action relating to the public agency's compliance with the agency fee obligation.

(c) Any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the public agency and the public employee organization, or if the memorandum of understanding fails to designate the funds, then to any such fund chosen by the employee. Proof of the payments shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization.

(d) An agency shop provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during that term. Notwithstanding the above, the public agency and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or

procedures regarding a vote on an agency shop agreement. The procedures in this subdivision are also applicable to an agency shop agreement placed in effect pursuant to subdivision (b).

(e) An agency shop arrangement shall not apply to management employees.

(f) Every recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement shall keep an adequate itemized record of its financial transactions and shall make available annually, to the public agency with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.) covering employees governed by this chapter, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the public agency with a copy of the financial reports.

CHAPTER 312

An act to amend Sections 1507.3, 1569.73, and 1569.74 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 1507.3 of the Health and Safety Code is amended to read:

1507.3. (a) A residential facility that provides care to adults may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician or surgeon to remain in the facility, or allowing a person who has been diagnosed as terminally ill by his or her physician and surgeon to become a resident of the facility if that person is already receiving hospice services and would continue to receive hospice services without disruption if he or she became a resident, when all of the following conditions are met:

(1) The facility agrees to retain the terminally ill resident, or accept as a resident the terminally ill person, and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident, or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential facilities that provide care to adults.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident, or the terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks authorized for a residential facility under this chapter.

(6) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident, or any resident who will share a room with the terminally ill person to be accepted as a resident, to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has changed so that continued residence in the facility will pose a threat to the health and safety of the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) A facility that has obtained a hospice waiver from the department pursuant to this section need not call emergency response services at the time of a life-threatening emergency if the hospice agency is notified instead and all of the following conditions are met:

(1) The resident is receiving hospice services from a licensed hospice agency.

(2) The resident has completed an advance directive, as defined in Section 4605 of the Probate Code, requesting to forego resuscitative measures.

(3) The facility has documented that facility staff have received training from the hospice agency on the expected course of the resident's illness and the symptoms of impending death.

(d) Nothing in this section is intended to expand the scope of care and supervision for a residential facility, as defined in this chapter, that provides care to adults nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident, or allow a terminally ill person to become a resident of the facility, as authorized by this section.

(e) Nothing in this section shall require any care or supervision to be provided by the residential facility beyond that which is permitted in this chapter.

(f) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(g) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice.

(h) The department, in consultation with the State Fire Marshal, shall develop and expedite implementation of regulations related to residents who have been diagnosed as terminally ill who remain in the facility and who are nonambulatory that ensure resident safety but also provide flexibility to allow residents to remain in the least restrictive environment.

(i) Nothing in this section shall be construed to relieve a licensed residential facility that provides care to adults of its responsibility, for purposes of allowing a resident who has been diagnosed as terminally ill to remain in the facility, to do both of the following:

(1) With regard to any resident who is bedridden, as defined in subdivision (a) of Section 1566.45, to, within 48 hours of the resident's retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(2) Secure a fire clearance approval from the city or county fire department, fire district, or any other local agency providing fire protection services, or the State Fire Marshal, whichever has primary fire protection jurisdiction.

SEC. 2. Section 1569.73 of the Health and Safety Code is amended to read:

1569.73. (a) Notwithstanding Section 1569.72 or any other provision of law, a residential care facility for the elderly may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician and surgeon to remain in the facility, or allowing a person who has been diagnosed

as terminally ill by his or her physician and surgeon to become a resident of the facility if that person is already receiving hospice services and would continue to receive hospice services without disruption if he or she became a resident, when all the following conditions are met:

(1) The facility agrees to retain the terminally ill resident, or accept as a resident the terminally ill person, and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential care facilities for the elderly.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident or terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks allowed under this chapter.

(6) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident, or any resident who will share a room with the terminally ill person to be accepted as a resident, to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has changed so that continued residence in the facility will pose a threat to the health and safety to the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) A facility that has obtained a hospice waiver from the department pursuant to this section need not call emergency response services at the time of a life-threatening emergency if the hospice agency is notified instead and all of the following conditions are met:

(1) The resident is receiving hospice services from a licensed hospice agency.

(2) The resident has completed an advance directive, as defined in Section 4605 of the Probate Code, requesting to forego resuscitative measures.

(3) The facility has documented that facility staff have received training from the hospice agency on the expected course of the resident's illness and the symptoms of impending death.

(d) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly as defined in this act, nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident or allow a terminally ill person to become a resident of the facility as authorized by this section.

(e) Nothing in this section shall require any care or supervision to be provided by the residential care facility for the elderly beyond that which is permitted in this chapter.

(f) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(g) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice.

(h) Nothing in this section shall be construed to relieve a licensed residential care facility for the elderly of its responsibility to notify the appropriate fire authority of the presence of a bedridden resident in the facility as required under subdivision (f) of Section 1569.72, and to obtain and maintain a fire clearance as required under Section 1569.149.

SEC. 3. Section 1569.74 of the Health and Safety Code is amended to read:

1569.74. (a) Licensed residential care facilities for the elderly that employ health care providers may establish policies to honor a request to forego resuscitative measures as defined in Section 4780 of the Probate Code.

(b) Any policy established pursuant to subdivision (a) shall meet all of the following conditions:

(1) The policy shall be in writing and specify procedures to be followed in implementing the policy.

(2) The policy and procedures shall, at all times, be available in the facility for review by the department.

(3) The licensee shall ensure that all staff are aware of the policy as well as the procedures to be followed in implementing the policy.

(4) A copy of the policy shall be given to each resident who makes a request to forego resuscitative measures and to the resident's primary physician.

(5) A copy of the resident's request to forego resuscitative measures shall be maintained in the facility and shall be immediately available for review by facility staff, the licensed health care provider, and the department.

(6) Facility staff are prohibited, on behalf of any resident, from signing any directive document as a witness or from being the legally recognized surrogate decisionmaker.

(7) The facility shall provide the resident's physician with a copy of the resident's request to forego resuscitative measures form.

(c) Any action by a facility that has established policies pursuant to subdivision (a), to honor a resident's request to forego resuscitative measures as provided for in subdivision (a) may only be taken in either of the following ways:

(1) By a licensed health care provider who is employed by the facility and on the premises at the time of the life threatening emergency.

(2) By notifying, under those conditions specified in subdivision (c) of Section 1569.73, the hospice agency that is caring for a resident receiving hospice services.

(d) Licensed residential care facilities for the elderly that have not established policies pursuant to subdivision (a), may keep an executed request to forego resuscitative measures form in the resident's file and present it to an emergency medical technician or paramedic when authorized to do so in writing by the resident or his or her legally recognized surrogate decisionmaker. The request may be honored by an emergency medical technician or by any health care provider as defined in Section 4621 of the Probate Code, who, in the course of professional or volunteer duties, responds to emergencies.

CHAPTER 313

An act to amend Sections 14502.1, 22134.5, 22714, 24203.5, 24203.6, 24209, 24209.3, 24211, 24212, 24213, 24216, 44929, and 87488 of, and to add and repeal Sections 22714.5, 44929.1, and 87488.1 of, the Education Code, relating to state teachers' retirement.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. It is the intent of the Legislature that school districts be encouraged to consider all retirement options, including, but not limited to, private, public, and a combination of private and public

options, prior to making their decisions regarding the options made available by this act. It is the further intent of the Legislature that each school district shall consider the impact that participation in one of the programs established by this act will have on the district's ability to meet state teacher credentialing requirements and on the district's ability to meet highly qualified teacher requirements under the framework of federal law.

SEC. 2. Section 14502.1 of the Education Code is amended to read:

14502.1. (a) The Controller, in consultation with the Department of Finance and the State Department of Education, shall develop a plan to review and report on financial and compliance audits. The plan shall commence with the 2003–04 fiscal year for audits of school districts, other local education agencies, and the offices of county superintendents of schools. The Controller, in consultation with the Department of Finance, the State Department of Education, and representatives of the California School Boards Association, the California Association of School Business Officials, the California County Superintendents Educational Service Association, the California Teachers Association, the California Society of Certified Public Accountants, shall recommend the statements and other information to be included in the audit reports filed with the state, and shall propose the content of an audit guide to carry out the purposes of this chapter. A supplement to the audit guide may be suggested in the audit year, following the above process, to address issues resulting from new legislation in that year that changes the conditions of apportionment. The proposed content of the audit guide and any supplement to the audit guide shall be submitted by the Controller to the Education Audits Appeal Panel for review and possible amendment.

(b) The audit guide and any supplement shall be adopted by the Education Audits Appeal Panel pursuant to the rulemaking procedures of the Administrative Procedure Act as set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. It is the intent of the Legislature that, for the 2003–04 fiscal year, the audit guide be adopted by July 1 of the fiscal year to be audited. A supplemental audit guide may be adopted to address legislative changes to the conditions of apportionment. It is the intent of the Legislature that supplements be adopted before March 1 of the audit year. Commencing with the 2004–05 fiscal year, and each fiscal year thereafter, the audit guide shall be adopted by July 1 of the fiscal year to be audited. A supplemental audit guide may be adopted to address legislative changes to the conditions of apportionment. The supplements shall be adopted before March 1 of the audit year. To meet these goals and to ensure the accuracy of the audit guide, the process for adopting emergency regulations set forth in Section 11346.1 of the

Government Code may be followed to adopt the guide and supplemental audit guide. It is the intent of the Legislature that once the audit guide has been adopted for a fiscal year, as well as any supplement for that year, thereafter only suggested changes to the audit guide and any additional supplements need be adopted pursuant to the rulemaking procedures of the Administrative Procedure Act. The audit guide and any supplement shall be issued in booklet form and may be made available by any means deemed appropriate. The Controller and consultants in the development of the suggested audit guide and any supplement shall work cooperatively on a timeline that will allow the education audits appeal panel to meet the July 1 and March 1 issuance dates. Consistent with current practices for development of the audit guide before the 2003–04 fiscal year, the Controller shall provide for the adoption of procedures and timetables for the development of the suggested audit guide, any supplement, and the format for additions, deletions, and revisions.

(c) For the audit of school districts or county offices of education electing to take formal action pursuant to Sections 22714, 22714.5, 44929, and 44929.1, the audit guide content proposed by the Controller shall include, but not be limited to, the following:

(1) The number and type of positions vacated.

(2) The age and service credit of the retirees receiving the additional service credit provided by Sections 22714,22714.5, 44929, and 44929.1.

(3) A comparison of the salary and benefits of each retiree receiving the additional service credit with the salary and benefits of the replacement employee, if any.

(4) The resulting retirement cost, including interest, if any, and postretirement health care benefits costs, incurred by the employer.

(d) The Controller shall annually prepare a cost analysis, based on the information included in the audit reports for the prior fiscal year, to determine the net savings or costs resulting from formal actions taken by school districts and county offices of education pursuant to Sections 22714, 22714.5, 44929, and 44929.1, and shall report the results of the cost analysis to the Governor and the Legislature by April 1 of each year.

(e) All costs incurred by the Controller to implement subdivision (c) shall be absorbed by the Controller.

(f) This section shall become operative July 1, 2003 and shall apply to the preparation of the audit guide for school district audits commencing with the 2003–04 fiscal year.

SEC. 3. Section 22134.5 of the Education Code is amended to read:

22134.5. (a) Notwithstanding Section 22134, ''final compensation'' means the highest average annual compensation earnable by a member during any period of 12 consecutive months while an active member of the Defined Benefit Program or time during which

he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last consecutive 12-month period of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of 12 consecutive months, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23805.

(e) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(g) This section shall only apply to a member who has 25 or more years of credited service, excluding service credited pursuant to Section 22714, 22714.5, 22715, 22717, or 22826, but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. This section also shall apply to a nonmember spouse, if the member had at least 25 years of credited service, excluding service credited pursuant to Section 22714, 22714.5, 22715, 22717, or 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

SEC. 4. Section 22714 of the Education Code is amended to read:

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action, determines pursuant to Section 44929 or 87488 that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging certificated employees or academic employees to retire for service and that the retirement will result in a net savings to the district or county office of education, an additional two years of service credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under Chapter 27 (commencing with Section 24201) during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period.

(2) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner and a time period, not to exceed eight years, that is acceptable to the Teachers' Retirement Board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in a net savings to the district.

(2) The county superintendent shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be

demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The school district shall reimburse the county superintendent for all costs to the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in a net savings to the county office of education.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in a net savings to the district.

(2) The chancellor shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5.

(3) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

(e) The opportunity to be granted service credit pursuant to this section shall be available to all members employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates shall forfeit the service credit granted under this section.

(h) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who takes any job with any school district in the state less than one year after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional service credit granted under this section.

(i) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who takes any job with the school district that granted the member the service credit less than five years after receiving the credit shall forfeit the ongoing benefit he

or she receives from the additional age and service credit granted under this section.

(j) This section does not apply to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

SEC. 5. Section 22714.5 is added to the Education Code, to read:

22714.5. (a) Notwithstanding Sections 22714, 44929, and 87488, an additional two years of service and an additional two years of age shall be credited under this part to a member of the Defined Benefit Program if the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) within the period designated in the memorandum of understanding or formal action described in paragraph (6).

(2) The employer determines that the best interests of the district would be served by encouraging certificated or academic employees to retire for service and that the retirement will result in a net savings to the district or county office of education.

(3) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service and age credit pursuant to this section and the amount the member would have received without the service and age credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service and age credit pursuant to this section and the amount the member would have received without the service and age credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner and time period, not to exceed eight years, that is acceptable to the Teachers' Retirement Board.

(4) (A) A school district shall demonstrate and certify to the county superintendent that the formal action taken would result in a net savings to the district.

(B) The county superintendent shall certify to the Teachers' Retirement Board that the result specified in subparagraph (A) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(C) The school district shall reimburse that county superintendent for all costs to the county superintendent that result from the certification.

(5) (A) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in a net savings to the county office of education.

(B) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that the result specified in subparagraph (A) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(C) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(6) (A) A community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in a net savings to the district.

(B) The chancellor shall certify to the Teachers' Retirement Board that the result specified in subparagraph (A) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5.

(C) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

(7) This section has been made applicable to the employer and the member pursuant to a memorandum of understanding between the employer and the representative employee organization or, for members who are not represented by a representative employee organization, this section has been made applicable to all of the members employed by the school district, community college district, or county office of education, pursuant to a formal action of the governing board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(8) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(b) The amount of additional service credit and additional age shall each be two years regardless of credited service or age. A member of the Defined Benefit Program who is credited with additional age and service under this section may not be credited with additional service under Section 22714.

(c) Any member of the Defined Benefit Program who is credited with additional age and service under this section and who subsequently reinstates from retirement shall forfeit the additional age and service credit granted under this section.

(d) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with age and service credit granted under this section and who takes any

job with any school district in the state less than one year after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional age and service credit granted under this section.

(e) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with age and service credit granted under this section and who takes any job with the school district that granted the member the age and service credit less than five years after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional age and service credit granted under this section.

(f) This section is not applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the memorandum of understanding or formal action, or if the member is not otherwise eligible to retire for service without the additional age or service credit available under this section.

(g) This section shall become operative on January 1, 2004, or 120 days after Assembly Bill No. 1207 of the 2003–04 Regular Session is chaptered, whichever is later, and 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 24203.5 of the Education Code is amended to read:

24203.5. (a) The percentage of final compensation used to compute the allowance pursuant to Section 24202.5, 24203, or 24205 of a member retiring on or after January 1, 1999, who has 30 or more years of credited service, excluding service credited pursuant to Sections 22714, 22714.5, 22715, 22717, and 22717.5, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance in Section 24202.5, 24203, or 24205, including any adjustments for retiring before the normal retirement age, and the additional percentage provided by this section does not exceed 2.40 percent. For purposes of establishing eligibility for the increased allowance pursuant to this section only, credited service shall include credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. A nonmember spouse shall also be eligible for the increased allowance pursuant to this section if the member had 30 or more years of credited service on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

(b) Nonqualified service credit for which contributions pursuant to Section 22826 were made in a lump sum on or after January 1, 2000, or for which the first installment was made on or after January 1, 2000, shall

not be included in determining the eligibility for an increased allowance pursuant to this section.

(c) The amendments made to subdivision (a) in the first year of the 1999–2000 Regular Session are declaratory of existing law.

SEC. 7. Section 24203.6 of the Education Code is amended to read:

24203.6. (a) In addition to the amount otherwise payable pursuant to Sections 24202.5, 24203, 24203.5, 24205, 24209.5, 24210, 24211, and 24212, a member who (1) retires for service on or after January 1, 2001, (2) has, prior to January 1, 2011, 30 or more years of credited service, excluding service credited pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826 but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652, and (3) is receiving an allowance subject to Section 24203.5, shall receive a monthly increase in the allowance, prior to any modification pursuant to Sections 24300 and 24309, in the amount identified in the following schedule for the number of years of the member's credited service at the time of retirement, excluding service credited pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826 but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652:

30 years of credited service	$200
31 years of credited service	$300
32 or more years of credited service	$400

(b) This section also shall apply to a nonmember spouse, if the member is eligible for the allowance increase pursuant to subdivision (a) upon his or her retirement for service and had at least 30 years of credited service, excluding service credited pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652 and the service credit of the member was divided into separate accounts in the name of the member and the nonmember spouse by a court pursuant to Section 22652. The amount identified in the schedule in subdivision (a) and payable pursuant to this section, that is based on the service credited during the marriage, shall be divided and paid to the member and the nonmember spouse proportionately according to the respective percentages of the member's service credit that were allocated to the member and the nonmember spouse in the court's order.

(c) The allowance increase provided under this section shall not be subject to Sections 24415 and 24417, but shall be subject to Section 22140.

SEC. 8. Section 24209 of the Education Code is amended to read:

24209. (a) Upon retirement for service following reinstatement, the member shall receive a service retirement allowance equal to the sum of both of the following:

(1) An amount equal to the monthly allowance the member was receiving immediately preceding reinstatement, exclusive of any amounts payable pursuant to Section 22714, 22714.5, or 22715, increased by the improvement factor that would have been applied to the allowance if the member had not reinstated.

(2) An amount calculated pursuant to Section 24202, 24202.5, 24203, 24203.5, or 24206 on service credited subsequent to the most recent reinstatement, the member's age at retirement, and final compensation.

(b) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, is equal to or greater than 30 years, the amounts identified in paragraphs (1), for members who initially retired on or after January 1, 1999, and (2) of subdivision (a) shall be calculated pursuant to Section 24203.5.

(c) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, is equal to or greater than 30 years, upon retirement for service following reinstatement, a member who retired pursuant to Section 24213, and received the terminated disability allowance for the prior retirement, shall receive a service retirement allowance equal to the sum of the following:

(1) An amount based on the service credit accrued prior to the effective date of the disability allowance, the member's age at the prior retirement increased by the factor provided in Section 24203.5, and projected final compensation.

(2) An amount calculated pursuant to Section 24202, 24202.5, 24203.5, or 24206 on service credited subsequent to the reinstatement, the member's age at retirement, and final compensation.

SEC. 9. Section 24209.3 of the Education Code is amended to read:

24209.3. (a) Notwithstanding subdivision (a) of Section 24209 and subdivision (d) of Section 24204, and exclusive of any amounts payable during the prior retirement for service pursuant to Section 22714, 22714.5, or 22715:

(1) A member who retired, other than pursuant to Section 24210, 24211, 24212, or 24213, and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on credited service performed prior to the most recent reinstatement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(2) A member who retired pursuant to Section 24210 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and indexed final compensation to the effective date of the initial service retirement.

(B) An amount calculated pursuant to this chapter based on the service credit accrued after termination of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(3) A member who retired pursuant to Section 24211 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) The greater of (i) the disability allowance the member was receiving immediately prior to termination of that allowance, excluding the children's portion, or (ii) an amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using

compensation earnable or projected final compensation or a combination of both.

(B) An amount equal to either of the following:

(i) For a member who was receiving a benefit pursuant to subdivision (a) of Section 24211, the member's credited service at the time of the retirement pursuant to Section 24211, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820).

(ii) For a member who was receiving a benefit pursuant to subdivision (b) of Section 24211, the member's projected service, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820).

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation using compensation earnable or projected final compensation or a combination of both.

(D) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or, for credited service performed during the most recent reinstatement, Section 22714, 22714.5, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(4) A member who retired pursuant to Section 24212 or 24213 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on the member's projected service credit, excluding service credited pursuant to Section 22717, 22717.5, or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable or projected final compensation or a combination of both.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final

compensation, using compensation earnable or projected final compensation or a combination of both.

(C) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or, for credited service performed during the most recent reinstatement, Section 22714, 22714.5, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(b) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, is equal to or greater than the number of years required to be eligible for an increased allowance pursuant to this chapter or Section 22134.5, the amounts identified in this section shall be calculated pursuant to the section authorizing the increased benefit.

(c) For members receiving an allowance pursuant to Section 24410.5 or 24410.6, the amount payable pursuant to this section shall not be less than the amount payable to the member as of the effective date of reinstatement.

(d) The amount payable pursuant to this section shall not be less than the amount that would be payable to the member pursuant to Section 24209.

(e) For purposes of determining an allowance increase pursuant to Sections 24415 and 24417, the calendar year of retirement shall be the year of the subsequent retirement if the final compensation used to calculate the allowance pursuant to this section is higher than the final compensation used to calculate the allowance for the prior retirement.

(f) The allowance paid pursuant to this section to a member receiving a lump-sum payment pursuant to Section 24221 shall be actuarially reduced to reflect that lump-sum payment.

SEC. 10. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(c) The allowance shall be increased by an amount based on any service credited pursuant to Sections 22714, 22714.5, 22715, 22717, and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(d) If the total amount of credited service, other than projected service or service that accrued pursuant to Sections 22714, 22714.5, 22715, 22717, 22717.5, and 22826, is equal to or greater than 30 years, the amounts identified in subdivisions (a) and (b) shall be calculated pursuant to Sections 24203.5 and 24203.6.

SEC. 11. Section 24212 of the Education Code is amended to read:

24212. (a) If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage under the Defined Benefit Program, the member's service retirement allowance, when payable, shall be based on projected service, excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit

contributions, shall not be greater than the terminated disability allowance excluding children's portions.

(b) The allowance shall be increased by an amount based on any service credited pursuant to Sections 22714, 22714.5, 22715, 22717, and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 12. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance under this part after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820). The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance. The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22714.5, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and projected final compensation to normal retirement age.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 13. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42120) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer. The limitation specified in subdivisions (d) and (f) of Section 24214 shall apply to creditable service performed beyond the specified exemption.

(2) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body of the employer.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in the district from which he or she retired.

(e) This section shall become operative on January 1, 2001, and 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. 14. Section 44929 of the Education Code is amended to read:

44929. Whenever the governing board of a school district or a county office of education, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging the retirement of certificated employees and that the retirement will result in a net savings to the district or county office of education, an additional two years of service shall be credited under the Defined Benefit Program of the State Teachers' Retirement Plan to a certificated employee pursuant to Section 22714 if all of the conditions set forth in that section are satisfied.

SEC. 15. Section 44929.1 is added to the Education Code, to read:

44929.1. (a) Notwithstanding Section 44929, an additional two years of service and an additional two years of age shall be credited under the Defined Benefit Program of the State Teachers' Retirement Plan to

a certificated employee pursuant to Section 22714.5 if all of the conditions set forth in that section are satisfied.

(b) This section shall become operative on January 1, 2004, or 120 days after Assembly Bill 1207 of the 2003–04 Regular Session is chaptered, whichever is later, and 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. 16. Section 87488 of the Education Code is amended to read:

87488. Whenever the governing board of a community college district, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of academic employees and that the retirement will result in a net savings to the district, an additional two years of service shall be credited under the Defined Benefit Program of the State Teachers' Retirement Plan to an academic employee pursuant to Section 22714 if all of the conditions set forth in that section are satisfied.

SEC. 17. Section 87488.1 is added to the Education Code, to read:

87488.1. (a) Notwithstanding Section 87488, an additional two years of service and an additional two years of age shall be credited under the Defined Benefit Program of the State Teachers' Retirement Plan to an academic employee pursuant to Section 22714.5 if all of the conditions set forth in that section are satisfied.

(b) This section shall become operative on January 1, 2004, or 120 days after Assembly Bill 1207 of the 2003–04 Regular Session is chaptered, whichever is later, and 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.

CHAPTER 314

An act to amend Sections 8592.1, 8592.2, 8592.3, and 8592.4 of the Government Code, relating to public safety.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. It is the intent of the Legislature to build upon the work of the Public Safety Radio Strategic Planning Committee in its 1997 report, Partnering for the Future: A Strategic Plan for California's Radio

Communications, and to encourage partnerships among local, state, and federal agencies to improve California's overall public safety radio capabilities.

SEC. 2. Section 8592.1 of the Government Code is amended to read:

8592.1. For purposes of this article, the following terms have the following meanings:

(a) ''Public safety spectrum'' means the spectrum allocated by the Federal Communications Commission for operation of interoperable and general use radio communication systems for public safety purposes within the state.

(b) ''Committee'' means the Public Safety Radio Strategic Planning Committee, which was established in December 1994 in recognition of the need to improve existing public radio systems and to develop interoperability among state public safety agencies, and which is comprised of representatives of the following state entities:

(1) The Department of the California Highway Patrol.
(2) The Department of Transportation.
(3) The Department of Corrections.
(4) The Department of Parks and Recreation.
(5) The Department of Fish and Game.
(6) The Department of Forestry and Fire Protection.
(7) The Department of Justice.
(8) The Department of Water Resources.
(9) The Office of Emergency Services.
(10) The Emergency Medical Services Authority.
(11) The Department of the Youth Authority.
(12) The Department of General Services.

SEC. 3. Section 8592.2 of the Government Code is amended to read:

8592.2. (a) The committee shall have primary responsibility in state government for developing and implementing a statewide integrated public safety communication system that facilitates interoperability among state agencies and coordinates other shared uses of the public safety spectrum consistent with decisions and regulations of the Federal Communications Commission. In order to facilitate effective use of the public safety spectrum, the committee shall consult with any regional planning committee or other federal, state, or local entity with responsibility for developing, operating, or monitoring interoperability of the public safety spectrum.

(b) The committee shall elect from among its members a chair with responsibility for leadership in implementing this article.

(c) The committee shall hold a meeting to address the requirements of this article no later than April 1, 2003.

SEC. 4. Section 8592.3 of the Government Code is amended to read:

8592.3. (a) The committee shall consult with the following organizations and entities:

(1) California State Peace Officers Association.
(2) California Police Chiefs Association.
(3) California State Sheriffs' Association.
(4) California Professional Firefighters.
(5) California Fire Chiefs Association.
(6) California State Association of Counties.
(7) League of California Cities.
(8) California State Firefighters Association.
(9) California Coalition of Law Enforcement Associations.
(10) California Correctional Peace Officers Association.
(11) CDF Firefighters.
(12) California Union of Safety Employees.

(b) Each organization or entity listed in subdivision (a) may designate a representative to work with the committee to develop agreements for interoperability or other shared use of the public safety spectrum between the applicable organization or entity and local and federal agencies that operate a communication system on the public safety spectrum and that have capacity and technical ability for interoperability or other shared use.

(c) The committee shall develop a model memorandum of understanding that sets forth general terms for interoperability or other shared uses among jurisdictions, which may be modified as necessary for a particular agreement entered into pursuant to subdivision (b).

(d) A local agency may not be required to adopt the model memorandum of understanding developed pursuant to subdivision (c).

SEC. 5. Section 8592.4 of the Government Code is amended to read:

8592.4. (a) The committee shall determine which agencies need new or upgraded communication equipment and shall establish a program for equipment purchase. In establishing this program, the board shall recommend the purchase of, equipment that will enable state agencies to commence conforming to accepted industry standards for interoperability consistent with the public safety digital communications standards of the American National Standards Institute and the Telecommunications Information Association.

(b) This section may not be construed to mandate that a state or local governmental agency affected thereby is required to compromise its immediate mission or ability to function and carry out its existing responsibilities.

CHAPTER 315

An act to amend Section 102600 of the Health and Safety Code, relating to vital records.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 102600 of the Health and Safety Code is amended to read:

102600. (a) Upon receipt by the State Registrar of an application for delayed registration of birth and payment of the required fee, he or she shall review the application together with the affidavits and documentary evidence accompanying it and shall accept the application if the application and evidence submitted comply with this chapter. After acceptance by the State Registrar the application shall constitute a delayed certificate of birth, and the State Registrar shall permanently preserve the certificates in a systematic manner and shall prepare and maintain a comprehensive and continuous index of all the certificates.

(b) In processing applications for the delayed registration of birth pursuant to this section, the State Registrar shall give priority to an application for a child who has been adjudged a dependent child of, and who is subject to the jurisdiction of, the juvenile court, pursuant to Section 300 of the Welfare and Institutions Code.

CHAPTER 316

An act to amend Sections 75.21, 271, 441, 442, and 60501 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 75.21 of the Revenue and Taxation Code is amended to read:

75.21. (a) Exemptions shall be applied to the amount of the supplemental assessment, provided that the property is not receiving any other exemption on either the current roll or the roll being prepared except as provided for in subdivision (b), that the assessee is eligible for the exemption, and that, in those instances in which the provisions of this

division require the filing of a claim for the exemption, the assessee makes a claim for the exemption.

(b) If the property received an exemption on the current roll or the roll being prepared and the assessee on the supplemental roll is eligible for an exemption and, in those instances in which the provisions of this division require the filing of a claim for the exemption, the assessee makes a claim for an exemption of a greater amount, then the difference in the amount between the two exemptions shall be applied to the supplemental assessment.

(c) In those instances in which the provisions of this division require the filing of a claim for the exemption, except as provided in subdivision (d), (e), or (f), any person claiming to be eligible for an exemption to be applied against the amount of the supplemental assessment shall file a claim or an amendment to a current claim, in that form as prescribed by the board, on or before the 30th day following the date of notice of the supplemental assessment, in order to receive a 100-percent exemption.

(1) With respect to property as to which the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, or welfare exemption was available, but for which a timely application for exemption was not filed, the following amounts shall be canceled or refunded:

(A) Ninety percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount, whichever is greater, for each supplemental assessment, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(B) Eighty-five percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount, whichever is greater, for each supplemental assessment, if an appropriate application for exemption is thereafter filed.

(2) 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.

(3) With respect to property as to which the veterans', homeowners', or disabled veterans' exemption was available, but for which a timely application for exemption was not filed, that portion of tax attributable to 80 percent of the amount of exemption available shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(4) With respect to property as to which any other exemption was available, but for which a timely application for exemption was not filed, the following amounts shall be canceled or refunded:

(A) Ninety percent of any tax or penalty or interest thereon, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(B) Eighty-five percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount, whichever is greater, for each supplemental assessment, if an appropriate application for exemption is thereafter filed.

Other provisions of this division pertaining to the late filing of claims for exemption do not apply to assessments made pursuant to this chapter.

(d) For purposes of this section, any claim for the homeowners' exemption, veterans' exemption, or disabled veterans' exemption previously filed by the owner of a dwelling, granted and in effect, constitutes the claim or claims for that exemption required in this section. In the event that a claim for the homeowners' exemption, veterans' exemption, or disabled veterans' exemption is not in effect, a claim for any of those exemptions for a single supplemental assessment for a change in ownership or new construction occurring on or after June 1, up to and including December 31, shall apply to that assessment; a claim for any of those exemptions for the two supplemental assessments for a change in ownership or new construction occurring on or after January 1, up to and including May 31, one for the current fiscal year and one for the following fiscal year, shall apply to those assessments. In either case, if granted, the claim shall remain in effect until title to the property changes, the owner does not occupy the home as his or her principal place of residence on the lien date, or the property is otherwise ineligible pursuant to Section 205, 205.5, or 218.

(e) Notwithstanding subdivision (c), an additional exemption claim may not be required to be filed until the next succeeding lien date in the case in which a supplemental assessment results from the completion of new construction on property that has previously been granted exemption on either the current roll or the roll being prepared.

(f) (1) Notwithstanding subdivision (c), an additional exemption claim is not required to be filed in the instance where a supplemental assessment results from a change in ownership of property where the purchaser of the property owns and uses or uses, as the case may be, other property that has been granted the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, or welfare exemption on either the current roll or the roll being prepared and the property purchased is put to the same use.

(2) In all other instances where a supplemental assessment results from a change in ownership of property, an application for exemption shall be filed pursuant to the provisions of subdivision (c).

SEC. 2. Section 271 of the Revenue and Taxation Code is amended to read:

271. (a) Provided that an appropriate application for exemption is filed within 90 days from the first day of the month following the month in which the property was acquired or by February 15 of the following calendar year, whichever occurs earlier, 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 that would have been canceled or refunded had the property qualified for relief under paragraph (3) of subdivision (a).

SEC. 3. 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) (1) 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.

(2) (A) This subdivision shall also apply to an owner-builder or an owner-developer of new construction that is sold to a third party, is constructed on behalf of a third party, or is constructed for the purpose of selling that property to a third party.

(B) The owner-builder or owner-developer of new construction described in subparagraph (A), shall, within 45 days of receipt of a written request by the assessor for information or records, provide the assessor with all information and records regarding that property. The information and records provided to the assessor shall include the total consideration provided either by the purchaser or on behalf of the purchaser that was paid or provided either, as part of or outside of the purchase agreement, including, but not limited to, consideration paid or provided for the purchase or acquisition of upgrades, additions, or for any other additional or supplemental work performed or arranged for by the owner-builder or owner-developer on behalf of the purchaser.

(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 does 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. 4. Section 442 of the Revenue and Taxation Code is amended to read:

442. (a) The property statement shall show all taxable property owned, claimed, possessed, controlled, or managed by the person filing it and required to be reported thereon.

Every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time.

(b) The requirements of this article shall be satisfied with respect to property belonging to others for which the declarer has contractual property tax obligations if the declarer includes that property in the property statement, submits the statement timely, and includes in the statement all information required in the statement pertaining to property belonging to others.

(c) Property that is the subject of a contract designated as a lease that provides that the lessee has the option of acquiring the property at the end of the lease term for one dollar ($1), or any other nominal consideration, shall be reported by the lessor on the lessor's property statement. If that property qualifies for the property tax exemption provided for by subdivision (d) or (e) of Section 3 of Article XIII of the California Constitution, that property shall be regarded as owned by the lessee and is not required to be shown on any property statement of the lessor.

SEC. 5. Section 60501 of the Revenue and Taxation Code is amended to read:

60501. Persons who have paid a tax for diesel fuel lost, sold, or removed as provided in paragraph (4) of subdivision (a), or used in a nontaxable use, other than on a farm for farming purposes or in an

exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

(1) Tax was imposed on the diesel fuel to which the claim relates.

(2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state except as provided in paragraph (4) of subdivision (a).

(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice or original invoice facsimile retained in an alternative storage media showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this state. If the motor vehicle is operated both over the highway and over a public highway outside the military reservation in a continuous trip the tax shall not be refunded as to that portion of the diesel fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as a refund of the tax for the use of diesel fuel in any motor vehicle operated upon a public

highway within a military reservation, which highway is constructed or maintained by this state or any political subdivision thereof.

As used in this section, ''military reservation'' includes any establishment of the United States Government or any agency thereof used by the armed forces of the United States for military, air, or naval operations, including research projects.

(F) Sold by a supplier to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee.

(G) Lost in the ordinary course of handling, transportation, or storage.

(H) Sold by a person to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(I) Sold by a person to a train operator for use in a diesel-powered train or for other off-highway use under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(J) Removed from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice, original invoice facsimile, or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than

seven hundred fifty dollars ($750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

CHAPTER 317

An act to amend Section 18855 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 18855 of the Revenue and Taxation Code is amended to read:

18855. (a) This article shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

(b) If, in any calendar year, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 1999, or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 2000, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California

Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 318

An act to amend Section 33080.8 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 33080.8 of the Health and Safety Code is amended to read:

33080.8. (a) On or before April 1 of each year, the Controller shall compile a list of agencies that appear to have major audit violations as defined in this section, based on the independent financial audit reports filed with the Controller pursuant to Section 33080.

(b) On or before June 1 of each year, for each major audit violation of each agency identified pursuant to subdivision (a), the Controller shall determine if the agency has corrected the major audit violation. Before making this determination, the Controller shall consult with each affected agency. In making this determination, the Controller may request and shall receive the prompt assistance of public officials and public agencies, including, but not limited to, the affected agencies, counties, and cities. If the Controller determines that an agency has not corrected the major audit violation, the Controller shall send a list of those agencies, their major violations, all relevant documents, and the affidavits required pursuant to subdivision (d) to the Attorney General for action pursuant to this section.

(c) For each agency that the Controller refers to the Attorney General pursuant to subdivision (b), the Controller shall notify the agency and the legislative body that the agency was on the list sent to the Attorney General. The Controller's notice shall inform the agency and the legislative body of the duties imposed by Section 33080.2.

(d) Within 45 days of receiving the referral from the Controller pursuant to subdivision (b), the Attorney General shall determine whether to file an action to compel the agency's compliance with this

part. Any action filed pursuant to this section shall be commenced in the County of Sacramento. The time limit for the Attorney General to make this determination is directory and not mandatory. Any action shall be accompanied by an affidavit or affidavits, to be provided by the Controller with the referral, setting forth facts that demonstrate a likelihood of success on the merits of the claim that the agency has a major audit violation. The affidavit shall also certify that the agency and the legislative body were informed not less than 10 days prior to the date on which the action was filed. The agency shall file a response to any action filed by the Attorney General pursuant to this section within 15 days of service.

(e) (1) On the earliest day that the business of the court will permit, but not later than 45 days after the filing of an action pursuant to this section, the court shall conduct a hearing to determine if good cause exists for believing that the agency has a major audit violation and has not corrected that violation.

(2) If the court determines that no good cause exists or that the agency had a major audit violation but corrected the major audit violation, the court shall dismiss the action.

(3) If the court determines that there is good cause for believing that the agency has a major audit violation and has not corrected that major audit violation, the court shall immediately issue an order that prohibits the agency from doing any of the following:

(A) Encumbering any funds or expending any money derived from any source except to pay the obligations designated in subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (e) of Section 33334.12.

(B) Adopting a redevelopment plan.

(C) Amending a redevelopment plan except to correct the major audit violation that is the subject of the action.

(D) Issuing, selling, offering for sale, or delivering any bonds or any other evidence of indebtedness.

(E) Incurring any indebtedness.

(f) In a case that is subject to paragraph (3) of subdivision (e), the court shall also set a hearing on the matter within 60 days.

(g) If, on the basis of that subsequent hearing, the court determines that the agency has a major audit violation and has not corrected that violation, the court shall order the agency to comply with this part within 30 days, and order the agency to forfeit to the state no more than:

(1) Two thousand dollars ($2,000) in the case of a community redevelopment agency with a total revenue, in the prior year, of less than one hundred thousand dollars ($100,000) as reported in the Controller's annual financial reports.

(2) Five thousand dollars ($5,000) in the case of a community redevelopment agency with a total revenue, in the prior year, of at least one hundred thousand dollars ($100,000) but less than two hundred fifty thousand dollars ($250,000) as reported in the Controller's annual financial reports.

(3) Ten thousand dollars ($10,000) in the case of a community redevelopment agency with a total revenue, in the prior year, of at least two hundred fifty thousand dollars ($250,000) as reported in the Controller's annual financial reports.

(h) The order issued by the court pursuant to paragraph (3) of subdivision (e) shall continue in effect until the court determines that the agency has corrected the major audit violation. If the court determines that the agency has corrected the major audit violation, the court may dissolve its order issued pursuant to paragraph (3) of subdivision (e) at any time.

(i) An action filed pursuant to this section to compel an agency to comply with this part is in addition to any other remedy, and is not an exclusive means to compel compliance.

(j) As used in this section, ''major audit violation'' means that, for the fiscal year in question, an agency did not:

(1) File an independent financial audit report that substantially conforms with the requirements of subdivision (a) of Section 33080.1.

(2) File a fiscal statement that includes substantially all of the information required by Section 33080.5.

(3) Establish time limits, as required by Section 33333.6.

(4) Deposit all required tax increment revenues directly into the Low and Moderate Income Housing Fund upon receipt, as required by Section 33334.3, 33334.6, 33487, or 33492.16.

(5) Establish a Low and Moderate Income Housing Fund, as required by subdivision (a) of Section 33334.3.

(6) Accrue interest earned by the Low and Moderate Income Housing Fund to that fund, as required by subdivision (b) of Section 33334.3.

(7) Determine that the planning and administrative costs charged to the Low and Moderate Income Housing Fund are necessary for the production, improvement, or preservation of low- and moderate-income housing, as required by subdivision (d) of Section 33334.3.

(8) Initiate development of housing on real property acquired using moneys from the Low and Moderate Income Housing Fund or sell the property, as required by Section 33334.16.

(9) Adopt an implementation plan, as required by Section 33490.

CHAPTER 319

An act to amend Sections 655.6, 1260, 1262, and 1275 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 655.6 of the Business and Professions Code is amended to read:

655.6. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from any patient, client, customer, or third-party payer for cytologic services relating to the examination of gynecologic slides if those services were not actually rendered by that person or under his or her direct supervision.

(b) (1) Clinical laboratories performing cytologic examinations of gynecologic slides shall directly bill either the patient or the responsible third-party payer for the cytology services rendered by those laboratories. Clinical laboratories shall not bill the physician and surgeon who requests the tests.

(2) Notwithstanding subdivision (a), it is not unlawful for a clinical laboratory to bill for cytologic services relating to the examination of gynecologic slides that were performed by an affiliated clinical laboratory. An ''affiliated clinical laboratory'' means a clinical laboratory that is wholly owned by, is the parent company of, or is under common ownership with, the clinical laboratory billing for the cytologic services. For these purposes, ''wholly owned'' means 100 percent ownership directly or through one or more subsidiaries, and ''common ownership'' means 100 percent ownership by a common parent company.

(c) For the purposes of this section, any person or entity who is responsible to pay for cytologic examination of gynecologic slides services provided to that patient shall be considered a responsible third-party payer.

(d) This section shall not apply to any of the following:

(1) Any person who, or clinical laboratory that, contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if services are to be provided to members of the plan on a prepaid basis.

(2) Any person who, or clinic that, provides cytologic examinations of gynecologic slides services without charge to the patient, or on a

sliding scale payment basis if the patient's charge for services is determined by the patient's ability to pay.

(3) Health care programs operated by public entities, including, but not limited to, colleges and universities.

(4) Health care programs operated by private educational institutions to serve the health care needs of their students.

(5) Any person who, or clinic that, contracts with an employer to provide medical services to employees of the employer if the cytologic services relating to the examination of gynecologic slides are provided under the contract.

SEC. 2. Section 1260 of the Business and Professions Code is amended to read:

1260. The department shall issue a clinical laboratory bioanalyst's license to each person who is a lawful holder of a degree of master of arts, master of science, or an equivalent or higher degree as determined by the department with a major in chemical, physical, biological, or clinical laboratory sciences. This education shall have been obtained in one or more established and reputable institutions maintaining standards equivalent, as determined by the department, to those institutions accredited by the Western Association of Schools and Colleges or an essentially equivalent accrediting agency, as determined by the department. The applicant also shall have a minimum of four years' experience as a licensed clinical laboratory scientist, performing clinical laboratory work embracing the various fields of clinical laboratory activity in a clinical laboratory approved by the department. The quality and variety of this experience shall be satisfactory to the department and shall have been obtained within the six-year period immediately antecedent to admission to the examination. The applicant shall successfully pass a written examination and an oral examination conducted by the department or a committee designated by the department to conduct the examinations, indicating that the applicant is properly qualified. The department may issue a license without conducting a written examination to an applicant who has passed a written examination of a national accrediting board having requirements that are, in the determination of the department, equal to or greater than those required by this chapter and regulations adopted by the department. The department shall establish by regulation the required courses to be included in the college or university training.

SEC. 3. Section 1262 of the Business and Professions Code is amended to read:

1262. No clinical laboratory scientist's or limited clinical laboratory scientist's license shall be issued by the department except after examination; provided, that a temporary clinical laboratory scientist's license or a temporary limited clinical laboratory scientist's license may

be issued to an individual who fulfills the requirements for admission to the examination unless the individual has failed a previous examination for the license. The department may issue licenses without examination to applicants who have passed examinations of the national accrediting boards whose requirements are equal to or greater than those required by this chapter and regulations established by the department. The department may issue licenses without further examination to applicants who have passed examinations of another state whose laws and regulations are equal to or greater than those required by this chapter and regulations established by the department. The evaluation of national or state accrediting boards for the purposes of this chapter shall be carried out by the department with assistance of representatives from the licensed groups. This section shall not apply to persons who have passed an examination by a national board or another state examination prior to the establishment of requirements that are equal to or exceed those of this chapter or the regulations of the department. The department may, however, make exceptions if individuals are otherwise qualified.

SEC. 4. Section 1275 of the Business and Professions Code is amended to read:

1275. The department shall develop and implement regulations for continuing education for persons licensed pursuant to this chapter on or before January 1, 1992, after consulting with the multidisciplinary committee established pursuant to Section 1228, and other appropriate organizations. On and after January 1, 1994, the department shall require not more than 12 hours of continuing education completed within a 12-month period or not more than 24 hours of continuing education completed within a 24-month period as a condition for renewal of a license issued under this chapter. The department may establish a fee for the implementation of this section, the total fees collected not to exceed the total costs to the program for the implementation of this requirement.

CHAPTER 320

An act to amend Section 742.24 of the Insurance Code, relating to investments.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 742.24 of the Insurance Code is amended to read:

742.24. To be eligible for a certificate of compliance, a self-funded or partially self-funded multiple employer welfare arrangement shall meet all of the following requirements:

(a) Be nonprofit.

(b) Be established and maintained by a trade association, industry association, professional association, or by any other business group or association of any kind that has a constitution or bylaws specifically stating its purpose, and have been organized and maintained in good faith with at least 200 paid members and operated actively for a continuous period of five years, for purposes other than that of obtaining or providing health care coverage benefits to its members. An association is a California mutual benefit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, which do not condition membership directly or indirectly on the health or claims history of any person, and which uses membership dues solely for and in consideration of the membership and membership benefits.

(c) Be organized and maintained in good faith with at least 2,000 employees and 50 paid employer members and operated actively for a continuous period of five years.

(d) Have been operating in compliance with ERISA on a self-funded or partially self-funded basis for a continuous period of five years pursuant to a trust agreement by a board of trustees that shall have complete fiscal control over the multiple employer welfare arrangement, and that shall be responsible for all operations of the multiple employer welfare arrangement. The trustees shall be selected by vote of the participating employers and shall be owners, partners, officers, directors, or employees of one or more employers participating in the multiple employer welfare arrangement. A trustee may not be an owner, officer, or employee of the insurer, administrator, or service company providing insurance or insurance-related services to the association. The trustees shall have authority to approve applications of association members for participation in the multiple employer welfare arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the multiple employer welfare arrangement.

(e) Benefits shall be offered only to association members.

(f) Benefits may be offered only through life agents, as defined in Section 1622, licensed in the state whose names, addresses, and telephone numbers have been filed with the commissioner as licensed life agents for the multiple employer welfare arrangement.

(g) Be operated in accordance with sound actuarial principles and conform to the requirements of Section 742.31.

(h) File an application with the department for a certificate of compliance no later than November 30, 1995.

(i) The multiple employer welfare arrangement shall at all times maintain aggregate stop loss insurance providing the arrangement with coverage with an attachment point which is not greater than 125 percent of annual expected claims. The commissioner may, by regulation, define ''expected claims'' for purposes of this subdivision and provide for adjustments in the amount of the percentage in specified circumstances in which the arrangement specifically provides for and maintains reserves in accordance with sound actuarial principles as provided in Section 742.31.

(j) The multiple employer welfare arrangement shall establish and maintain specific stop loss insurance providing the arrangement with coverage with an attachment point which is not greater than 5 percent of annual expected claims. The commissioner may, by regulation, define ''expected claims'' for purposes of this subdivision and provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subdivision determined by sound actuarial principles as provided in Section 742.31.

(k) The multiple employer welfare arrangement shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles as provided in Section 742.31.

(*l*) The association has within its own organization adequate facilities and competent personnel to serve the multiple employer welfare arrangement, or has contracted with a licensed third-party administrator to provide those services.

(m) The association has established a procedure for handling claims for benefits in the event of the dissolution of the multiple employer welfare arrangement.

(n) On and after January 1, 2003, in addition to the requirements of this article, maintain a surplus of not less than one million dollars ($1,000,000), and that this amount be increased as follows: one million seven hundred fifty thousand dollars ($1,750,000) by January 1, 2004; two million five hundred thousand dollars ($2,500,000) by January 1, 2005; three million two hundred fifty thousand dollars ($3,250,000) by January 1, 2006; and four million dollars ($4,000,000) by January 1, 2007.

(o) Submit all proposed rate levels to the department for informational purposes no later than 45 days prior to their implementation. The proposed rates shall contain an aggregate benefit structure which has a loss ratio experience of not less than 80 percent. The loss ratio experience shall be calculated as claims paid during the

contract period plus a reasonable estimate of claims liability for the contract period at the end of the current year divided by contributions paid or collected for the contract period minus unearned contributions at the end of the current year.

(p) (1) Comply with the investment requirements of Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and Section 1192.5, except for investments made pursuant to paragraph (2).

(2) (A) A multiple employer welfare arrangement may invest funds as provided in subparagraph (B) in an amount not to exceed 75 percent of any excess of invested assets over the sum of the following:

(i) The reserves and related actuarial items held in support of policies and contracts.

(ii) The surplus required by subdivision (n).

(B) The investments authorized by subparagraph (A) may be made only in an open-ended diversified management company, as defined in the federal Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), that is registered with and reports to the Securities and Exchange Commission and is domiciled in the United States, and all of the assets of which are held in the United States by a bank, trust company, or other custodian chartered by the United States, or its territories or states.

(3) The commissioner may, in his or her discretion and after a hearing, require by written order the disposal of any investment made in violation of this section. The commissioner may also, after a hearing, require the disposal of any investment made pursuant to paragraph (2) if the multiple employer welfare arrangement has failed to maintain cash or liquid assets sufficient to meet its claims and any other contractual obligations.

CHAPTER 321

An act to add Section 14133.45 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 14133.45 is added to the Welfare and Institutions Code, to read:

14133.45. (a) Utilization controls adopted by the department shall not include prior authorization for renal dialysis treatment provided to eligible recipients for the treatment of end stage renal disease.

(b) For purposes of this section, ''end stage renal disease'' is the same as defined in subdivision (d) of Section 1794.02 of the Health and Safety Code.

(c) Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, the department may implement this section by provider manual or similar notice without further regulatory action.

CHAPTER 322

An act to add Section 1569.628 to the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 1569.628 is added to the Health and Safety Code, to read:

1569.628. A licensee of a residential care facility for the elderly that advertises or promotes special care, programming, or environments for persons with a health related condition, except as specified in Section 1569.72, shall provide to each prospective resident an accurate narrative description of these programs and services. The description shall be provided in writing prior to admission. All reasonable efforts shall be made to communicate the information in the narrative description to a person who is unable to read it himself or herself, including, but not limited to, reading the description out loud.

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 323

An act to amend Sections 7950, 8708, and 8709 of the Family Code, and to amend Sections 15100 and 16120 of the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 7950 of the Family Code is amended to read:

7950. (a) With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a placement in foster care is being made, the following considerations shall be used:

(1) Placement shall, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child. Diligent efforts shall be made to locate an appropriate relative. Before any child may be placed in long-term foster care, each relative whose name has been submitted to the agency as a possible caretaker, either by himself or herself or by other persons, shall be evaluated as an appropriate placement resource.

(2) No agency or entity that receives any state assistance and is involved in foster care placements may do either of the following:

(A) Deny to any person the opportunity to become a foster parent on the basis of the race, color, or national origin of the person or the child involved.

(B) Delay or deny the placement of a child into foster care on the basis of the race, color, or national origin of the foster parent or the child involved.

(b) Subdivision (a) shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

(c) Nothing in this section precludes a search for an appropriate relative being conducted simultaneously with a search for a foster family.

SEC. 2. Section 8708 of the Family Code is amended to read:

8708. (a) Neither the department nor a licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may do any of the following:

(1) Deny to any person the opportunity to become an adoptive parent on the basis of the race, color, or national origin of the person or the child involved.

(2) Delay or deny the placement of a child for adoption on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(3) Delay or deny the placement of a child for adoption solely because the prospective, approved adoptive family resides outside the jurisdiction of the department or the licensed adoption agency. For purposes of this paragraph, an approved adoptive family means a family approved pursuant to the California adoptive applicant assessment standards. If the adoptive applicant assessment was conducted in another state according to that state's standards, the California placing agency shall determine whether the standards of the other state substantially meet the standards and criteria established in California adoption regulations.

(b) This section shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

SEC. 3. Section 8709 of the Family Code is amended to read:

8709. (a) The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may consider the child's religious background in determining an appropriate placement.

(b) This section shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

SEC. 4. Section 15100 of the Welfare and Institutions Code is amended to read:

15100. A revolving fund in the State Treasury is hereby created to be known as the Welfare Advance Fund. All moneys in the fund are appropriated for the purpose of making payments or advances to counties, Indian tribes, the federal Social Security Administration, or other federal, state, or governmental entities, of the state and federal shares of local assistance programs, and for the payment of refunds. In addition, the fund may be used for the purpose of making a consolidated payment, comprised of the state and federal shares of local assistance costs, to any payee associated with programs administered by the State Department of Social Services.

Payments or advances of funds to counties, Indian tribes, the federal Social Security Administration, or other federal, state, or governmental entities, or to any payee, which payments or advances are properly chargeable to appropriations made from other funds in the State Treasury, may be made by Controller's warrant drawn against the Welfare Advance Fund. For every warrant so issued, the several purposes and amounts for which it was drawn shall be identified for the payee.

The amounts to be transferred to the Welfare Advance Fund at any time shall be determined by the department, and, upon order of the

Controller, shall be transferred from the funds and appropriations otherwise properly chargeable therewith to the Welfare Advance Fund.

Refunds of amounts disbursed from the Welfare Advance Fund shall, on order of the Controller, be deposited in the Welfare Advance Fund, and, on order of the Controller, shall be transferred therefrom to the funds and appropriations from which the amounts were originally derived. Claims for amounts erroneously paid into the Welfare Advance Fund shall be submitted by the department to the Controller who, if he or she approves the claims, shall draw his or her warrant in payment thereof against the Welfare Advance Fund.

All amounts increasing the cash balance in the Welfare Advance Fund, which were derived from the cancellation of warrants issued therefrom, shall, on order of the Controller, be transferred to and in augmentation of the appropriations from which the amounts were originally derived.

SEC. 5. Section 16120 of the Welfare and Institutions Code is amended to read:

16120. A child shall be eligible for Adoption Assistance Program benefits if all of the conditions specified in subdivisions (a) through (g), inclusive, are met or if the conditions specified in subdivision (h) are met.

(a) The child has at least one of the following characteristics that are barriers to his or her adoption:

(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, age of three years or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a developmental disability as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care as described in Section 11464.

(b) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(c) The child meets either of the following criteria:

(1) At the time a petition for an agency adoption, as defined in Section 8506 of the Family Code, or an independent adoption, as defined in

Section 8524 of the Family Code, is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.

(2) The child is the subject of an agency adoption as defined in Section 8506 of the Family Code and was any of the following:

(A) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.

(B) Relinquished for adoption to a licensed California private or public adoption agency, or the department, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency.

(C) Committed to the care of the department pursuant to Section 8805 or 8918 of the Family Code.

(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.

(f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.

(h) A child shall be eligible for Adoption Assistance Program benefits if the child received Adoption Assistance Program benefits with respect to a prior adoption and the child is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the child's adoptive parents died.

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 324

An act to amend Sections 444.20, 444.22, 444.24, and 1771.7 of the Health and Safety Code, relating to consumer assistance.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 444.20 of the Health and Safety Code is amended to read:

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

(a) The health care delivery system continues to undergo rapid and dramatic change. Health care services are provided by a variety of managed care structures, including health maintenance organizations (HMOs), preferred provider organizations (PPOs), and an array of hybrid models that have elements of traditional fee-for-service and indemnity systems while applying managed care's utilization management, gatekeeper, and case management techniques. As a result of these changes, many consumers are confused about how managed care works or have problems navigating the health care system.

(b) The Health Rights Hotline (HRH) operates in the Sacramento area to help all health care consumers. The program's goals are to provide an independent source of information and help for health care consumers, to collect needed information regarding health care consumers' problems, and to advocate for health care system improvements for all consumers. The program is independent from, but works in close collaboration with, health plans, providers, purchasers, insurance agents and brokers, consumer groups, and regulators. The program also works with the local Health Insurance Counseling and Advocacy Program (HICAP), which serves Medicare beneficiaries and those imminent of becoming eligible for Medicare statewide.

(c) The program educates consumers about their health care rights and responsibilities. It also assists consumers with questions about their health plans and with specific problems through hotline and in-person services. In addition, the program collects and analyzes information, generated both by consumers' use of the program and from other sources, that can identify the strengths and weaknesses of particular plans, provider groups, and delivery systems. The program has informed

health plans, providers, purchasers, consumers, regulators, and the Legislature about how independent support can be provided to consumers in managed care.

(d) Maintaining consumer confidence is a paramount concern in the operation of the program. While one vehicle to protect these communications would be to establish attorney-client relationships with consumers served, the program is generally not designed as a ''legal'' program and it would undercut its collaborative strategy and problem solving orientation if assistance were required to be positioned in a legal context. Furthermore, it is critical that consumers using the program are free from any retribution.

(e) The Health Consumer Alliance (HCA), a partnership of independent, nonprofit legal services agencies, includes seven local health consumer assistance programs in the Counties of Alameda, Fresno, Los Angeles, Orange, San Diego, San Francisco, and San Mateo. These seven Health Consumer Centers help low-income consumers receive necessary health care through education, training, and advocacy, and analysis of systemic health access issues.

(f) The Health Insurance Counseling and Advocacy Program (HICAP) provides Medicare beneficiaries and those imminent of becoming eligible for Medicare with counseling and advocacy services on a statewide basis. HICAP offers information and assistance regarding Medicare, managed health care, health and long-term care related life and disability insurance, and related health care coverage plans.

SEC. 2. Section 444.22 of the Health and Safety Code is amended to read:

444.22. (a) The Legislature recognizes that the Health Rights Hotline, serving the greater Sacramento area, and the Health Consumer Alliance (HCA) programs serving the Counties of Alameda, Fresno, Los Angeles, Orange, San Diego, San Francisco, and San Mateo, provide needed education and assistance to individual consumers and provide the public with critical information about the health care system and how consumers can best be assisted. While most of their financial support is from private sources, the programs serve an important public interest, as does HICAP which statewide serves Medicare beneficiaries and persons imminent of becoming eligible for Medicare.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against any health facility, health care service plan, provider, or an employee thereof, or any subscriber, enrollee, or agent of the subscriber or enrollee, or any other recipient of health care services or individual assisting the recipient of health care services, if the communication is made to a program described in subdivision (a) regarding a grievance or complaint and is intended to assist the program in carrying out its duties and responsibilities, unless the action was done maliciously or without

good faith. This subdivision is not intended to allow for the unapproved release of confidential or proprietary information by an employee or contractor, or to otherwise infringe on the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

SEC. 3. Section 444.24 of the Health and Safety Code is amended to read:

444.24. This part shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date. Notwithstanding this date of repeal, the privileges and protections provided under this part shall continue to apply to any actions taken or materials collected after January 1, 2011, if they relate to communications or actions made on or before January 1, 2011.

SEC. 4. Section 1771.7 of the Health and Safety Code is amended to read:

1771.7. (a) No resident of any continuing care retirement community shall be deprived of any civil or legal right, benefit, or privilege guaranteed by law, by the California Constitution, or by the United States Constitution solely by reason of status as a resident of a community. In addition, because of the discretely different character of residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599), Section 73523 of Title 22 of the California Code of Regulations, and applicable federal law and regulations.

(b) All residents in residential living units shall have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or provider's governing body.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.

(6) To maintain and establish ties to the local community.

(7) To organize and participate freely in the operation of resident associations.

(c) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall do both of the following:

(1) Permit the formation of a resident association by interested residents who may elect a governing body. The provider shall provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to permit a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life. Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. The provider shall biennially conduct a resident satisfaction survey that shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the governing board of the provider required by subdivision (c) of Section 1771.8. A copy of the survey shall be posted in a conspicuous location at each facility.

(d) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at or before the resident's admission to the community.

(e) The department may, upon receiving a complaint of a violation of this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations and consult with the Continuing Care Advisory Committee for determination of compliance.

(f) Failure to comply with this section shall be grounds for the imposition of conditions on, suspension of, or revocation of the provisional certificate of authority or certificate of authority pursuant to Section 1793.21.

CHAPTER 325

An act to amend Sections 5640, 5657, 7583.36, 7820, 7841, and 7883 of, and to repeal Section 7849 of, the Business and Professions Code,

and to amend Section 26509 of the Government Code, relating to professions and vocations.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

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

SECTION 1. Section 5640 of the Business and Professions Code is amended to read:

5640. It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment, for any person, who, without possessing a valid, unrevoked license as provided in this chapter, engages in the practice of landscape architecture or uses the title or term ''landscape architect'', ''landscape architecture,'' ''landscape architectural,'' or any other titles, words, or abbreviations that would imply or indicate that he or she is a landscape architect as defined in Section 5615.

SEC. 2. Section 5657 of the Business and Professions Code is amended to read:

5657. Each licensee shall file his or her proper or current mailing and business address with the board at its office in Sacramento, and shall immediately notify the board of any changes of mailing or business address, giving both his or her old and new addresses. A penalty as provided in this chapter shall be paid by a licensee who fails to notify the board within 30 days after a change of address.

SEC. 3. Section 7583.36 of the Business and Professions Code is amended to read:

7583.36. A licensee shall not permit any employee to carry tear gas or any other nonlethal chemical agent prior to ascertaining that the employee is proficient in the use of tear gas or other nonlethal chemical agent. Evidence of proficiency shall include a certificate from a training facility approved by the Department of Consumer Affairs, Bureau of Security and Investigative Services that the person is proficient in the use of tear gas or any other nonlethal chemical agent.

SEC. 4. Section 7820 of the Business and Professions Code is amended to read:

7820. The board shall have and use a seal bearing the name ''State Board for Geologists and Geophysicists.''

SEC. 5. Section 7841 of the Business and Professions Code is amended to read:

7841. An applicant for registration as a geologist shall have all the following qualifications:

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Graduation with a major in geological sciences from college or university.

(c) Have a documented record of a minimum of five years of professional geological experience of a character satisfactory to the board, demonstrating that the applicant is qualified to assume responsible charge of this work upon licensure as a geologist. This experience shall be gained under the supervision of a geologist or geophysicist licensed in this or any other state, or under the supervision of others who, in the opinion of the board, have the training and experience to have responsible charge of geological work. Professional geological work does not include routine sampling, laboratory work, or geological drafting.

Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of upper division or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of three years towards meeting the requirement for at least five years of professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by the applicant having performed the work in a responsible position, as the term ''responsible position'' is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination that incorporates a national examination for geologists created by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of state laws, rules and regulations, and of seismicity and geology unique to practice within this state.

SEC. 6. Section 7849 of the Business and Professions Code is repealed.

SEC. 7. Section 7883 of the Business and Professions Code is amended to read:

7883. A revoked certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its

expiration, the holder of the certificate, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular date before the date on which it is reinstated, plus all accrued and unpaid renewal fees and the delinquency fee, if any, accrued at the time of its revocation.

SEC. 8. Section 26509 of the Government Code is amended to read:

26509. (a) Notwithstanding any other provision of law, including any provision making records confidential, and including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the district attorney shall be given access to, and may make copies of, any complaint against a person subject to regulation by a consumer-oriented state agency and any investigation of the person made by the agency, where that person is being investigated by the district attorney regarding possible consumer fraud.

(b) Where the district attorney does not take action with respect to the complaint or investigation, the material shall remain confidential.

(c) Where the release of the material would jeopardize an investigation or other duties of a consumer-oriented state agency, the agency shall have discretion to delay the release of the information.

(d) As used in this section, a consumer-oriented state agency is any state agency that regulates the licensure, certification, or qualification of persons to practice a profession or business within the state, where the regulation is for the protection of consumers who deal with the professionals or businesses. It includes, but is not limited to, all of the following:

(1) The Dental Board of California.
(2) The Medical Board of California.
(3) The State Board of Optometry.
(4) The California State Board of Pharmacy.
(5) The Veterinary Medical Board.
(6) The California Board of Accountancy.
(7) The California Architects Board.
(8) The State Board of Barbering and Cosmetology.
(9) The Board for Professional Engineers and Land Surveyors.
(10) The Contractors' State License Board.
(11) The Funeral Directors and Embalmers Program.
(12) The Structural Pest Control Board.
(13) The Bureau of Home Furnishings and Thermal Insulation.
(14) The Board of Registered Nursing.
(15) The State Board of Chiropractic Examiners.
(16) The Board of Behavioral Science Examiners.
(17) The State Athletic Commission.
(18) The Cemetery Program.
(19) The State Board of Guide Dogs for the Blind.

(20) The Bureau of Security and Investigative Services.
(21) The Court Reporters Board of California.
(22) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
(23) The Osteopathic Medical Board of California.
(24) The Division of Investigation.
(25) The Bureau of Automotive Repair.
(26) The State Board for Geologists and Geophysicists.
(27) The Department of Alcoholic Beverage Control.
(28) The Department of Insurance.
(29) The Public Utilities Commission.
(30) The State Department of Health Services.
(31) The New Motor Vehicle Board.

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 326

An act to amend Sections 1653.5, 12800, 12801, 12801.5, 12814.5, and 13000 of, and to add Sections 12801.2 and 12801.9 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 5, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 1653.5 of the Vehicle Code is amended to read:

1653.5. (a) Every form prescribed by the department for use by an applicant for the issuance or renewal by the department of a driver's license or identification card pursuant to Division 6 (commencing with Section 12500) shall contain a section for the applicant's social security account number, federal individual taxpayer identification number, or other number or identifier deemed appropriate by the department under paragraph (2) of subdivision (a) of Section 12801.

(b) Every form prescribed by the department for use by an applicant for the issuance, renewal, or transfer of the registration or certificate of title to a vehicle shall contain a section for the applicant's driver's license or identification card number.

(c) A person who submits to the department a form that, pursuant to subdivision (a), contains a section for the applicant's social security account number, federal individual taxpayer identification number, or other number or identifier deemed appropriate by the department under paragraph (2) of subdivision (a) of Section 12801, or pursuant to subdivision (b), the applicant's driver's license or identification card number, if any, shall furnish the appropriate number or identifier in the space provided.

(d) (1) The department shall not complete an application for the issuance or renewal by the department of a driver's license or identification card pursuant to Division 6 (commencing with Section 12500) that does not include one of the following:

(A) The applicant's social security account number.

(B) Subject to paragraph (2) of subdivision (a) of Section 12801, a federal individual taxpayer identification number.

(C) Subject to paragraph (2) of subdivision (a) of Section 12801, a number or identifier that is determined to be appropriate by the department.

(2) The department shall not complete an application for the issuance or transfer of the registration or certificate of title to a vehicle that does not include one of the following:

(A) The applicant's driver's license number.

(B) The applicant's identification card number.

(e) An applicant's social security account number or federal individual taxpayer identification number shall not be included by the department on a driver's license, identification card, registration, certificate of title, or any other document issued by the department.

(f) Notwithstanding any other provision of law, information regarding an applicant's social security account number, federal individual taxpayer identification number, or any other information collected under Section 12801 or 12801.5, obtained by the department pursuant to this section, is not a public record and may not be disclosed by the department except for any of the following purposes:

(1) Responding to a request for information from an agency operating pursuant to, and carrying out the provisions of, Part A (Aid to Families with Dependent Children), or Part D (Child Support and Establishment of Paternity), of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) Implementation of Section 12419.10 of the Government Code.

(3) Responding to information requests from the Franchise Tax Board for the purpose of tax administration.

SEC. 2. Section 12800 of the Vehicle Code is amended to read:

12800. Every application for an original or a renewal of a driver's license shall contain all of the following information:

(a) The applicant's true full name, age, sex, mailing address, residence address, social security account number, federal individual taxpayer identification number, or other number or identifier number deemed appropriate by the department under paragraph (2) of subdivision (a) of Section 12801.

(b) A brief description of the applicant for the purpose of identification.

(c) A legible print of the thumb or finger of the applicant.

(d) The type of motor vehicle or combination of vehicles the applicant desires to operate.

(e) Whether the applicant has ever previously been licensed as a driver and, if so, when and in what state or country and whether or not the license has been suspended or revoked and, if so, the date of and reason for the suspension or revocation.

(f) Whether the applicant has ever previously been refused a driver's license in this state and, if so, the date of and the reason for the refusal.

(g) Whether the applicant, within the last three years, has experienced, on one or more occasions, either a lapse of consciousness or an episode of marked confusion caused by a condition that may bring about recurrent lapses, or whether the applicant has a disease, disorder, or disability that affects his or her ability to exercise reasonable and ordinary control in operating a motor vehicle upon a highway.

(h) Whether the applicant understands traffic signs and signals.

(i) Whether the applicant has ever previously been issued an identification card by the department.

(j) Documentation acceptable to the department showing that the applicant is presently residing in this state. The department shall develop regulations specifying those documents that are acceptable for this purpose.

(k) Any other information necessary to enable the department to determine whether the applicant is entitled to a license under this code.

SEC. 3. Section 12801 of the Vehicle Code is amended to read:

12801. (a) (1) The department shall require an application for the issuance or renewal of a driver's license or identification card by the department to contain one of the following:

(A) The applicant's social security account number.

(B) Subject to paragraph (2), a federal individual taxpayer identification number.

(C) Subject to paragraph (2), a number or identifier that is determined to be appropriate by the department.

(2) If an applicant signs an affidavit under penalty of perjury attesting that he or she is presently not eligible for a social security account number and submits a federal individual taxpayer identification number, or other number or identifier that is deemed appropriate by the department, the submission of those documents shall be acceptable to the department in lieu of a social security account number until the applicant obtains a social security account number. Upon obtaining a social security account number, the applicant shall provide the department that number under paragraph (1).

(3) The department shall not complete an application for the issuance or renewal by the department of a driver's license or identification card that does not include one of the following:

(A) The applicant's social security account number.

(B) Subject to paragraph (2), a federal individual taxpayer identification number.

(C) Subject to paragraph (2), a number or identifier that is determined to be appropriate by the department.

(b) Notwithstanding any other law, the social security number or federal individual taxpayer identification number collected on a driver's license or identification card application shall not be displayed on the driver's license or identification card, including, but not limited to, inclusion on a magnetic tape or strip used to store data on the license.

SEC. 4. Section 12801.2 is added to the Vehicle Code, to read:

12801.2. (a) The department shall require every applicant for an original driver's license or identification card to present an identification document acceptable to the department, for the purpose of establishing identity prior to completing an application.

(b) Any applicant who furnishes the department with his or her federal individual taxpayer identification number pursuant to Section 1653.5, shall present to the department a birth certificate or record of birth, determined to be acceptable by the department, issued by a foreign jurisdiction, and, in addition, one of the following documents, determined acceptable by the department:

(1) Matricula consular issued by the government of the United States of Mexico.

(2) A passport issued by a foreign jurisdiction.

(3) A military identification card bearing the applicant's photograph, from the county of origin.

(4) A driver's license, bearing the applicant's photograph, issued by a foreign jurisdiction.

(5) A driver's license, bearing the applicant's photograph, issued by another state, possession or territory of the United States.

(c) The department may, through regulations, accept documents in addition to those specified in subdivision (b), provided that those additional documents accurately confirm the identity of the applicant.

(d) An applicant who does not possess a birth certificate or birth record from his or her country of origin may present two or more of the documents specified in subdivision (b) or referenced in subdivision (c).

(e) An applicant who presents to the department a birth certificate or record of birth issued by his or her country of origin, but who does not possess any of the other documents specified in subdivision (b), may present, in addition to the birth certificate, a letter from the Consulate General of the applicant's home country that confirms the authenticity of the birth record.

SEC. 5. Section 12801.5 of the Vehicle Code is amended to read:

12801.5. (a) Notwithstanding Section 40300 or any other provision of law, a peace officer may not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under the age of 16 years.

(b) The inability to obtain a driver's license does not abrogate or diminish in any respect the legal requirement of every driver in this state to obey the motor vehicle laws of this state, including laws with respect to licensing, motor vehicle registration, and financial responsibility.

SEC. 6. Section 12801.9 is added to the Vehicle Code, to read:

12801.9. Notwithstanding any other provision of law, a commercial driver's license applicant shall include the applicant's social security account number in the application.

SEC. 7. Section 12814.5 of the Vehicle Code is amended to read:

12814.5. (a) The director may establish a program to evaluate the traffic safety and other effects of renewing driver's licenses by mail. Pursuant to that program, the department may renew by mail driver's licenses for licensees not holding a probationary license, and whose records, for the two years immediately preceding the determination of eligibility for the renewal, show no notification of a violation of subdivision (a) of Section 40509, a total violation point count not greater than one as determined in accordance with Section 12810, no suspension of the driving privilege pursuant to Section 13353.2, and no refusal to submit to or complete chemical testing pursuant to Section 13353 or 13353.1.

(b) The director may terminate the renewal by mail program authorized by this section at any time the department determines that the program has an adverse impact on traffic safety.

(c) No renewal by mail shall be granted to any person who is 70 years of age or older.

(d) (1) The department shall charge a fee of twelve dollars ($12) for each noncommercial license renewal and twenty-seven dollars ($27) for each commercial license or noncommercial firefighter license renewal granted pursuant to subdivision (a) which expires on the fourth birthday following the date of the application.

(2) The department shall charge a fee of fifteen dollars ($15) for each noncommercial license renewal and thirty-four dollars ($34) for each commercial license or noncommercial firefighter license renewal granted pursuant to subdivision (a) which expires on the fifth birthday following the date of the application.

(e) The department shall notify each licensee granted a renewal by mail pursuant to this section of major changes to the Vehicle Code affecting traffic laws occurring during the prior five-year period.

(f) The department shall not renew a driver's license by mail if the license has been previously renewed by mail two consecutive times for five-year periods.

(g) Notwithstanding any other provision of the act that added this subdivision to this section during the 2003 portion of the 2003–04 Regular Session or any other provision of law, an individual eligible to renew a driver's license pursuant to this section is not required to personally appear at a department office for purposes of obtaining that renewal.

SEC. 8. Section 13000 of the Vehicle Code is amended to read:

13000. (a) The department may issue an identification card to any person attesting to the true full name, correct age, and other identifying data as certified by the applicant for the identification card.

(b) Any person 62 years of age or older may apply for, and the department upon receipt of a proper application therefor shall issue, an identification card bearing the notation ''Senior Citizen''.

(c) Every application for an identification card shall be signed and verified by the applicant before a person authorized to administer oaths and shall be supported by bona fide documentary evidence of the age and identity of the applicant as the department may require, and shall include a legible print of the thumb or finger of the applicant.

(d) Any person 62 years of age or older, and any other qualified person, may apply for, or possess, an identification card under the provisions of either subdivision (a) or (b), but not under both of those provisions.

SEC. 9. (a) The Department of Justice, in consultation with the Department of Motor Vehicles and other interested parties, shall study the cost, feasibility, technological capacity, and privacy implications for developing a biometrics system that guarantees that applicants for a driver's license or identification card are issued only one driver's license or identification card.

(b) On or before January 1, 2005, the Department of Justice shall provide the findings of the study described in subdivision (a) to the Legislature.

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 327

An act to add Section 512.5 to the Labor Code, relating to employment.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 512.5 is added to the Labor Code, to read:

512.5. (a) Notwithstanding any provision of this chapter, if the Industrial Welfare Commission adopts or amends an order that applies to an employee of a public agency who operates a commercial motor vehicle, it may exempt that employee from the application of the provisions of that order which relate to meal periods or rest periods, consistent with the health and welfare of that employee, if he or she is covered by a valid collective bargaining agreement.

(b) ''Commercial motor vehicle'' for the purposes of this section has the same meaning as provided in subdivision (b) of Section 15210 of the Vehicle Code.

(c) ''Public agency'' for the purposes of this section means the state and any political subdivision of the state, including any city, county, city and county, or special district.

CHAPTER 328

An act to amend Section 10110.1 of, and to add Section 10110.4 to, the Insurance Code, relating to life insurance.

[Approved by Governor September 6, 2003. Filed with
Secretary of State September 8, 2003.]

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

SECTION 1. Section 10110.1 of the Insurance Code is amended to read:

10110.1. (a) An insurable interest, with reference to life and disability insurance, is an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of that person's death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or law.

(b) An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest.

(c) Except as provided in Section 10110.4, an employer has an insurable interest, as referred to in subdivision (a), in the life or physical or mental ability of any of its directors, officers, or employees or the directors, officers, or employees of any of its subsidiaries or any other person whose death or physical or mental disability might cause financial loss to the employer; or, pursuant to any contractual arrangement with any shareholder concerning the reacquisition of shares owned by the shareholder at the time of his or her death or disability, on the life or physical or mental ability of that shareholder for the purpose of carrying out the contractual arrangement; or, pursuant to any contract obligating the employer as part of compensation arrangements or pursuant to a contract obligating the employer as guarantor or surety, on the life of the principal obligor. The trustee of an employer or trustee of a pension, welfare benefit plan, or trust established by an employer providing life, health, disability, retirement, or similar benefits to employees and retired employees of the employer or its affiliates and acting in a fiduciary capacity with respect to those employees, retired employees, or their dependents or beneficiaries has an insurable interest in the lives of employees and retired employees for whom those benefits are to be provided. The employer shall obtain the written consent of the individual being insured.

(d) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(e) Any contract of life or disability insurance procured or caused to be procured upon another individual is void unless the person applying

for the insurance has an insurable interest in the individual insured at the time of the application.

(f) Notwithstanding subdivisions (a), (d), and (e), a charitable organization that meets the requirements of Section 214 or 23701d of the Revenue and Taxation Code may effectuate life or disability insurance on an insured who consents to the issuance of that insurance.

(g) This section shall not be interpreted to define all instances in which an insurable interest exists.

SEC. 2. Section 10110.4 is added to the Insurance Code, to read:

10110.4. (a) Except as allowed in subdivision (c), an insurer may not issue or deliver a corporate-owned life insurance policy.

(b) ''Corporate-owned life insurance policy'' means a life insurance policy that is purchased by a California employer, that designates the employer as the beneficiary of the policy, and that insures the life of a California resident who is a current or former employee of the employer.

(c) This section does not apply to a policy insuring the life of a current or former exempt employee. An exempt employee is an administrative, executive, or professional employee who is exempt under Section 515 of the Labor Code and the regulations adopted pursuant thereto.

(d) Except as provided in subdivision (f), it is a violation of public policy for a California employer to purchase or hold a corporate-owned life insurance policy.

(e) (1) A corporate-owned life insurance policy purchased on or after the effective date of this section is void.

(2) Except as provided in subdivision (f), a corporate-owned life insurance policy purchased prior to the effective date of this section shall become void on the next premium payment date on or after the date five years from the effective date of this section, but no later than January 1, 2010.

(f) A corporate-owned life insurance policy purchased prior to the effective date of this section that insures the life of a current or former nonexempt employee shall continue in force after the effective date of this section provided that no further premium payments are made after the effective date of this section. However, an employer who has purchased and holds such a corporate-owned life insurance policy shall disclose in writing to the current or former nonexempt employee whose life is insured by the policy, within 90 days of the effective date of this section, all of the following information:

(1) The existence of the corporate-owned life insurance policy on the life of the nonexempt employee.

(2) The identity of the insurer under the policy.

(3) The benefit amount under the policy, unless the full amount of the benefit is used to defray the costs of nonexempt employee benefits.

(4) How benefits paid under the policy would be used.

(5) The name of the beneficiary under the policy.

(g) For a former employee, the disclosure requirements shall be deemed satisfied if the employer mails the required information to the former employee's last known address.

SEC. 3. It is the intent of the Legislature that all corporate-owned life insurance policies, as described in Section 10110.4 of the Insurance Code, purchased prior to the effective date of this act, except for those policies specified in subdivision (f) of that section, shall become void no later than January 1, 2010.

CHAPTER 329

An act to amend Sections 210, 225.5, 226, 605, 752, 1021, 1021.5, and 1197.1 of the Labor Code, relating to employment.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 210 of the Labor Code is amended to read:

210. In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

SEC. 2. Section 225.5 of the Labor Code is amended to read:

225.5. In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

SEC. 3. 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 accurate 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. 4. Section 605 of the Labor Code is amended to read:

605. Any railroad corporation that violates any of the provisions of this chapter is liable to the state in a penalty of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each

offense. The penalty shall be recovered and suit therefor shall be brought in the name of the state in a court of competent jurisdiction in any county into or through which said railroad may pass. The suit may be brought either by the Attorney General of the state or under his or her direction by the district attorney of any county in the state into or through which said railroad passes.

SEC. 5. Section 752 of the Labor Code is amended to read:

752. (a) Any affected employee, or his or her representative, may file a complaint with the Labor Commissioner concerning the conduct of an election pursuant to subdivision (b) of Section 750.5 within 14 days following notice of the outcome of the election. The Labor Commissioner shall investigate the complaint and shall invalidate the election if the commissioner finds that misconduct has occurred that could have affected the outcome of the election. If the election is invalidated, the commissioner shall prohibit the employer from conducting a similar election for a period of 12 months.

(b) Any employer, or representative of an employer, that violates Section 750 or 751.8 shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each affected employee for each violation for each pay period.

(2) For each subsequent violation for the same offense, two hundred dollars ($200) for each violation for each affected employee for each pay period, regardless of whether the initial violation is intentionally committed.

(c) If the Labor Commissioner determines that an employer has failed to comply with paragraph (6) of subdivision (b) of Section 750.5, the Labor Commissioner shall order the employer to comply. The order, in appropriate cases, shall include provisions for reinstatement and backpay.

(d) An employer shall not retaliate in any way against an employee for exercising any right pursuant to this chapter.

SEC. 6. Section 1021 of the Labor Code is amended to read:

1021. Any person who does not hold a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who employs any worker to perform services for which a license is required, shall be subject to a civil penalty in the amount of two hundred dollars ($200) per employee for each day of employment. The civil penalties provided for by this section are in addition to any other penalty provided by law.

SEC. 7. Section 1021.5 of the Labor Code is amended to read:

1021.5. Any person who holds a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who willingly and

knowingly enters into a contract with any person to perform services for which a license is required as an independent contractor, and that person does not meet the burden of proof of independent contractor status pursuant to Section 2750.5 or hold a valid state contractor's license, shall be subject to a civil penalty in the amount of two hundred dollars ($200) per person so contracted with for each day of the contract. The civil penalties provided for by this section are in addition to any other penalty provided by law.

SEC. 8. Section 1197.1 of the Labor Code is amended to read:

1197.1. (a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a person has paid or caused to be paid a wage less than the minimum, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated. The Labor Commissioner promptly shall take all appropriate action, in accordance with this section, to enforce the citation and to recover the civil penalty assessed in connection with the citation.

(c) If a person desires to contest a citation or the proposed assessment of a civil penalty therefor, the person shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner that appears on the citation of his or her request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty shall be affirmed, modified, or dismissed.

The decision of the Labor Commissioner shall consist of a notice of findings, findings, and an order, all of which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor

Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court. The party shall pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(d) A person to whom a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(e) When no petition objecting to a citation or the proposed assessment of a civil penalty is filed, a certified copy of the citation or proposed civil penalty may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty.

(f) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(g) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

(h) The civil penalties provided for in this section are in addition to any other penalty provided by law.

(i) This section shall not apply to any order of the commission relating to household occupations.

CHAPTER 330

An act to amend Section 1632 of the Civil Code, relating to contracts.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 1632 of the Civil Code is amended to read:

1632. (a) The Legislature hereby finds and declares all of the following:

(1) This section was enacted in 1976 to increase consumer information and protections for the state's sizeable and growing Spanish-speaking population.

(2) Since 1976, the state's population has become increasingly diverse and the number of Californians who speak languages other than English as their primary language at home has increased dramatically.

(3) According to data from the United States Census of 2000, of the more than 12 million Californians who speak a language other than English in the home, approximately 4.3 million speak an Asian dialect or another language other than Spanish. The top five languages other than English most widely spoken by Californians in their homes are Spanish, Chinese, Tagalog, Vietnamese, and Korean. Together, these languages are spoken by approximately 83 percent of all Californians who speak a language other than English in their homes.

(b) Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, an unexecuted translation of the contract or agreement, in the language in which the contract or agreement was negotiated:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family or household purposes.

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family or household purposes where the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code.

(5) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(c) Notwithstanding subdivision (b), for a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Section 10240 of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

(d) At the time and place where a lease, sublease, or rental contract or agreement described in subdivision (b) is executed, notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be provided to the lessee or tenant.

(e) Provision by a supervised financial organization of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, prior to the execution of the contract or agreement, shall also be deemed compliance with the requirements of subdivision (b) with regard to the original contract or agreement.

(1) ''Regulation M'' and ''Regulation Z'' mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(2) As used in this section, ''supervised financial organization'' means a bank, savings association, as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code.

(f) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (b) is executed, a notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be conspicuously displayed to the effect that the person described in subdivision (b) is required to provide an unexecuted contract or agreement in the language in which the contract

or agreement was negotiated, or a translation of the disclosures required by law in the language in which the contract or agreement was negotiated, as the case may be. If a person described in subdivision (b) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the language in which the contract or agreement was negotiated is used.

(g) The term ''contract'' or ''agreement,'' as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term ''contract'' or ''agreement'' does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

The term ''contract'' or ''agreement'' does not include a home improvement contract as defined in Sections 7151.2 and 7159 of the Business and Professions Code, nor does it include plans, specifications, description of work to be done and materials to be used, or collateral security taken or to be taken for the retail buyer's obligation contained in a contract for the installation of goods by a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if the home improvement contract or installation contract is otherwise a part of a contract described in subdivision (b).

Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (b), including, but not limited to, rules and regulations governing a tenancy and inventories of furnishings to be provided by the person described in subdivision (b), are not included in the term ''contract'' or ''agreement.''

(h) This section does not apply to any person engaged in a trade or business who negotiates primarily in a language other than English as described by subdivision (b) if the party with whom he or she is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as a tenant, lessee, or sublessee, or similarly obligates himself or herself by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through his or her own interpreter.

As used in this subdivision, ''his or her own interpreter'' means a person, not a minor, able to speak fluently and read with full understanding both the English language and any of the languages

specified in subdivision (b) in which the contract or agreement was negotiated, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

(i) The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the contract or the disclosures required by subdivision (e) in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

(j) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom he or she made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee.

SEC. 1.5. Section 1632 of the Civil Code is amended to read:

1632. (a) The Legislature hereby finds and declares all of the following:

(1) This section was enacted in 1976 to increase consumer information and protections for the state's sizeable and growing Spanish-speaking population.

(2) Since 1976, the state's population has become increasingly diverse and the number of Californians who speak languages other than English as their primary language at home has increased dramatically.

(3) According to data from the United States Census of 2000, of the more than 12 million Californians who speak a language other than English in the home, approximately 4.3 million speak an Asian dialect or another language other than Spanish. The top five languages other than English most widely spoken by Californians in their homes are Spanish, Chinese, Tagalog, Vietnamese, and Korean. Together, these languages are spoken by approximately 83 percent of all Californians who speak a language other than English in their homes.

(b) Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which

includes a translation of every term and condition in that contract or agreement:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family or household purposes.

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family or household purposes where the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code.

(5) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(c) Notwithstanding subdivision (b), for a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Section 10240 of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

(d) At the time and place where a lease, sublease, or rental contract or agreement described in subdivision (b) is executed, notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be provided to the lessee or tenant.

(e) Provision by a supervised financial organization of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, prior to the execution of the contract or agreement, shall also be deemed in compliance with the requirements of subdivision (b) with regard to the original contract or agreement.

(1) ''Regulation M'' and ''Regulation Z'' mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(2) As used in this section, ''supervised financial organization'' means a bank, savings association as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code.

(f) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (b) is executed, a notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be conspicuously displayed to the effect that the person described in subdivision (b) is required to provide a contract or agreement in the language in which the contract or agreement was negotiated, or a translation of the disclosures required by law in the language in which the contract or agreement was negotiated, as the case may be. If a person described in subdivision (b) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the language in which the contract or agreement was negotiated is used.

(g) The term ''contract'' or ''agreement,'' as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term ''contract'' or ''agreement'' does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

The term ''contract'' or ''agreement'' does not include a home improvement contract as defined in Sections 7151.2 and 7159 of the Business and Professions Code, nor does it include plans, specifications, description of work to be done and materials to be used, or collateral security taken or to be taken for the retail buyer's obligation contained in a contract for the installation of goods by a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of

the Business and Professions Code, if the home improvement contract or installation contract is otherwise a part of a contract described in subdivision (b).

Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (b), including, but not limited to, rules and regulations governing a tenancy and inventories of furnishings to be provided by the person described in subdivision (b), are not included in the term ''contract'' or ''agreement.''

(h) This section does not apply to any person engaged in a trade or business who negotiates primarily in a language other than English, as described by subdivision (b), if the party with whom he or she is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as a tenant, lessee, or sublessee, or similarly obligates himself or herself by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through his or her own interpreter.

As used in this subdivision, ''his or her own interpreter'' means a person, not a minor, able to speak fluently and read with full understanding both the English language and any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

(i) Notwithstanding subdivision (b), a translation may retain the following elements of the executed English-language contract or agreement without translation: names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make and model of goods or services, alphanumeric codes, numerals, dollar amounts expressed in numerals, dates, and individual words or expressions having no generally accepted non-English translation.

(j) The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the contract or the disclosures required by subdivision (e) in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

(k) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom

he or she made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee.

SEC. 2. This act shall become operative on July 1, 2004.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1632 of the Civil Code proposed by both this bill and SB 146. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 1632 of the Civil Code, and (3) this bill is enacted after SB 146, in which case Section 1 of this bill shall not become operative.

CHAPTER 331

An act to amend Sections 1522.41, 1529.2, and 1563 of the Health and Safety Code, and to amend Sections 16001.9 and 16003 of, and to add Section 16013 to, the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

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

(a) Foster children are harmed by discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status, whether that discrimination is directed at them or at their caregivers.

(b) County child welfare departments in California receive federal, state, and county funds for the care, placement, and supervision of abused and neglected children who have been removed from their homes for their own protection and who are dependents of the juvenile courts of the state.

(c) Group home facilities and foster family agencies are licensed by the State Department of Social Services, contract with county child welfare departments, receive federal, state, and county funds, and have paid professional staff engaged in providing care and services to foster children and training, supervision, and support to foster parents.

(d) County child welfare departments, group home facilities, and foster family agencies have a legal responsibility to provide care, placement, and services to foster children, family members, foster

parents, and service providers without discriminating on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(e) Foster family homes and relative caregivers are licensed by the State Department of Social Services and receive federal, state, and county funds for the care of children. Still, foster parents and relative caregivers are not paid employees, instead, they care for foster children in their own homes and are permitted under current practice to decide on an individual basis whether to accept and retain an individual child in their care.

(f) Once foster parents or relative caregivers accept a child into their home, they have a legal responsibility to provide care to the child without discriminating on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Because any change in living environment is traumatic for any child, if the foster parents or relative caregivers cannot fulfill this responsibility with respect to an individual child, then foster parents and relative caregivers should notify the child's social worker and seek additional training, counseling, or other assistance. Only as a last resort should the foster parent or relative caregiver request that the child be removed from the foster parents' or relative caregivers' home.

(g) Initial and ongoing training for county child welfare workers, group home staff and administrators, foster family agency staff, foster parents, and relative caregivers is crucial to enable all persons involved in providing care, placement, and services to foster children to fulfill their responsibilities to provide safe and nondiscriminatory care, placement, and services to foster children.

SEC. 2. Section 1522.41 of the Health and Safety Code is amended to read:

1522.41. (a) The director, in consultation and collaboration with county placement officials, group home provider organizations, the Director of Mental Health, and the Director of Developmental Services, shall develop and establish a certification program to ensure that administrators of group home facilities have appropriate training to provide the care and services for which a license or certificate is issued.

(b) (1) In addition to any other requirements or qualifications required by the department, an administrator of a group home facility shall successfully complete a department approved certification program pursuant to subdivision (c) prior to employment. An administrator employed in a group home on the effective date of this section shall meet the requirements of paragraph (2) of subdivision (c).

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with all of the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 10 days of any change in administrators.

(c) (1) The administrator certification programs shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial and educational needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Administration, storage, misuse, and interaction of medication used by facility residents.

(H) Resident admission, retention, and assessment procedures, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(I) Nonviolent emergency intervention and reporting requirements.

(2) The department shall adopt separate program requirements for initial certification for persons who are employed as group home administrators on the effective date of this section. A person employed as an administrator of a group home facility on the effective date of this section, shall obtain a certificate by completing the training and testing requirements imposed by the department within 12 months of the effective date of the regulations implementing this section. After the effective date of this section, these administrators shall meet the requirements imposed by the department on all other group home administrators for certificate renewal.

(3) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit to the department the documentation required by subdivision (d) within 30 days after being notified of having passed the test. The department may extend these time deadlines for good cause.

The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints pursuant to Section 1522. The department may waive the submission for those persons who have a current clearance on file.

(5) That person is at least 21 years of age.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a group home facility. Any person willfully making any false representation as being a certified administrator or facility manager is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 classroom hours of continuing education related to the core of knowledge specified in subdivision (c). For purposes of this section, an individual who is a group home facility administrator and who is required to complete the continuing education hours required by the regulations of the Department of Developmental Services, and approved by the regional center, may have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every administrator of a group home facility shall complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after July 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency

fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate shall be proof of compliance with this paragraph.

(5) A suspended or revoked certificate shall be subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f), and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for a period of 12 months to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status and change of mailing address within 30 days of any change.

(g) Unless otherwise ordered by the department, the certificate shall be considered forfeited under either of the following conditions:

(1) The department has revoked any license held by the administrator after the department issued the certificate.

(2) The department has issued an exclusion order against the administrator pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, after the department issued the certificate, and the administrator did not appeal the exclusion order or, after the appeal, the department issued a decision and order that upheld the exclusion order.

(h) (1) The department, in consultation and collaboration with county placement officials, provider organizations, the State

Department of Mental Health, and the State Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. The department may also grant continuing education hours for continuing courses offered by accredited educational institutions that are consistent with the requirements in this section. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (j).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in group home facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in group homes and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the requirements of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years, to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee, not to exceed one hundred dollars ($100) every two years, for the

review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(i) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

(j) Subdivisions (b) to (i), inclusive, shall be implemented upon regulations being adopted by the department, by January 1, 2000.

SEC. 3. Section 1529.2 of the Health and Safety Code is amended to read:

1529.2. (a) In addition to the foster parent training provided pursuant to Section 903.7 of the Welfare and Institutions Code, foster family agencies shall supplement the community college training by providing a program of training for their certified foster families.

(b) (1) Every licensed foster parent shall complete a minimum of 12 hours of foster parent training, as prescribed in paragraph (3), before the placement of any foster children with the foster parent. In addition, a foster parent shall complete a minimum of eight hours of foster parent training annually as prescribed in paragraph (4). No child shall be placed in a foster family home unless these requirements are met by the persons in the home who are serving as the foster parents.

(2) (A) Upon the request of the foster parent for a hardship waiver from the postplacement training requirement or a request for an extension of the deadline, the county may, at its option, on a case-by-case basis, waive the postplacement training requirement or extend any established deadline for a period not to exceed one year, if the postplacement training requirement presents a severe and unavoidable obstacle to continuing as a foster parent. Obstacles for which a county may grant a hardship waiver or extension are:

(i) Lack of access to training due to the cost or travel required.

(ii) Family emergency.

(B) Before a waiver or extension may be granted, the foster parent should explore the opportunity of receiving training by video or written materials.

(3) The initial preplacement training shall include, but not be limited to, training courses that cover all of the following:

(A) An overview of the child protective system.

(B) The effects of child abuse and neglect on child development.

(C) Positive discipline and the importance of self-esteem.

(D) Health issues in foster care.

(E) Accessing education and health services available to foster children.

(F) The right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or

perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(4) The postplacement annual training shall include, but not be limited to, training courses that cover all of the following:

(A) Age-appropriate child development.

(B) Health issues in foster care.

(C) Positive discipline and the importance of self-esteem.

(D) Emancipation and independent living skills if a foster parent is caring for youth.

(E) The right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(5) Foster parent training may be attained through a variety of sources, including community colleges, counties, hospitals, foster parent associations, the California State Foster Parent Association's Conference, adult schools, and certified foster parent instructors.

(6) A candidate for placement of foster children shall submit a certificate of training to document completion of the training requirements. The certificate shall be submitted with the initial consideration for placements and provided at the time of the annual visit by the licensing agency thereafter.

(c) Nothing in this section shall preclude a county from requiring county-provided preplacement or postplacement foster parent training in excess of the requirements in this section.

SEC. 4. Section 1563 of the Health and Safety Code is amended to read:

1563. (a) The director shall ensure that licensing personnel at the department have appropriate training to properly carry out this chapter.

(b) The director shall institute a staff development and training program to develop among departmental staff the knowledge and understanding necessary to successfully carry out this chapter. Specifically, the program shall do all of the following:

(1) Provide staff with 36 hours of training per year that reflects the needs of persons served by community care facilities. This training shall, where appropriate, include specialized instruction in the needs of foster children, persons with mental disorders, or developmental or physical disabilities, or other groups served by specialized community care facilities.

(2) Give priority to applications for employment from persons with experience as care providers to persons served by community care facilities.

(3) Provide new staff with comprehensive training within the first six months of employment. This comprehensive training shall, at a minimum, include the following core areas: administrative action process, client populations, conducting facility visits, cultural awareness, documentation skills, facility operations, human relation skills, interviewing techniques, investigation processes, and regulation administration.

(c) In addition to the requirements in subdivision (b), group home and foster family agency licensing personnel shall receive a minimum of 24 hours of training per year to increase their understanding of children in group homes, certified homes, and foster family homes. The training shall cover, but not be limited to, all of the following topics:

(1) The types and characteristics of emotionally troubled children.

(2) The high-risk behaviors they exhibit.

(3) The biological, psychological, interpersonal, and social contributors to these behaviors.

(4) The range of management and treatment interventions utilized for these children, including, but not limited to, nonviolent, emergency intervention techniques.

(5) The right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

SEC. 5. Section 16001.9 of the Welfare and Institutions Code is amended to read:

16001.9. (a) It is the policy of the state that all children in foster care shall have the following rights:

(1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

(4) To receive medical, dental, vision, and mental health services.

(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.

(6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASA), and probation officers.

(7) To visit and contact brothers and sisters, unless prohibited by court order.

(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.

(10) To attend religious services and activities of his or her choice.

(11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(12) To not be locked in any room, building, or facility premises, unless placed in a community treatment facility.

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level.

(14) To work and develop job skills at an age-appropriate level that is consistent with state law.

(15) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.

(16) To attend Independent Living Program classes and activities if he or she meets age requirements.

(17) To attend court hearings and speak to the judge.

(18) To have storage space for private use.

(19) To review his or her own case plan if he or she is over 12 years of age and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.

(20) To be free from unreasonable searches of personal belongings.

(21) To confidentiality of all juvenile court records consistent with existing law.

(22) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(b) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

SEC. 6. 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, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(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. 7. Section 16013 is added to the Welfare and Institutions Code, to read:

16013. (a) It is the policy of this state that all persons engaged in providing care and services to foster children, including, but not limited to, foster parents, adoptive parents, relative caregivers, and other caregivers contracting with a county welfare department, shall have fair and equal access to all available programs, benefits, services, and licensing processes, and shall not be subjected to discrimination or harassment on the basis of their clients' or their own actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(b) Nothing in this section shall be interpreted to create or modify existing preferences for foster placements or to limit the local placement agency's ability to make placement decisions for a child based on the child's best interests.

CHAPTER 332

An act to add Section 207.6 to the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 207.6 is added to the Welfare and Institutions Code, to read:

207.6. A minor may be detained in a jail or other secure facility for the confinement of adults pursuant to subdivision (b) of Section 207.1 or paragraph (1) of subdivision (b) of Section 707.1 only if the court makes its findings on the record and, in addition, finds that the minor poses a danger to the staff, other minors in the juvenile facility, or to the public because of the minor's failure to respond to the disciplinary control of the juvenile facility, or because the nature of the danger posed by the minor cannot safely be managed by the disciplinary procedures of the juvenile facility.

CHAPTER 333

An act to amend Section 2890.2 of the Public Utilities Code, and to amend Section 1 of Chapter 286 of the Statutes of 2002, relating to telecommunications.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 2890.2 of the Public Utilities Code is amended to read:

2890.2. (a) No later than January 1, 2004, a provider of mobile telephony services shall provide subscribers with a means by which a subscriber can obtain reasonably current and available information, as determined by the provider, on the subscriber's calling plan or plans and service usage, including roaming usage and charges.

(b) Each provider of mobile telephony services shall inform subscribers at the time service is established of the availability of the information described in subdivision (a) and how it may be obtained.

(c) For purposes of this section, ''mobile telephony services'' means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). ''Mobile telephony services'' does not include mobile satellite

services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

SEC. 2. Section 1 of Chapter 286 of the Statutes of 2002 is amended to read:

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

(a) Mobile telephony service subscribers may currently be unable to monitor their call time minutes, including roaming usage and charges, and, as a result, they face higher rates because they unknowingly exceed the number of minutes included under their plans.

(b) Mobile telephony service subscribers need reasonably accurate information relative to their current service usage in order to enable them to better utilize their particular calling plans.

(c) Providing mobile telephony service subscribers with a reasonable estimate that includes a differentiation between the types of usage covered by their plans, such as ''peak'' versus ''free'' minutes, will enable subscribers to make informed decisions about their mobile telephony service.

(d) The Legislature intends to require the provision of reasonably available usage information by mobile telephony service providers by January 1, 2004.

(e) Technology exists to provide mobile telephony service subscribers with reasonably accurate information relative to their current service usage, including roaming usage and charges, and this type of information can be obtained through a variety of sources, including, but not limited to, cellular telephone providers, Internet Web sites, and traditional telephone customer service providers, such as 1-800 telephone numbers.

(f) The Legislature intends that reasonably available, current usage information be provided to all mobile telephony service subscribers, taking into consideration technical limitations that may affect reporting to a consumer, including, but not limited to, limitations on reporting ''roaming'' minutes incurred when a mobile telephony service subscriber is outside his or her plan coverage area.

CHAPTER 334

An act to amend Sections 6031.5, 6065, 6086.10, 6140, 6140.5, 6141.1, 6145, and 6234 of, and to add Section 6086.16 to, the Business and Professions Code, relating to attorneys.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 6031.5 of the Business and Professions Code is amended to read:

6031.5. (a) State Bar sections, as established under and pursuant to Article 13 of the Rules and Regulations of the State Bar, and their activities shall not be funded with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide an individual section, or two or more sections collectively, with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (b), funds raised by or through the activities of the sections, or other funds collected from voluntary sources. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the sections.

(b) Notwithstanding the other provisions of this section, the State Bar is expressly authorized to collect voluntary fees to fund the State Bar sections on behalf of those organizations in conjunction with the State Bar's collection of its annual membership dues. Funds collected pursuant to this subdivision, and other funds raised by or through the activities of the sections, or collected from voluntary sources, for their support or operation, shall not be subject to the expenditure limitations of subdivision (b) of Section 6140.05.

(c) Notwithstanding any other provision of law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar which has been incorporated for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory dues are not used to fund any successor entity.

(d) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates of the State Bar as referenced in subdivision (c), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Conference of Delegates of California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary.

SEC. 2. Section 6065 of the Business and Professions Code, as amended by Section 6 of Chapter 415 of the Statutes of 2002, is amended to read:

6065. (a) (1) Any unsuccessful applicant for admission to practice, after he or she has taken any examination and within four months after the results thereof have been declared, has the right to inspect those of his or her examination papers that are in the actual, physical possession of the examining committee at the time the request for inspection is made. The inspection shall occur at the office of the examining committee located nearest to the place at which the applicant took the examination.

(2) The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 3. Section 6065 of the Business and Professions Code, as added by Section 7 of Chapter 415 of the Statutes of 2002, is amended to read:

6065. (a) (1) Any unsuccessful applicant for admission to practice, after he or she has taken any examination and within four months after the results thereof have been declared, has the right to inspect his or her examination papers at the office of the examining committee located nearest to the place at which the applicant took the examination.

(2) The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise.

(b) This section shall become operative on January 1, 2009.

SEC. 4. Section 6086.10 of the Business and Professions Code is amended to read:

6086.10. (a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs. An order pursuant to this subdivision

is enforceable both as provided in Section 6140.7 and as a money judgment.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be ''reasonable costs'' of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

(c) A member may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State Bar in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparation for the hearing.

(e) In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to Section 6086.13, costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

SEC. 5. Section 6086.16 is added to the Business and Professions Code, to read:

6086.16. The State Bar shall report to the Assembly and Senate Committees on Judiciary by January 1, 2005, on the status of its regulatory and disciplinary efforts concerning alleged abuses by private actions brought on behalf of the general public pursuant to Section 17204 of the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Division 6).

SEC. 6. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for active members at a sum not exceeding three hundred ten dollars ($310).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on

an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall remain in effect only until January 1, 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 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board shall establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of the active members of the State Bar arising from or connected with the practice of law. Any payments from the fund shall be discretionary and shall be subject to regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of governors.

(b) Upon making a payment to a person who has applied to the fund for payment to relieve or mitigate pecuniary losses caused by the dishonest conduct of an active member of the State Bar, the State Bar is subrogated, to the extent of that payment, to the rights of the applicant against any person or persons who, or entity that, caused the pecuniary loss. The State Bar may bring an action to enforce those rights within three years from the date of payment to the applicant.

(c) Any attorney whose actions have caused the payment of funds to a claimant from the Client Security Fund shall reimburse the fund for all moneys paid out as a result of his or her conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim, as a condition of continued practice. The reimbursed amount, plus applicable interest and costs, shall be added to and become a part of the membership fee of a publicly reproved or suspended member for the next calendar year. For a member who resigns with disciplinary charges pending or a member who is suspended or disbarred, the reimbursed amount, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership.

(d) Any assessment against an attorney pursuant to subdivision (c) that is part of an order imposing a public reproval on a member or is part of an order imposing discipline or accepting a resignation with a disciplinary matter pending, may also be enforced as a money judgment.

SEC. 8. Section 6141.1 of the Business and Professions Code is amended to read:

6141.1. (a) The payment by any member of the annual membership fee, any portion thereof, or any penalty thereon, may be waived by the board as it may provide by rule. The board may require submission of recent federal and state income tax returns and other proof of financial

condition as to those members seeking waiver of all or a portion of their fee or penalties on the ground of financial hardship.

(b) The board shall adopt rules providing that:

(1) An active member who can demonstrate annual individual earned income of less than forty thousand dollars ($40,000) derived from the provision of arbitration, mediation, referee, or other dispute resolution services and, generally, from the practice of law shall presumptively qualify for a waiver of 25 percent of the annual membership fee.

(2) An active member who can demonstrate total annual individual earned income of less than thirty thousand dollars ($30,000) shall presumptively qualify for a waiver of 50 percent of the annual membership fee.

SEC. 9. Section 6145 of the Business and Professions Code is amended to read:

6145. (a) The board shall contract with a nationally recognized independent public accounting firm for an audit of its financial statement for each fiscal year beginning after December 31, 1998. The financial statement shall be promptly certified under oath by the Treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit shall examine the receipts and expenditures of the State Bar and the State Bar sections, to assure that the receipts of the sections are being applied, and their expenditures are being made, in compliance with subdivision (a) of Section 6031.5, and that the receipts of the sections are applied only to the work of the sections.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity.

(b) The board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's

operations for the respective fiscal year, commencing with January 1, 2002, through December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the Bureau of State Audits may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the Bureau of State Audits may otherwise be able to conduct.

SEC. 10. Section 6234 of the Business and Professions Code is amended to read:

6234. Any information provided to or obtained by the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, shall be as follows:

(a) Confidential and this confidentiality shall be absolute unless waived by the attorney.

(b) Exempt from the provisions of Section 6086.1.

(c) Not discoverable or admissible in any civil proceeding without the written consent of the attorney to whom the information pertains.

(d) Not discoverable or admissible in any disciplinary proceeding without the written consent of the attorney to whom the information pertains.

(e) Except with respect to the provisions of subdivision (d) of Section 6232, the limitations on the disclosure and admissibility of information in this section shall not apply to information relating to an attorney's noncooperation with, or unsuccessful completion of, the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, or to information otherwise obtained by the Office of the Chief Trial Counsel, by independent means, or from any other lawful source.

SEC. 11. It is the intent of the Legislature that the changes made to Sections 6086.10 and 6140.5 of the Business and Professions Code by this act shall apply to costs and assessments ordered but unpaid on the date this act becomes operative, as well as to any costs and assessments ordered thereafter.

SEC. 12. 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 335

An act to amend Section 1950.5 of the Civil Code, relating to tenancy.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 1950.5 of the Civil Code is amended to read:

1950.5. (a) This section applies to security for a rental agreement for residential property that is used as the dwelling of the tenant.

(b) As used in this section, ''security'' means any payment, fee, deposit or charge, including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.

(3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.

(4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent, in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent if the term of the lease is six months or longer.

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than

cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

(d) Any security shall be held by the landlord for the tenant who is party to the lease or agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the landlord.

(e) The landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b). The landlord may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

(f) (1) Within a reasonable time after notification of either party's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection. At a reasonable time, but no earlier than two weeks before the termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security. If a tenant chooses not to request an initial inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours' prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.

(2) Based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

(3) The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

(4) Nothing in this subdivision shall prevent a landlord from using the security for deductions itemized in the statement provided for in paragraph (2) that were not cured by the tenant so long as the deductions are for damages authorized by this section.

(5) Nothing in this subdivision shall prevent a landlord from using the security for any purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between completion of the initial inspection and termination of the tenancy or was not identified during the initial inspection due to the presence of a tenant's possessions.

(g) (1) No later than 21 calendar days after the tenant has vacated the premises, but not earlier than the time that either the landlord or the tenant provides a notice to terminate the tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

(2) Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as follows:

(A) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged.

(B) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement shall provide the tenant with the name, address, and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

(3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession within 21 calendar days after the tenant has vacated the premises, the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement. If the reason for the estimate is because the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the manner specified.

(4) The landlord need not comply with paragraph (2) or (3) if either of the following apply:

(A) The deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars.

(B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver shall only be effective if it is signed by the tenant at the same time or after a notice to terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of the Code of Civil Procedure has been given, or no earlier than 60 calendar days prior to the expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2).

(5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3) when a tenant makes a request for documentation within 14 calendar days after receiving the itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days after receiving the request from the tenant.

(6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address provided by the tenant. If the tenant does not provide an address, mailings pursuant to this subdivision shall be sent to the unit that has been vacated.

(h) Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the security held:

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited,

and of the names of the successors in interest, their address, and their telephone number. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision (g).

(i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

(1) The security remaining after any lawful deductions are made.

(2) An itemization of any lawful deductions from any security received.

(3) His or her election under paragraph (1) or (2) of subdivision (h).

This subdivision does not affect the validity of title to the real property transferred in violation of this subdivision.

(j) In the event of noncompliance with subdivision (h), the landlord's successors in interest shall be jointly and severally liable with the landlord for repayment of the security, or that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and (g). A successor in interest of a landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or successors in interest as provided in subdivision (h), unless and until the successor in interest first makes restitution of the initial security as provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting as provided in subdivision (g).

This subdivision does not preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she is not liable for damages as provided in subdivision (*l*), or any security not transferred pursuant to subdivision (h).

(k) Upon receipt of any portion of the security under paragraph (1) of subdivision (h), the landlord's successors in interest shall have all of the rights and obligations of a landlord holding the security with respect to the security.

(*l*) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security in violation of subdivision (j), may subject the landlord or the landlord's

successors in interest to statutory damages of up to twice the amount of the security, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant such an award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

(m) No lease or rental agreement may contain any provision characterizing any security as ''nonrefundable.''

(n) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or statutory or both, are within the jurisdictional amount allowed by Section 116.220 of the Code of Civil Procedure.

(o) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease indicating the requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

(p) The amendments to this section made during the 1985 portion of the 1985–86 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.

SEC. 1.5. Section 1950.5 of the Civil Code is amended to read:

1950.5. (a) This section applies to security for a rental agreement for residential property that is used as the dwelling of the tenant.

(b) As used in this section, ''security'' means any payment, fee, deposit or charge, including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.

(3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.

(4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent, in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent if the term of the lease is six months or longer.

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

(d) Any security shall be held by the landlord for the tenant who is party to the lease or agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the landlord.

(e) The landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b). The landlord may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

(f) (1) Within a reasonable time after notification of either party's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection. The requirements of this subdivision do not apply when the tenancy is terminated pursuant to subdivision (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At a reasonable time, but no earlier than two weeks before the termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security. If a tenant chooses not to request an initial

inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours' prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.

(2) Based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

(3) The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

(4) Nothing in this subdivision shall prevent a landlord from using the security for deductions itemized in the statement provided for in paragraph (2) that were not cured by the tenant so long as the deductions are for damages authorized by this section.

(5) Nothing in this subdivision shall prevent a landlord from using the security for any purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between completion of the initial inspection and termination of the tenancy or was not identified during the initial inspection due to the presence of a tenant's possessions.

(g) (1) No later than 21 calendar days after the tenant has vacated the premises, but not earlier than the time that either the landlord or the tenant provides a notice to terminate the tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or not earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

(2) Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as follows:

(A) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged.

(B) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement shall provide the tenant with the name, address, and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

(3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession within 21 calendar days after the tenant has vacated the premises, the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement. If the reason for the estimate is because the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the manner specified.

(4) The landlord need not comply with paragraph (2) or (3) if either of the following apply:

(A) The deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars.

(B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver shall only be effective if it is signed by the tenant at the same time or after a notice to terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of the Code of Civil Procedure has been given, or no earlier than 60 calendar days prior to the

expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2).

(5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3) when a tenant makes a request for documentation within 14 calendar days after receiving the itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days after receiving the request from the tenant.

(6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address provided by the tenant. If the tenant does not provide an address, mailings pursuant to this subdivision shall be sent to the unit that has been vacated.

(h) Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the security held:

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited, and of the names of the successors in interest, their address, and their telephone number. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision (g).

(i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

(1) The security remaining after any lawful deductions are made.

(2) An itemization of any lawful deductions from any security received.

(3) His or her election under paragraph (1) or (2) of subdivision (h).

This subdivision does not affect the validity of title to the real property transferred in violation of this subdivision.

(j) In the event of noncompliance with subdivision (h), the landlord's successors in interest shall be jointly and severally liable with the landlord for repayment of the security, or that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and (g). A successor in interest of a landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or successors in interest as provided in subdivision (h), unless and until the

successor in interest first makes restitution of the initial security as provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting as provided in subdivision (g).

This subdivision does not preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she is not liable for damages as provided in subdivision (*l*), or any security not transferred pursuant to subdivision (h).

(k) Upon receipt of any portion of the security under paragraph (1) of subdivision (h), the landlord's successors in interest shall have all of the rights and obligations of a landlord holding the security with respect to the security.

(*l*) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security in violation of subdivision (j), may subject the landlord or the landlord's successors in interest to statutory damages of up to twice the amount of the security, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant such an award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

(m) No lease or rental agreement may contain any provision characterizing any security as ''nonrefundable.''

(n) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or statutory or both, are within the jurisdictional amount allowed by Section 116.220 of the Code of Civil Procedure.

(o) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease indicating the requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

(p) The amendments to this section made during the 1985 portion of the 1985–86 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.

(q) The amendments to this section made during the 2003 portion of the 2003–04 Regular Session of the Legislature that are set forth in paragraph (1) of subdivision (f) are declaratory of existing law.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1950.5 of the Civil Code proposed by both this bill and AB 1384. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 1950.5 of the Civil Code, and (3) this bill is enacted after AB 1384, in which case Section 1 of this bill shall not become operative.

CHAPTER 336

An act to amend Section 77202 of the Government Code, relating to trial courts.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 77202 of the Government Code is amended to read:

77202. (a) The Legislature shall make an annual appropriation to the Judicial Council for the general operations of the trial courts based on the request of the Judicial Council. The Judicial Council's trial court budget request shall meet the needs of all trial courts in a manner which promotes equal access to the courts statewide. The Judicial Council shall allocate the appropriation to the trial courts in a manner that best ensures the ability of the courts to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost-saving measures in court operations, in order to guarantee access to justice to citizens of the state.

The Judicial Council shall ensure that its trial court budget request and the allocations made by it reward each trial court's implementation of efficiencies and cost-saving measures.

These efficiencies and cost-saving measures shall include, but not be limited to, the following:

(1) The sharing or merger of court support staff among trial courts across counties.

(2) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(3) The establishment of a separate calendar or division to hear a particular type of case.

(4) In rural counties, the use of all court facilities for hearings and trials of all types of cases and the acceptance of filing documents in any case.

(5) The use of alternative dispute resolution programs, such as arbitration.

(6) The development and use of automated accounting and case-processing systems.

(b) (1) The Judicial Council shall adopt policies and procedures governing practices and procedures for budgeting in the trial courts in a manner that best ensures the ability of the courts to carry out their functions and may delegate the adoption to the Administrative Director of the Courts. The Administrative Director of the Courts shall establish budget procedures and an annual schedule of budget development and management consistent with these rules.

(2) The Trial Court Policies and Procedures shall specify the process for a court to transfer existing funds between or among the budgeted program components to reflect changes in the court's planned operation or to correct technical errors. If the process requires a trial court to request approval of a specific transfer of existing funds, the Administrative Office of the Courts shall review the request to transfer funds and respond within 30 days of receipt of the request. The Administrative Office of the Courts shall respond to the request for approval or denial to the affected court, in writing, with copies provided to the Department of Finance, the Legislative Analyst Office, the Legislature's budget committees, and the court's affected labor organizations.

(3) The Judicial Council shall circulate for comment to all affected entities any amendments proposed to the Trial Court Policies and Procedures as they relate to budget monitoring and reporting. Final changes shall be adopted at a meeting of the Judicial Council.

CHAPTER 337

An act to amend Sections 30610.3, 31402.2 and 31402.3 of the Public Resources Code, and to repeal Section 6 of Chapter 518 of the Statutes of 2002, relating to coastal access.

[Approved by Governor September 6, 2003. Filed with
Secretary of State September 8, 2003.]

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

SECTION 1. Section 30610.3 of the Public Resources Code is amended to read:

30610.3. (a) Whenever the commission determines (1) that public access opportunities through an existing subdivided area, which has less than 75 percent of the subdivided lots built upon, or an area proposed to be subdivided are not adequate to meet the public access requirements of this division and (2) that individual owners of vacant lots in such an area do not have the legal authority to comply with such public access requirements as a condition of securing a coastal development permit for the reason that some other person or persons has such legal authority, the commission shall implement such public access requirements as provided in this section.

(b) The commission, on its own motion or at the request of an affected property owner, shall identify an area as meeting the criteria specified in subdivision (a). After such an area has been identified, the commission shall, after appropriate public hearings adopt a specific public access program for such area and shall request that the State Coastal Conservancy, established pursuant to Division 21 (commencing with Section 31000), implement such program. Such access program shall include, but not be limited to, the identification of specific land areas and view corridors to be used for public access, any facilities or other development deemed appropriate, the commission's recommendations regarding the manner in which public access will be managed, and the types of permitted public uses. The State Coastal Conservancy shall, pursuant to its authority, implement such public access program.

(c) The State Coastal Conservancy shall be authorized to expend funds when appropriated from the Coastal Access Account for the purchase of lands and view easements and to pay for any development needed to carry out the public access program specified in subdivision (a). Not more than 5 percent of the amount of funds necessary to carry out each such public access program may be provided as a grant to the State Coastal Conservancy for its administrative costs incurred in carrying out the access program.

(d) The State Coastal Conservancy may enter into any agreement it deems necessary and appropriate with any state or local public agency or with a private association authorized to perform such functions for the operation and maintenance of any access facilities acquired or developed pursuant to this section.

(e) Every person receiving a coastal development permit or a certificate of exemption for development on any vacant lot within an area designated pursuant to this section shall, prior to the commencement of construction, pay to the commission, for deposit in the Coastal Access Account, an ''in-lieu'' public access fee. The amount of each such fee shall be determined by dividing the cost of acquiring the specified lands and view easements by the total number of lots within the identified area. The proportion of the acquisition cost that can be allocated to lots built upon pursuant to permits that were not subject to public access conditions under this division or the California Coastal Zone Conservation Act of 1972 (former Division 18 (commencing with Section 27000)) shall be paid from the Coastal Access Account. An ''in-lieu'' public access fee may be in the form of an appropriate dedication, in which event the lots to which such dedication can be credited shall not be counted toward the total number of lots used in arriving at the ''in-lieu'' public access fee share for each remaining lot.

(f) For purposes of determining the acquisition costs specified in subdivision (e), the State Coastal Conservancy may, in the absence of a fixed price agreed to by both the State Coastal Conservancy and the seller, specify an estimated cost based on a formal appraisal of the value of the interest proposed to be acquired. The appraisal shall be conducted by an independent appraiser under contract with the State Coastal Conservancy and shall be completed within 120 days of the adoption of the specific public access program by the commission pursuant to subdivision (b). Such appraisal shall be deemed suitable for all purposes of the Property Acquisition Law (Part 11 (commencing with Section 15850 of the Government Code)). For every year following public acquisition of the interests in land specified as part of a public access program and prior to payment of the required ''in-lieu'' fee, a carrying cost factor equal to 5 percent of the share attributable to each lot shall be added to any unpaid ''in-lieu'' public access fee; provided, however, that a lot owner in such an area may pay the ''in-lieu'' public access fee at any time after public acquisition in order to avoid payment of the carrying cost factor.

(g) No provision of this section may be applied within any portion of the unincorporated area in the County of Sonoma, commonly known as the Sea Ranch.

SEC. 2. Section 31402.2 of the Public Resources Code is amended to read:

31402.2. The conservancy shall accept any outstanding offer to dedicate a public accessway, described in Section 31402.1, that has not been accepted by another public agency or nonprofit organization within 90 days of its expiration date.

SEC. 3. Section 31402.3 of the Public Resources Code is amended to read:

31402.3. (a) To the extent that funds are available in the Coastal Access Account in the State Coastal Conservancy Fund, the conservancy shall open at least three public accessways each year either directly or by awarding grants to public agencies or nonprofit organizations.

(b) The conservancy may transfer public access easements or other less-than-fee interests in property to an appropriate public agency or nonprofit organization for development, management, or public use, or may enter into agreements with public agencies and nonprofit organizations for the development, management, or public use of the accessway. Transfer under this section is not subject to approval by the Department of General Services pursuant to Section 11005.2 of the Government Code. The conservancy shall retain the right to reclaim the easements or other interests in the event that the public agency or nonprofit organization ceases to exist, is no longer able to manage the accessway, or violates the terms of the agreement.

(c) Before a nonprofit organization may accept an offer to dedicate an interest in real property under Division 20 (commencing with Section 30000), the nonprofit organization shall do all of the following:

(1) Submit satisfactory proof to the executive director of the commission that the nonprofit organization has been approved as a tax exempt public benefit corporation under Section 501(c)(3) of the Internal Revenue Code, and has filed a Form 990 with the Internal Revenue Service.

(2) Submit a management plan to the executive director of the commission and the executive officer of the conservancy that describes the nonprofit organization's planned management and operation of the interest.

(3) Grant a right of entry that permits the conservancy to reclaim or assign the interest to another public agency or nonprofit organization, if the conservancy and the commission determine that the nonprofit organization is not managing or operating the interest consistent with the management plan developed pursuant to paragraph (2).

(d) A public accessway accepted pursuant to Section 31402.2 may not be developed, improved, or formally opened for public use until its transfer, development, or public use has been authorized by the conservancy.

(e) The conservancy may not use moneys appropriated from the General Fund for the purposes of this section.

SEC. 4. Section 6 of Chapter 518 of the Statutes of 2002 is repealed.

SEC. 5. Any funds in the Coastal Access Account in the General Fund shall be transferred to the Coastal Access Account in the State Coastal Conservancy Fund.

CHAPTER 338

An act to add Section 425.17 to the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 425.17 is added to the Code of Civil Procedure, to read:

425.17. (a) The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process or Section 425.16.

(b) Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

(c) Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or

financial instruments, arising from any statement or conduct by that person if both of the following conditions exist:

(1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services.

(2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

(d) Subdivisions (b) and (c) do not apply to any of the following:

(1) Any person enumerated in subdivision (b) of Section 2 of Article I of the California Constitution or Section 1070 of the Evidence Code, or any person engaged in the dissemination of ideas or expression in any book or academic journal, while engaged in the gathering, receiving, or processing of information for communication to the public.

(2) Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

(3) Any nonprofit organization that receives more than 50 percent of its annual revenues from federal, state, or local government grants, awards, programs, or reimbursements for services rendered.

(e) If any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt pursuant to this section, the appeal provisions in subdivision (j) of Section 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do not apply to that action or cause of action.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 339

An act to amend Section 69432.7 of the Education Code, relating to student financial aid.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 69432.7 of the Education Code is amended to read:

69432.7. As used in this chapter, the following terms have the following meanings:

(a) An ''academic year'' is July 1 to June 30, inclusive. The starting date of a session shall determine the academic year in which it is included.

(b) ''Access costs'' means living expenses and expenses for transportation, supplies, and books.

(c) ''Award year'' means one academic year, or the equivalent, of attendance at a qualifying institution.

(d) ''College grade point average'' and ''community college grade point average'' mean a grade point average calculated on the basis of all college work completed, except for nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree.

(e) ''Commission'' means the Student Aid Commission.

(f) ''Enrollment status'' means part-time status or full-time status.

(1) Part time, for purposes of Cal Grant eligibility, is defined as 6 to 11 semester units, inclusive, or the equivalent.

(2) Full time, for purposes of Cal Grant eligibility, is defined as 12 or more semester units or the equivalent.

(g) ''Expected family contribution,'' with respect to an applicant, shall be determined using the federal methodology pursuant to subdivision (a) of Section 69506 (as established by Title IV of the federal Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.)) and applicable rules and regulations adopted by the commission.

(h) ''High school grade point average'' means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, ''high school grade point average'' includes senior year coursework.

(i) ''Instructional program of not less than one academic year'' means a program of study that results in the award of an associate or baccalaureate degree or certificate requiring at least 24 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(j) ''Instructional program of not less than two academic years'' means a program of study that results in the award of an associate or baccalaureate degree requiring at least 48 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(k) ''Maximum household income and asset levels'' means the applicable household income and household asset levels for participants in the Cal Grant Program, as defined and adopted in regulations by the commission for the 2001–02 academic year, which shall be set pursuant to the following income and asset ceiling amounts:

CAL GRANT PROGRAM INCOME CEILINGS

	Cal Grant A, C, and T	Cal Grant B
Dependent and Independent students with dependents*		
Family Size		
Six or more	$74,100	$40,700
Five	$68,700	$37,700
Four	$64,100	$33,700
Three	$59,000	$30,300
Two	$57,600	$26,900
Independent		
Single, no dependents	$23,500	$23,500
Married	$26,900	$26,900

*Applies to independent students with dependents other than a spouse.

CAL GRANT PROGRAM ASSET CEILINGS

	Cal Grant A, C, and T	Cal Grant B
Dependent**	$49,600	$49,600
Independent	$23,600	$23,600

**Applies to independent students with dependents other than a spouse.

The commission shall annually adjust the maximum household income and asset levels based on the percentage change in the cost of living within the meaning of paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution. Any applicant who qualifies to be considered under the simplified needs test established by federal law for student assistance shall be presumed to meet the asset level test under this section. Prior to disbursing any Cal Grant funds, a qualifying institution shall be obligated, under the terms of its institutional participation agreement with the commission, to resolve any conflicts that may exist in the data the institution possesses relating to that individual.

(*l*) ''Qualifying institution'' means any of the following:

(1) Any California private or independent postsecondary educational institution that participates in the Pell Grant program and in at least two of the following federal campus-based student aid programs:

(A) Federal Work-Study.

(B) Perkins Loan Program.

(C) Supplemental Educational Opportunity Grant Program.

(2) Any nonprofit institution headquartered and operating in California that certifies to the commission that 10 percent of the institution's operating budget, as demonstrated in an audited financial statement, is expended for the purposes of institutionally funded student financial aid in the form of grants, that demonstrates to the commission that it has the administrative capacity to administer the funds, that is accredited by the Western Association of Schools and Colleges, and that meets any other state-required criteria adopted by regulation by the commission in consultation with the Department of Finance. A regionally accredited institution that was deemed qualified by the commission to participate in the Cal Grant Program for the 2000–01 academic year shall retain its eligibility as long as it maintains its existing accreditation status.

(3) Any California public postsecondary educational institution.

(m) ''Satisfactory academic progress'' means those criteria required by applicable federal standards published in Title 34 of the Code of Federal Regulations. The commission may adopt regulations defining ''satisfactory academic progress'' in a manner that is consistent with those federal standards.

CHAPTER 340

An act to amend Sections 94739, 94800, 94802, 94901, 94905, and 94945 of, to amend and renumber Section 94740.1 of, and to add

Sections 94740.3 and 94740.5 to, the Education Code, relating to postsecondary education.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 94739 of the Education Code is amended to read:

94739. (a) ''Private postsecondary educational institution'' means any person doing business in California that offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education under any of the following circumstances:

(1) A majority of the students to whom instruction, training, or education is provided during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(2) More than 50 percent of the revenue derived from providing instruction, training, or education during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(3) More than 50 percent of the hours of instruction, training, or education provided during any 12-month period is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(4) A substantial portion, as determined by the council, by regulation, of the instruction, training, or education provided is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(b) The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Institutions offering education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Institutions offering education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) Institutions offering continuing education where the institution or the program is approved, certified, or sponsored by any of the following:

(A) A government agency, other than the bureau, that licenses persons in a particular profession, trade, or job category.

(B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, trade, or job category.

(C) A bona fide trade, business, or professional organization.

(6) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization comprised of multidenominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instruction in the principles of that church, religious denomination, or religious organization, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church, religious denomination, or religious organization. Institutions operating under this paragraph shall offer degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization. The enactment of this paragraph expresses the legislative intent that the state shall not involve itself in the content of degree programs awarded by any institution operating under this paragraph, as long as the institution awards degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization. Institutions operating under this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. Degrees awarded under this paragraph shall reflect the nature of the degree title, such as ''associate of religious studies,'' or ''bachelor of religious studies,'' or ''master of divinity'' or ''doctor of divinity.'' The use of the degree titles ''associate of arts'' or ''associate of science,'' ''bachelor of arts'' or ''bachelor of science,'' ''master of arts'' or ''master of science,'' or ''doctor of philosophy'' or ''Ph.D.'' shall only be awarded by institutions approved to operate under Article 8 (commencing with Section 94900) or meeting the requirements for an exemption under Section 94750. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization comprised of multidenominational members of the same well-recognized religion, lawfully operating as a nonprofit religious

corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas that are represented as being linked to their church, religious denomination, or religious organization, but which, in reality, are degrees in secular areas of study. An institution operating under this paragraph shall file annually with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporations Code. A college or university operating under this paragraph shall file annually with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporations Code.

(7) (A) Public institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.

(B) Institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges that are incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and that are not managed by any entity for profit.

(C) For-profit institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.

(D) Institutions accredited by the Western Association of Schools and Colleges that do not meet all of the criteria in subparagraph (B) and that are incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that have been in continuous operation since April 15, 1997, and that are not managed by any entity for profit. Notwithstanding this subdivision, institutions that meet the criteria in this subparagraph shall be subject to Section 94831, except subdivision (c) of that section, and Sections 94832, 94834, 94838, and 94985.

SEC. 2. Section 94740.1 of the Education Code is amended and renumbered to read:

94740.7. ''Registered,'' ''registered institution,'' or ''registered educational service'' means any individual or organization that offers an educational service and is registered to operate under Article 9.5 (commencing with Section 94931).

SEC. 3. Section 94740.3 is added to the Education Code, to read:

94740.3. ''Non-WASC regional accrediting agency'' means a regional accrediting agency, other than the Western Association of Schools and Colleges, recognized by the United States Department of Education as possessing similar quality and rigor in accreditation standards, and limited to the following:

(a) Middle States Association of Colleges and Schools, Commission on Higher Education.

(b) New England Association of Schools and Colleges, Commission on Institutions of Higher Education.

(c) North Central Association of Colleges and Schools, The Higher Learning Commission.

(d) Northwest Association of Schools and of Colleges and Universities, Commission on Colleges and Universities.

(e) Southern Association of Colleges and Schools, Commission on Colleges.

SEC. 4. Section 94740.5 is added to the Education Code, to read:

94740.5. ''Non-WASC regionally accredited institution'' means a degree-granting institution that has been accredited by one of the non-WASC regional accrediting agencies listed in Section 94740.3. It does not include any of the following:

(a) An institution within the meaning of paragraph (7) of subdivision (b) of Section 94739 that has been accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.

(b) An institution that has provisional accreditation.

(c) An institution that has applied for accreditation.

(d) An institution that is identified by an accrediting agency as a candidate for accreditation.

SEC. 5. Section 94800 of the Education Code is amended to read:

94800. All institutions approved under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

(a) That the institution is financially capable of fulfilling its commitments to its students.

(b) That upon satisfactory completion of training, the student is given an appropriate degree, diploma, or certificate by the institution, indicating that the course or courses of instruction or the program or programs of instruction or study have been satisfactorily completed by the student.

(c) That the institution provides instruction as part of its educational program. Instruction shall include any specific, formal arrangement by an institution for its enrollees to participate in learning experiences

wherein the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

SEC. 6. Section 94802 of the Education Code is amended to read:

94802. (a) Each institution desiring to operate in this state shall make application to the bureau, upon forms to be provided by the bureau. The application shall include, as a minimum, at least all of the following:

(1) A catalog published, or proposed to be published, by the institution containing the information specified in the criteria adopted by the bureau. The catalog shall include specific dates as to when the catalog applies.

(2) A description of the institution's placement assistance, if any.

(3) Copies of media advertising and promotional literature.

(4) Copies of all student enrollment agreement or contract forms and instruments evidencing indebtedness.

(5) The name and California address of a designated agent upon whom any process, notice, or demand may be served.

(6) The information specified in Section 94808.

(7) The institution's most current financial report as described in Section 94806.

(8) An application submitted by a non-WASC regionally accredited institution, as defined in Section 94740.5, shall include a copy of the certificate of accreditation issued by the non-WASC regional accrediting agency, as defined in Section 94740.3.

(b) Each application shall be signed and certified under oath by the owners of the school or, if the school is incorporated, by the principal owners of the school (those who own at least 10 percent of the stock), or by the corporate officers or their designee.

(c) Following review of the application and any other further information submitted by the applicant, or required in conformity with Article 8 (commencing with Section 94900) and Article 9 (commencing with Section 94915), and any investigation of the applicant as the bureau deems necessary or appropriate, the bureau either shall grant or deny approval to operate to the applicant.

SEC. 7. Section 94901 of the Education Code is amended to read:

94901. (a) (1) Except as provided in Section 94905, the bureau shall conduct a qualitative review and assessment of the institution. It also shall conduct a qualitative review and assessment of all programs offered except continuing education programs and programs that are exclusively avocational or recreational in nature. The review shall include the items listed in subdivision (b) of Section 94900, through a comprehensive onsite review process, performed by a qualified visiting committee impaneled by the bureau for that purpose.

(2) An institution may include some or all of its separate operating sites under one application. Alternately, it may submit separate

applications for any one site or combination of sites. The satellites or branches included in either an initial or renewal application shall be considered by the bureau to comprise a separate, single institution for purposes of regulation, approval, and compliance under this chapter.

(3) The application shall include a single fee based on the number of branches, satellites, and programs included within a single application in order to cover the costs involved for those multisite and multiprogram reviews. If the application is for renewal of an existing approval, the institution need only submit information necessary to document any changes made since the time its previous application was filed with the bureau. Fees for renewal applications will be based on the actual costs involved in the administrative review process.

(b) The number of sites inspected by the bureau as part of its review process shall be subject to the following considerations:

(1) If the application for approval includes branches and satellites, the bureau shall inspect each branch and may inspect any satellite campus.

(2) If the application is for approval to operate a branch or a satellite, the bureau, in addition to inspecting the branch or satellite, also may inspect the institution operating the branch or satellite campus.

(c) The bureau may waive or modify the onsite inspection for institutions offering home study or correspondence courses. The visiting committee shall be impaneled by the bureau within 90 days of the date of the receipt of a completed application, and shall be composed of educators, and other individuals with expertise in the areas listed in subdivision (b) of Section 94900, from degree-granting institutions legally operating within the state. Within 90 days of the receipt of the visiting committee's evaluation report and recommendations, or any reasonable extension of time not to exceed 90 days, the bureau shall take one of the following actions:

(1) If the institution is in compliance with this chapter, and has not operated within three years before the filing of the application in violation of this chapter then in effect, the bureau may grant an approval to operate not to exceed five years.

(2) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of this chapter then in effect, or if the bureau determines that an unconditional grant of approval to operate is not in the public interest, the bureau may grant a conditional approval to operate subject to whatever restrictions the bureau deems appropriate. The bureau shall notify the institution of the restrictions or conditions, the basis for the restrictions or conditions, and the right to request a hearing to contest them. Conditional approval shall not exceed two years.

(3) The bureau may deny the application. If the application is denied, the bureau may permit the institution to continue offering the program

of instruction to students already enrolled or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

(d) When evaluating an institution whose purpose is to advance postsecondary education through innovative methods, the visiting committee shall comprise educators who are familiar with, and receptive to, evidence bearing on the educational quality and accomplishments of those methods.

(e) The standards and procedures utilized by the bureau shall not unreasonably hinder educational innovation and competition.

(f) Each institution or instructional program offering education for entry into a health care profession in which the provider has primary care responsibilities shall offer that education within a professional degree program that shall be subject to approval by the bureau pursuant to this section.

(g) (1) If an institution is not operating in California when it applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a) of Section 94900. The operational plan also shall include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the filing of the application. The bureau may request additional information to enable the bureau to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.

(2) If the bureau determines that the operational plan satisfies the minimum standards described in subdivision (a) of Section 94900, that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the bureau shall grant a temporary approval to operate, subject to any restrictions the bureau reasonably deems necessary to ensure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (a) and (b) of Section 94900. The bureau shall inspect, pursuant to subdivision (a) of Section 94901, the institution, or branch or satellite campus if approval is sought for that campus between 90 days and 180 days after operation has begun under the temporary approval to operate. Following receipt of the visiting committee's or the bureau staff's report, the bureau shall act as provided in paragraph (1), (2), or (3) of subdivision (c).

(h) If at any time the bureau determines that an institution has deviated from the standards for approval, the bureau, after identifying for the institution the areas in which it has deviated from the standards,

and after giving the institution due notice and an opportunity to be heard, may place the institution on probation for a prescribed period of time, not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the bureau, and special visits by authorized representatives of the bureau to determine progress toward total compliance. If, at the end of the probationary period, the institution has not taken steps to eliminate the cause or causes for its probation to the satisfaction of the bureau, the bureau may revoke the institution's approval to award degrees and provide notice to the institution to cease its operations.

(i) An institution may not advertise itself as an approved institution unless each degree program offered by the institution has been approved in accordance with the requirements of this section. The bureau shall review all operations of the institution, pertaining to California degrees, both within and outside of California. The bureau may conduct site visits outside of California, including the institution's foreign operations, when the bureau deems these visits to be necessary. The institution shall be responsible for the expenses of the visiting team members including the bureau's staff liaison. The bureau may authorize any institution approved to issue degrees under this section to issue certificates for the completion of courses of study that are within the institution's approved degree-granting programs.

(j) An institution shall not offer any educational program or degree title that was not offered by the institution at the time the institution applied for approval to operate, and shall not offer any educational program or degree title at a campus that had not offered the program or degree title at the time the institution applied for approval to operate that campus, unless the bureau first approves the offering of the program or degree title after determining that it satisfies the minimum standards established by this section.

SEC. 8. Section 94905 of the Education Code is amended to read:

94905. (a) (1) Any non-WASC regionally accredited institution, as defined in Section 94740.5, that is incorporated in another state and maintains its accredited status throughout the period of a student's course of study, and that is approved by the bureau to operate, may issue degrees, diplomas, or certificates. Except for continuing education programs and programs that are exclusively avocational or recreational in nature, accredited public or private postsecondary educational institutions incorporated in another state shall not offer degrees, diplomas, or certificates in California unless they comply with this section.

(2) A non-WASC regionally accredited institution approved to operate pursuant to this section, and any and all of its program offerings,

are subject to the requirements of Article 13 (commencing with Section 94950).

(b) The bureau shall not approve a non-WASC regionally accredited institution to issue degrees, diplomas, or certificates pursuant to this section until the bureau has determined that the institution has complied with all of the following requirements:

(1) The institution meets the financial responsibility requirements set forth in paragraph (2) of subdivision (a) of Section 94804.

(2) The institution's cohort default rate on guaranteed student loans does not exceed 15 percent for the three most recent years, as published by the United States Department of Education.

(3) The institution submits to the bureau copies of its most recent Integrated Postsecondary Education Data System Report of the United States Department of Education and its accumulated default rate.

(4) The institution pays fees in accordance with Section 94932.

(5) The institution has submitted an application to operate for itself or a branch or satellite campus pursuant to Section 94802 or an application for renewal pursuant to Section 94840.

(c) A non-WASC regionally accredited institution shall be required to notify the bureau of the addition of a degree, diploma, or certificate program that is not included in the institution's initial or renewal application within 90 days of adding the program. If a non-WASC regional accrediting agency, as defined in Section 94740.3, requires approval of the additional degree, diploma, or certificate program, a copy of the certificate of accreditation or approval shall be included with the notice to the bureau, and no additional review or investigation of the program shall be required by the bureau. If the regional accrediting agency does not require approval of the additional degree, diploma, or certificate program, the institution shall include its most recent certificate of accreditation with the notice to the bureau, and no additional review or investigation of the program or institution shall be required by the bureau. Nothing in this subdivision shall be construed to limit the authority of the bureau to investigate student complaints.

(d) A non-WASC regionally accredited institution approved to operate pursuant to this section shall be subject to disciplinary action by the bureau if the institution loses its accreditation or federal financial aid eligibility due to an action taken by a non-WASC regional accrediting agency or federal authority.

(e) A non-WASC regionally accredited institution approved to operate pursuant to this section is exempt from the requirements of Sections 94900 and 94901, Article 9 (commencing with Section 94915), and Article 9.5 (commencing with Section 94931), except for the applicable financial responsibility requirements referenced by paragraph (2) of subdivision (a) of Section 94804. Any non-WASC

regionally accredited institution that is not approved to operate pursuant to this section may apply for approval to operate pursuant to Sections 94900 and 94901.

(f) The bureau shall annually include, in the report it prepares pursuant to Section 94995, its findings and recommendations relative to institutions that have secured institutional or programmatic approval pursuant to this section.

SEC. 9. Section 94945 of the Education Code is amended to read:

94945. (a) The bureau shall assess each institution, including a non-WASC regionally accredited institution, as defined in Section 94740.5, except for an institution that receives all of its students' total charges, as defined in subdivision (k) of Section 94852, from third-party payers for the purpose of compliance with the provisions of this chapter that are related to the Student Tuition Recovery Fund. A third-party payer, for the purposes of this section, means an employer, government program, or other payer that pays a student's total charges directly to the institution when no separate agreement for the repayment of that payment exists between the third-party payer and the student. A student who receives third-party payer benefits for his or her institutional charges is not eligible for benefits from the Student Tuition Recovery Fund.

(1) (A) The amount assessed each institution shall be calculated only for those students who are California residents and who are eligible to be reimbursed from the fund. It shall be based on the actual amount charged each of these students for total tuition cost, regardless of the portion that is prepaid, and shall be assessed as tuition is paid or loans are funded on behalf of the student, based upon academic term. The amount of the assessment on an institution shall be determined in accordance with paragraphs (2) and (3).

(B) Each institution shall collect the amount assessed by the bureau in the form of a Student Tuition Recovery Fund fee from its new students, and remit these fees to the bureau during the quarter immediately following the quarter in which the fees were collected from the students, or from loans funded on behalf of the students, except that an institution may waive collection of the Student Tuition Recovery Fund fee and assume the fee as a debt of the institution. The student's subsequent disenrollment at the institution shall not relieve the institution of the obligation to pay the fee to the bureau, nor be the basis for refund of the fee to the student. An institution may not charge a fee of any kind for the collection of the Student Tuition Recovery Fund fee. An institution may refuse to enroll a student who has not paid, or made provisions to pay, the appropriate Student Tuition Recovery Fund fee.

(C) For the purposes of this section, a ''new student'' means a student who signs his or her enrollment agreement on or after January 1, 2002.

Those students who sign their enrollment agreement prior to January 1, 2002, are not ''new students'' for purposes of this section, and shall be assessed the Student Tuition Recovery Fund fee in effect prior to January 1, 2002, except that an institution may waive collection of the Student Tuition Recovery Fund fee in effect prior to January 1, 2002. Institutions electing to waive collection of the Student Tuition Recovery Fund fee shall disclose this fact to the student in the enrollment agreement, along with the amount of the fee paid on the student's behalf to the bureau.

(2) The amount collected from a new student by an institution shall be calculated on the basis of the course tuition paid over the current calendar year, based upon the assessment rate in effect when the student enrolled at the institution, without regard to the length of time the student's program of instruction lasts. For purposes of annualized payment, a new student enrolled in a course of instruction that is longer than one calendar year in duration shall pay fees for the Student Tuition Recovery Fund based on the amount of tuition collected during the current calendar year.

(3) The assessment made pursuant to this section shall be made in accordance with both of the following:

(A) Each new student shall pay a Student Tuition Recovery Fund assessment for the period of January 1, 2002, to December 31, 2002, inclusive, at the rate of three dollars ($3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(B) Commencing January 1, 2003, Student Tuition Recovery Fund fees shall be collected from new students at the rate of two dollars and fifty cents ($2.50) per thousand dollars of tuition charged, rounded to the nearest thousand dollars. For new students signing enrollment agreements between January 1, 2002, and December 31, 2002, inclusive, the assessment rate of three dollars ($3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars, as provided in subparagraph (A) of this paragraph, shall remain the assessment rate for the duration of the student's enrollment agreement.

(4) The bureau may levy additional reasonable special assessments on an institution under this section only if these assessments are required to ensure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94944.

(5) (A) The bureau may not levy a special assessment unless the balance in any account in the Student Tuition Recovery Fund falls below two hundred fifty thousand dollars ($250,000), as certified by the Secretary of the State and Consumer Services Agency.

(B) A special assessment is a surcharge, collected by each institution from newly enrolled students, of up to 100 percent of that institution's regular assessment for four consecutive quarters. The affected student

shall pay the surcharge simultaneously with his or her regular quarterly payment to the Student Tuition Recovery Fund.

(C) The bureau shall provide at least 90 days' notice of an impending special assessment to each affected institution. This notice shall also be posted on the bureau's Internet Web site.

(D) The bureau may apply any special assessment payments that it receives from an institution as a credit toward that institution's current or future obligations to the Student Tuition Recovery Fund.

(6) The assessments shall be paid into the Student Tuition Recovery Fund and credited to the appropriate account in the fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid claims to students. Unless additional reasonable assessments are required, no assessments for the degree-granting postsecondary educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account of the fund exceeds one million five hundred thousand dollars ($1,500,000). Unless additional reasonable assessments are required, no assessments for the vocational educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account exceeds four million five hundred thousand dollars ($4,500,000). However, regardless of the balance in the fund, assessments shall be made on any newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the fund are continuously appropriated to the bureau for the purpose of paying claims to students pursuant to Section 94944.

(b) The bureau may deduct from the fund the reasonable costs of administration of the tuition recovery program authorized by Section 94944 and this section. The maximum amount of administrative costs that may be deducted from the fund, in a fiscal year, shall not exceed one hundred thousand dollars ($100,000) from the degree-granting postsecondary educational institution account and three hundred thousand dollars ($300,000) from the vocational educational institution account, plus the interest earned on money in the fund that is credited to the fund. Prior to the bureau's expenditure of any amount in excess of one hundred thousand dollars ($100,000) from the fund for administration of the tuition recovery program, the bureau shall develop a plan itemizing that expenditure. The plan shall be subject to the approval of the Department of Finance. Institutions, including any non-WASC regionally accredited institution, as defined in Section 94740.5, except for schools of cosmetology licensed pursuant to Article 8 (commencing with Section 7362) of Chapter 10 of Division 3 of the Business and Professions Code and institutions that offer vocational or job training programs, that meet the student tuition indemnification requirements of a California state agency, that secure a policy of surety

or insurance from an admitted insurer protecting their students against loss of paid tuition, or that demonstrate to the bureau that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from this section.

(c) Reasonable costs in addition to those permitted under subdivision (b) may be deducted from the fund for any of the following purposes:

(1) To make and maintain copies of student records from institutions that close.

(2) To reimburse the bureau or a third party serving as the custodian of records.

(d) In the event of a closure by any approved institution under this chapter, any assessments that have been made against those institutions, but have not been paid into the fund, shall be recovered. Any payments from the fund made to students on behalf of any institution shall be recovered from that institution.

(e) In addition to civil remedies, the bureau may order an institution to pay previously unpaid assessments or to reimburse the bureau for any payments made from the fund in connection with the institution. Before any order is made pursuant to this section, the bureau shall provide written notice to the institution and notice of the institution's right to request a hearing within 30 days of the service of the notice. If a hearing is not requested within 30 days of the service of the notice, the bureau may order payment. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply, and the bureau shall have all powers prescribed in that chapter. Within 30 days after the effective date of the issuance of the order, the bureau may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(f) In addition to any other action that the bureau may take under this chapter, the bureau may suspend or revoke an institution's approval to operate because of the institution's failure to pay assessments when due or failure to pay reimbursement for any payments made from the fund within 30 days of the bureau's demand for payment.

(g) The moneys deposited in the fund shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those institutions or students.

CHAPTER 341

An act to amend Sections 25281 and 25297.1 of, and to add Section 25296.09 to, the Health and Safety Code, relating to hazardous

substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter, the following definitions apply:

(a) ''Automatic line leak detector'' means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. ''Automatic line leak detector'' includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) ''Board'' means the State Water Resources Control Board. ''Regional board'' means a California regional water quality control board.

(c) ''Compatible'' means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d) (1) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) ''Participating Agency'' or ''PA'' means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) ''Unified Program Agency'' or ''UPA'' means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. Except as

provided in Section 25296.09, after a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

(e) ''Department'' means the Department of Toxic Substances Control.

(f) ''Facility'' means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(g) ''Federal act'' means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(h) ''Hazardous substance'' means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(i) ''Local agency'' means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(j) ''Operator'' means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(k) ''Owner'' means the owner of an underground storage tank.

(*l*) ''Person'' means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. ''Person'' also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) ''Pipe'' means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate

commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) ''Primary containment'' means the first level of containment, such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.

(o) ''Product tight'' means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) ''Release'' means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) ''Secondary containment'' means the level of containment external to, and separate from, the primary containment.

(r) ''Single walled'' means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(s) ''Special inspector'' means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t) ''Storage'' or ''store'' means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. ''Storage'' or ''store'' does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(u) ''Tank'' means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

(v) ''Tank integrity test'' means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(w) ''Tank tester'' means an individual who performs tank integrity tests on underground storage tanks.

(x) ''Unauthorized release'' means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

(y) (1) ''Underground storage tank'' means any one or combination of tanks, including pipes connected thereto, that is used for the storage

of hazardous substances and that is substantially or totally beneath the surface of the ground. ''Underground storage tank'' does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25290.2, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) ''Underground tank system'' or ''tank system'' means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa) (1) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) ''Unified program facility permit'' means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) ''Permit'' means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

SEC. 2. Section 25296.09 is added to the Health and Safety Code, to read:

25296.09. (a) (1) If the board enters into an agreement with a local agency and the Santa Clara Valley Water District pursuant to subdivision (j) of Section 25297.1, the Santa Clara Valley Water District shall have the same authority and responsibility as a local agency for purposes of Sections 25296.10 to 25297.2, inclusive, and for purposes of Sections

25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57.

(2) Paragraph (1) shall remain operative only until June 30, 2004.

(3) The inoperation of paragraph (1) does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2004, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(4) Nothing in this section implies that the Santa Clara Valley Water District has CUPA authority other than authority for the local oversight program in accordance with paragraph (1).

(b) (1) The Legislature hereby finds and declares that, beginning in 1988, and continuing each year since that date, the Santa Clara Valley Water District has had a role in implementing the requirements of the provisions listed in subdivision (a).

(2) The Legislature hereby finds and declares that the funding provided by the state to the Santa Clara Valley Water District for the work described in paragraph (1) is hereby ratified.

(c) (1) Any action taken by the Santa Clara Valley Water District that a local agency is otherwise authorized to take pursuant to Sections 25296.10 to 25297.2, inclusive, and Sections 25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57, and that was taken by the Santa Clara Valley Water District on and after January 1, 1988, and continuing on and before January 1, 2004, or until the effective date of an agreement entered into pursuant to subdivision (j) of Section 25297.1, whichever date occurs first, is hereby ratified as having been taken pursuant to this chapter and Chapter 6.75 (commencing with Section 25299.10). However, this ratification applies only to an action that would be valid only if an agreement pursuant to subdivision (j) of Section 25297.1 had been in effect at the time of the action and that otherwise complies with applicable law.

(2) This subdivision does not apply to any action taken by the Santa Clara Valley Water District that is the subject of a civil action pending on June 12, 2003.

SEC. 3. Section 25297.1 of the Health and Safety Code is amended to read:

25297.1. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. In implementing the local oversight program, the agreement specified in subdivision (b) shall be between the board and the local agency. The

board shall select local agencies for participation in the program from among those local agencies which apply to the board, giving first priority to those local agencies which have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall select only those local agencies that have implemented this chapter and that, except as provided in Section 25404.5, have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287.

(b) In implementing the local oversight program described in subdivision (a), the board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board may not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

(c) The board shall provide funding to a local agency that enters into an agreement pursuant to subdivision (b) for the reasonable costs incurred by the local agency in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks.

(d) The board shall adopt administrative and technical procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken pursuant to this section. The procedures shall include, but not be limited to, all of the following:

(1) Guidelines as to which sites may be assigned to the local agency.

(2) The content of the agreements which may be entered into by the board and the local agency.

(3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local

agency in implementing this section, as specified in subdivision (i), unless the cleanup or abatement action is subject to subdivision (d) of Section 25296.10.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a database for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Hazardous Substance Cleanup Fund for oversight of abatement of releases from underground storage tanks as part of the local oversight program established pursuant to this section.

(2) A local agency that enters into an agreement pursuant to subdivision (b), shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency, which enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by the staff of a local agency or the local agency's authorized representative, that are either technical program staff or their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other provision of law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

(4) (A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars ($115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

(B) The total amount of the costs per site for administration and technical assistance to local agencies by the board and the regional board entering into agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-five dollars ($35) for each hour of site-specific oversight. The board shall base its costs on the total hours of site-specific oversight work performed by all participating local agencies. The regional board shall base its costs on the total number of hours of site-specific oversight costs attributable to the local agency which received regional board assistance.

(C) The amounts specified in subparagraphs (A) and (B) are base rates for the 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter, the board shall adjust the base rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the implicit price deflator for state and local government purchases of goods and services, as published by the United States Department of Commerce or by a successor agency of the federal government.

(5) In recovering costs from responsible parties for costs incurred under this section, the local agency shall prorate any costs identifiable as startup costs over the expected number of cases which the local agency will oversee during a 10-year period. A responsible party who has been assessed startup costs for the cleanup of any unauthorized release that, as of January 1, 1991, is the subject of oversight by a local agency, shall receive an adjustment by the local agency in the form of a credit, for the purposes of cost recovery. Startup costs include all of the following expenses:

(A) Small tools, safety clothing, cameras, sampling equipment, and other similar articles necessary to investigate or document pollution.

(B) Office furniture.

(C) Staff assistance needed to develop computer tracking of financial and site-specific records.

(D) Training and setup costs for the first six months of the local agency program.

(6) This subdivision does not apply to costs that are required to be recovered pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

(j) (1) Notwithstanding subdivisions (a) and (b), the board may enter into an agreement with a local agency and the Santa Clara Valley Water District to implement the local oversight program in Santa Clara County.

(2) Paragraph (1) shall remain operative only until June 30, 2004.

(3) The inoperation of paragraph (1) does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2004, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(k) If the board enters into an agreement with a local agency and the Santa Clara Valley Water District to implement the local oversight program in Santa Clara County, pursuant to subdivision (j), the board may provide funding to the Santa Clara Valley Water District pursuant to subdivision (d) of Section 25299.51 for oversight costs incurred by the district on and after July 1, 2002, to June 30, 2004.

SEC. 4. The Legislature finds and declares that, because of the unique circumstances applicable only to the Santa Clara Valley Water District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

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 protect the health and safety of the citizens of Santa Clara County and the environment from contamination and the threat of

contamination, and to continue local investigation and cleanup of groundwater pollution from unauthorized releases from petroleum underground storage tanks, it is necessary that this act take effect immediately.

CHAPTER 342

An act to amend Sections 19994.30 and 19994.33 of, to amend the heading of Chapter 5.6 (commencing with Section 19994.30) of Part 2.6 of Division 5 of, to add Chapter 32 (commencing with Section 7596) to Division 7 of Title 1 of, and to repeal Sections 19994.31 and 19994.32 of, the Government Code, relating to tobacco.

[Approved by Governor September 8, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Chapter 32 (commencing with Section 7596) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 32. SMOKING IN PUBLIC BUILDINGS

7596. As used in this chapter:

(a) ''Public building'' means a building owned and occupied, or leased and occupied, by the state, a county, a city, a city and county, or a California Community College district.

(1) ''Inside a public building'' includes all indoor areas of the building, except for covered parking lots, residential space, and state prison yard areas. ''Inside a public building'' also includes any indoor space leased to the state, county, or city, except for covered parking lots and residential space.

(2) ''Residential space'' means a private living area, but it does not include common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of a multicomplex building such as a dormitory.

(b) ''State'' or ''state agency'' means a state agency, as defined pursuant to Section 11000, the Legislature, the Supreme Court and the Courts of Appeal, and each campus of the California State University and the University of California.

(c) ''Public employee'' means an employee of a state agency or an employee of a county or city.

7597. (a) No public employee or member of the public shall smoke any tobacco product inside a public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building, or in a passenger vehicle, as defined by Section 465 of the Vehicle Code, owned by the state.

(b) This section shall not preempt the authority of any county, city, city and county, California Community College campus, campus of the California State University, or campus of the University of California to adopt and enforce additional smoking and tobacco control ordinances, regulations, or policies that are more restrictive than the applicable standards required by this chapter.

7598. Except as provided in Section 7597, a public employee or other person may smoke in any outdoor area of a public building unless otherwise prohibited by state law or local ordinance and a sign describing the prohibition is posted by the state, county, or city agency or other appropriate entity.

SEC. 2. The heading of Chapter 5.6 (commencing with Section 19994.30) of Part 2.6 of Division 5 of the Government Code is amended to read:

CHAPTER 5.6. TOBACCO CONTROL

SEC. 3. Section 19994.30 of the Government Code is amended to read:

19994.30. As used in this chapter:

(a) ''Building'' means a building owned and occupied, or leased and occupied, by the state.

(b) ''State'' or ''state agency'' means a state agency, as defined pursuant to Section 11000, the Legislature, the Supreme Court and the courts of appeal, and each California Community College campus and each campus of the California State University and the University of California.

(c) ''State employee'' means an employee of a state agency.

SEC. 4. Section 19994.31 of the Government Code is repealed.

SEC. 5. Section 19994.32 of the Government Code is repealed.

SEC. 6. Section 19994.33 of the Government Code is amended to read:

19994.33. (a) The State Department of Health Services may develop guidelines for the content and effective presentation of tobacco smoking control programs designed to assist an individual in either a self-help or group environment. The guidelines may be distributed to state agencies. The State Department of Health Services may provide a copy of the guidelines to any individual or group, upon request, and may charge a fee that shall not exceed the actual cost of producing a copy.

(b) State agencies may offer tobacco smoking control programs to their employees. A state agency may use existing employee training funds to pay for the presentation of tobacco smoking control programs offered to state employees at a state-owned or state-leased building during normal work hours.

(c) Not later than January 31, 1994, and thereafter upon initial employment, each state agency shall inform its employees about the smoking prohibition contained in Section 7597, areas where smoking is permitted, and the availability of tobacco smoking control programs.

(d) Enrollment in a tobacco smoking control program by any state employee shall be voluntary.

CHAPTER 343

An act to add Section 1773.11 to the Labor Code, relating to prevailing wages.

[Approved by Governor September 8, 2003. Filed with Secretary of State September 8, 2003.]

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

SECTION 1. Section 1773.11 is added to the Labor Code, to read:

1773.11. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following:

(1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.

(2) Provide these wage rates to the state or political subdivision that requests them.

(b) This section does not apply to a contract for a public work, as defined in this chapter.

(c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any

calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

CHAPTER 344

An act to add Sections 45061.5, 45168.5, 87834.5, and 88167.5 to the Education Code, relating to school employees.

[Approved by Governor September 8, 2003. Filed with Secretary of State September 9, 2003.]

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

SECTION 1. Section 45061.5 is added to the Education Code, to read:

45061.5. (a) Notwithstanding any other law, the governing board of a school district that collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of a certificated employee for the purpose of transmitting the money to an employee organization shall transmit the money to the employee organization within 15 days of issuing the paycheck containing the deduction to the employee.

(b) (1) This section does not limit the right of an employee organization or affected employee to sue for a failure of the employer to transmit dues or fees pursuant to this section.

(2) In an action brought for a violation of subdivision (a), the court may award reasonable attorney fees and costs to the prevailing party if any party to the action requests attorney fees and costs.

(c) A school district or county office of education may not request, and the State Board of Education may not grant, a waiver of compliance with this section.

SEC. 2. Section 45168.5 is added to the Education Code, to read:

45168.5. (a) (1) Notwithstanding any other law, the governing board of a school district that collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of a classified employee for the purpose of transmitting the money to an employee organization shall transmit the money to the employee organization within 15 days of issuing the paycheck containing the deduction to the employee.

(2) Notwithstanding paragraph (1), if the governing board of a school district with a pupil population exceeding 400,000, collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money

from the salary of a classified employee for the purpose of transmitting the money to an employee organization, the governing board shall transmit the money to the employee organization within 15 working days of issuing the paycheck containing the deduction to the employee.

(b) (1) This section does not limit the right of an employee organization or affected employee to sue for a failure of the employer to transmit dues or fees pursuant to this section.

(2) In an action brought for a violation of subdivision (a), the court may award reasonable attorney fees and costs to the prevailing party if any party to the action requests attorney fees and costs.

(c) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

(d) A school district or county office of education may not request, and the State Board of Education may not grant, a waiver of compliance with this section,

SEC. 3. Section 87834.5 is added to the Education Code, to read:

87834.5. (a) Notwithstanding any other law, the governing board of a community college district that collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of an academic employee for the purpose of transmitting the money to an employee organization shall transmit the money to the employee organization within 15 days of issuing the paycheck containing the deduction to the employee.

(b) (1) This section does not limit the right of an employee organization or affected employee to sue for a failure of the employer to transmit dues or fees pursuant to this section.

(2) In an action brought for a violation of subdivision (a), the court may award reasonable attorney fees and costs to the prevailing party if any party to the action requests attorney fees and costs.

SEC. 4. Section 88167.5 is added to the Education Code, to read:

88167.5. (a) Notwithstanding any other law, the governing board of a community college district that collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of a classified employee for the purpose of transmitting the money to an employee organization shall transmit the money to the employee organization within 15 days of issuing the paycheck containing the deduction to the employee.

(b) (1) This section does not limit the right of an employee organization or affected employee to sue for a failure of the employer to transmit dues or fees pursuant to this section.

(2) In an action brought for a violation of subdivision (a), the court may award reasonable attorney fees and costs to the prevailing party if any party to the action requests attorney fees and costs.

(c) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 88060).

CHAPTER 345

An act to add and repeal Sections 66025.6 and 69433.4 to, and to add and repeal Article 12.5 (commencing with Section 69750) of Chapter 2 of Part 42 of, the Education Code, and to add and repeal Section 981.8 of, the Military and Veterans Code, relating to postsecondary education.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

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

(a) The California National Guard, the State Military Reserve, and the Naval Militia provide military organization in California, with the capacity to protect the lives and property of the people of the state during periods of natural disaster and civil disturbance, and to provide homeland security.

(b) The California National Guard, the State Military Reserve, and the Naval Militia perform other functions required by the California Military and Veterans Code or as directed by the Governor.

(c) The California National Guard, the State Military Reserve, and the Naval Militia serve the essential public purpose of protecting the health, safety, and property of California's citizens.

(d) Postsecondary education benefit incentive programs have been highly successful in providing enlistment and retention inducements for maintaining and strengthening national guard and reserve programs in other states.

(e) It is the intent of the Legislature to further the public purposes served by the California National Guard, the State Military Reserve, and the Naval Militia by providing enlistment and retention inducements by making postsecondary education benefits available to members serving the state faithfully for a period of at least one year.

SEC. 2. Section 66025.6 is added to the Education Code, to read:

66025.6. (a) As used in this section, the following terms have the following meanings:

(1) ''Active duty'' means either of the following:

(A) Active federal service or full-time national guard duty on behalf of the United States of America either voluntarily, or when involuntarily

ordered to duty by appropriate authorities under Title 10 or Title 32 of the United States Code during a period of armed conflict, mobilization, contingency operations, or other crisis.

(B) (i) Active military duty in the service of the state when the Governor has issued a proclamation of a state of insurrection pursuant to Section 143 of the Military and Veterans Code or a proclamation of a state of emergency; or

(ii) When the National Guard is on active duty pursuant to Section 146 of the Military and Veterans Code, or is called to active service or duty under Chapter 7.5 (commencing with Section 400) of Part 1 of Division 2 of the Military and Veterans Code, and a certificate of satisfactory service, or an equivalent thereof, is issued by the Military Department.

(2) ''Qualifying member'' means a person who:

(A) Is a resident, as defined in Section 68017.

(B) Is currently an active member of, and has satisfactorily served for at least one year in, the California National Guard, the State Military Reserve, or the Naval Militia, and maintains satisfactory service throughout the period that tuition and fees are waived pursuant to this section.

(C) Is currently enrolled, and in good standing, in an undergraduate program of instruction, or has been admitted to a program in which he or she will be enrolled, on at least a half-time basis, at a campus of the University of California, the California State University, or the California Community Colleges.

(b) (1) Any qualifying member who undertakes active duty is entitled to an academic leave of absence for any academic session that the qualifying member is unable to attend or complete because he or she is on active duty.

(2) A qualifying member who takes an academic leave of absence during an academic session pursuant to this subdivision may have his or her transcripts cleared for that academic term.

(3) The graduation requirements for a qualifying member who, within one year of returning from active duty, resumes his or her studies at the same postsecondary educational institution shall be the same as the graduation requirements at the time the qualifying member initially enrolled.

(c) The Military Department shall determine whether an individual meets the requirements of ''active duty'' and ''qualifying member,'' as they are set forth in subdivision (a). The department shall issue a certificate to individuals who meet those requirements.

(d) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. Section 69433.4 is added to the Education Code, to read:

69433.4. (a) Notwithstanding any other provision of law, a recipient of a Cal Grant award who is a member of the National Guard, the State Military Reserve, or the Naval Militia on active duty within the meaning of Section 66025.6, who is obliged to withdraw from his or her studies because of that active duty, and who later resumes those studies no later than one year after completing that active duty, does not forfeit either any of the monetary value of the Cal Grant award or any of his or her period of eligibility for that award.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

SEC. 4. Article 12.5 (commencing with Section 69750) is added to Chapter 2 of Part 42 of the Education Code, to read:

Article 12.5. National Guard Assumption Program of Loans for Education

69750. Commencing with the 2004–05 fiscal year, the National Guard Assumption Program of Loans for Education is established for qualifying members of the National Guard, the State Military Reserve, or the Naval Militia within the meaning of Section 66025.6 who seek, or who have completed, baccalaureate degrees at institutions of higher education within this state.

69750.3. (a) Any qualifying member of the National Guard, the State Military Reserve, or the Naval Militia enrolled in an institution of higher education participating in the loan assumption program set forth in this article is eligible to enter into an agreement for loan assumption, to be redeemed pursuant to Section 69750.5. In order to be eligible to enter into a loan assumption agreement, an applicant shall satisfy both of the conditions specified in subdivision (b).

(b) (1) The applicant is currently enrolled in, or has been admitted to, a program in which he or she will be enrolled in at least 10 semester units or the equivalent. The applicant shall agree to maintain not less than 10 semester units per semester, or the equivalent, and to maintain satisfactory academic progress.

(2) In order to meet the costs associated with obtaining a baccalaureate degree, the applicant has received, or is approved to receive, a loan under one or more the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) Any loan program approved by the Student Aid Commission.

(c) A person participating in the program pursuant to this article shall not be eligible to enter into more than one agreement under this article.

69750.5. The Student Aid Commission shall commence loan assumption payments, as required by Section 69750.7, upon verification that the applicant has met the requirements of the loan assumption agreement and all other conditions of this article.

69750.7. The terms of the loan assumption agreements granted under this article shall be as follows, subject to the specific terms of each warrant:

(a) After a program participant has completed one year of additional service as a qualifying member within the meaning of Section 66025.6, the Student Aid Commission shall assume up to two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated loan programs.

(b) After a program participant has completed two consecutive years of additional service as a qualifying member within the meaning of Section 66025.6, the commission shall assume up to an additional three thousand dollars ($3,000) of the participant's outstanding liability under one or more of the designated loan programs, for a total loan assumption of up to five thousand dollars ($5,000).

(c) After a program participant has competed three consecutive years of additional service as a qualifying member within the meaning of Section 66025.6, the commission shall assume up to a maximum of an additional three thousand dollars ($3,000) of the participant's outstanding liability under one or more of the designated loan programs, for a total loan assumption of up to eight thousand dollars ($8,000).

(d) After a program participant has completed four consecutive years of additional service as a qualifying member within the meaning of Section 66025.6, the commission shall assume up to a maximum of an additional three thousand dollars ($3,000) of the participant's outstanding liability under one or more of the designated loan programs, for a total loan assumption of up to eleven thousand dollars ($11,000).

69751. (a) The Student Aid Commission shall administer this article, and shall adopt rules and regulations for that purpose. The rules and regulations shall include, but need not be limited to, provisions regarding the period of time for which a loan assumption agreement shall remain valid, the reallocation of funds that are not utilized, and the development of projections for funding purposes. The commission shall solicit the advice of representatives from postsecondary education institutions regarding the proposed rules and regulations.

(b) The Student Aid Commission shall work in conjunction with lenders participating in federal loan programs to develop a streamlined application process for participation in the program set forth in this article.

69751.3. On or before July 1, 2006, the Office of the Adjutant General shall submit a report to the Legislature on the effectiveness of the National Guard Assumption Program of Loans for Education established by this article.

69751.5. This article shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 5. Section 981.8 is added to the Military and Veterans Code, to read:

981.8. (a) The Office of the Adjutant General is requested to annually make both of the following available to each member of the California National Guard, the State Military Reserve, and the Naval Militia who does not have a baccalaureate degree:

(1) A copy of the enrollment fee waiver application of the Board of Governors of the California Community Colleges.

(2) A copy of the Free Application for Federal Student Aid (FAFSA).

(b) The Office of the Adjutant General is requested to provide assistance as necessary to help the members complete the forms made available to them under subdivision (a).

(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.

CHAPTER 346

An act to amend Section 44579.1 of the Education Code, relating to teachers.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 44579.1 of the Education Code is amended to read:

44579.1. (a) There is hereby established the Instructional Time and Staff Development Reform Program. It is the intent of the Legislature that this program enhance staff development opportunities for classroom personnel, but this article may not be construed to provide the sole source of funding for staff development activities for school personnel or to limit in any way the amount or type of staff development that is provided to school district personnel from other resources.

(b) The State Department of Education shall submit draft regulations for the purpose of implementing this article to the State Board of Education for its review and approval. The State Board of Education shall adopt regulations for the purpose of implementing this article pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) (1) Each fiscal year, the Superintendent of Public Instruction shall provide each eligible school district and county office of education applying for a grant pursuant to this article with a staff development allowance of two hundred seventy dollars ($270) per day, adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1, for up to three days, for each certificated classroom teacher and one hundred forty dollars ($140) per day, adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1, for up to one day for each classified classroom instructional aide and certificated teaching assistant who participates in staff development instructional methods, including teaching strategies, classroom management and other training designed to improve pupil performance, conflict resolution, intolerance and hatred prevention, and academic content in the core curriculum areas that are provided by the school district or county office of education.

(2) Each fiscal year, the Superintendent of Public Instruction, shall provide each eligible charter school applying for a grant pursuant to this article with a staff development allowance of two hundred seventy dollars ($270) per day, adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1, for up to three days, for each classroom teacher and one hundred forty dollars ($140) per day adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1, for up to one day for each classroom instructional aide and assistant who participates in staff development instructional methods, including teaching strategies, classroom management, and other training designed to improve pupil performance, conflict resolution, intolerance and hatred prevention, and academic content in the core curriculum areas that are provided by the charter school.

(d) To be eligible for a grant pursuant to this article, the staff development program provided by the school district, charter school, or county office of education shall meet all of the following requirements:

(1) Meet local educational priorities as defined by the governing board of the school district, charter school, or county board of education.

(2) Be consistent with regulations defining staff development activities eligible to receive funding under this section.

(e) To qualify as a funded participant, each eligible participant shall be present for the full staff development day, and records of attendance shall be maintained in a manner to be prescribed in regulations. Each staff development day shall be at least as long as the full-time instructional workday for certificated or classified instructional employees of the school district. For purposes of this section, a single staff development day may be conducted over several calendar days.

(f) (l) Except as provided pursuant to paragraph (2), if the staff development day is conducted after completion of an instructional day, it may not be held on a minimum day for which a parent or guardian was notified pursuant to subdivision (c) of Section 48980.

(2) For staff working in multitrack, year-round schools, not more than two staff development days may be scheduled for ''off track'' teachers at a school with a minimum day scheduled. In this event, teachers at the multitrack, year-round school who are being paid for service on the minimum days are not eligible for that day of funding under this article.

(g) Notwithstanding Section 45203, probationary and permanent employees in the classified service may not receive regular pay on days during which staff development is offered pursuant to this article unless they are required to report for duty on those days.

(h) A charter school may be eligible to receive funding under this chapter only if the school certifies that it meets the minimum instructional time requirements applicable to school districts.

(i) This section shall be operative in any fiscal year only to the extent that funds are provided for its purposes in the annual Budget Act.

CHAPTER 347

An act to amend Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110, 3201, 3203, 3206, 3303, 3304, 3305, 3307, and 3308 of, and to repeal Sections 3105, 3306, and 3309 of, the Elections Code, relating to absentee voters.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 3100 of the Elections Code is amended to read:

3100. When a voter who qualifies as a special absentee voter pursuant to subdivision (b) of Section 300 applies for an absent voter's ballot, the application shall be deemed to be an affidavit of registration

and an application for permanent absentee voter status, pursuant to Chapter 3 (commencing with Section 3200). The application must be completed by the voter and must contain the voter's name, residence address for voting purposes, the address to which the ballot is to be sent, the voter's political party for a primary election, and the voter's signature.

If the applicant is not a resident of the county to which he or she has applied, the elections official receiving the application shall forward it immediately to the proper county.

SEC. 2. Section 3101 of the Elections Code is amended to read:

3101. Upon timely receipt of the application for an absentee ballot, the elections official shall examine the application to ascertain that it is properly executed in accordance with this code. If the elections official is satisfied of this fact, the applicant shall be deemed a duly registered voter as of the date appearing on the application to the same extent and with the same effect as though he or she had registered in proper time prior to the election.

SEC. 3. Section 3103 of the Elections Code is amended to read:

3103. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) The elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State. The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name has been written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) The elections official shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with this section.

(e) In the event that a voter executes a special absentee ballot pursuant to this section and an application for an absentee ballot pursuant to Section 3101, the elections official shall reject the voted ballot previously cast, cancel the voter's permanent absent voter status, and

process the application in accordance with Chapter 1 (commencing with Section 3000).

(f) Notwithstanding any other provision of law, a special absentee voter who qualifies pursuant to this section may, by facsimile transmission, register to vote and apply for an absent voter's ballot. Upon request, the elections official may send to the qualified special absentee voter either by mail, facsimile, or electronic transmission the special absentee ballot or, if available, an absent voter's ballot pursuant to Chapter 1 (commencing with Section 3000).

SEC. 4. Section 3104 of the Elections Code is amended to read:

3104. Any absentee voter ballot application by a qualified special absentee voter shall also be deemed an affidavit of voter registration and an application for permanent absent voter status.

SEC. 5. Section 3105 of the Elections Code is repealed.

SEC. 6. Section 3106 of the Elections Code is amended to read:

3106. When the application is received by an elections official, other than a county elections official, the elections official receiving it shall, after the election, transmit it to the county elections official who, if the application is not subject to rejection, shall file the original. If an application is rejected, it shall be returned to the applicant with the reason for rejection endorsed on it, together with a new blank application.

SEC. 7. Section 3108 of the Elections Code is amended to read:

3108. If any special absentee voter to whom an absent voter's ballot has been mailed and which ballot has not been voted by him or her returns to the county in which he or she is registered on or before election day, he or she may apply for a second absentee ballot pursuant to Section 3014. The elections official shall require him or her to sign an authorization to cancel the absent voter's ballot previously issued when it is returned to the county elections official. The elections official shall then issue another absent ballot to the voter, or the elections official shall certify to the precinct board that the voter is eligible to vote in the precinct polling place of his or her residence.

SEC. 8. Section 3110 of the Elections Code is amended to read:

3110. If a special absentee voter is unable to appear at his or her polling place because of being recalled to service after the final day for making application for an absent voter's ballot, but before 5 p.m. on the day before the day of election, he or she may appear before the elections official and make application for an absent voter's ballot. The elections official shall deliver to him or her an absent voter's ballot which may be voted in the elections official's office or voted outside the elections official's office on or before the close of the polls on the day of election and returned as are other absent voter's ballots.

SEC. 9. Section 3201 of the Elections Code is amended to read:

3201. Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001, 3100, or 3304. The voter shall complete an application, which shall be available from the county elections official, and which shall contain all of the following:

(a) The applicant's name at length.

(b) The applicant's residence address.

(c) The address where ballot is to be mailed, if different from the place of residence.

(d) The signature of the applicant.

SEC. 10. Section 3203 of the Elections Code is amended to read:

3203. (a) Upon receipt of an application for permanent absent voter status, the county elections official shall process the application in the same manner as an application for a regular absent voter's ballot, or, in the case of an application made pursuant to Section 3100 or 3304, in the same manner as an application for a special absent voter ballot or overseas ballot.

(b) In addition to processing applications in accordance with Chapter 1 (commencing with Section 3000), if it is determined that the applicant is a registered voter, the county elections official shall do the following:

(1) Place the voter's name upon a list of those to whom an absentee ballot is sent each time there is an election within their precinct.

(2) Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206.

(3) Maintain a copy of the absentee ballot voter list on file open to the public inspection for election and governmental purposes.

SEC. 11. Section 3206 of the Elections Code is amended to read:

3206. A voter whose name appears on the permanent absent voter list shall remain on the list and shall be mailed an absentee ballot for each election conducted within his or her precinct for which he or she is eligible to vote. If the voter fails to return an executed absent voter ballot for any statewide direct primary or general election in accordance with Section 3017 the voter's name shall be deleted from the list.

SEC. 11.5. Section 3206 of the Elections Code is amended to read:

3206. A voter whose name appears on the permanent absent voter list shall remain on the list and shall be mailed an absentee ballot for each election conducted within his or her precinct for which he or she is eligible to vote. If the voter fails to return an executed absent voter ballot for any statewide general election in accordance with Section 3017 the voter's name shall be deleted from the list.

SEC. 11.6. Section 3206 of the Elections Code is amended to read:

3206. A voter whose name appears on the permanent absent voter list shall remain on the list and shall be mailed an absentee ballot for each election conducted within his or her precinct for which he or she is

eligible to vote. If the voter fails to return an executed absent voter ballot for any statewide general election in accordance with Section 3017 the voter's name shall be deleted from the list.

SEC. 11.7. Section 3206 of the Elections Code is amended to read:

3206. A voter whose name appears on the permanent absent voter list shall remain on the list and shall be mailed an absentee ballot for each election conducted within his or her precinct for which he or she is eligible to vote. If the voter fails to return an executed absent voter ballot for any statewide general election in accordance with Section 3017 the voter's name shall be deleted from the list.

SEC. 12. Section 3303 of the Elections Code is amended to read:

3303. Any person described in Section 3302 who desires to register and vote under this chapter shall apply in writing to the elections official of the county in which the person was last domiciled prior to departure from the United States. When an overseas voter as described in Section 3302 applies for an absent voter's ballot, the application shall be deemed an affidavit of registration and an application for permanent absent voter status, pursuant to Chapter 3 (commencing with Section 3200).

SEC. 13. Section 3304 of the Elections Code is amended to read:

3304. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and for whom the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking the nomination or election to any office listed on the ballot.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name is written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) The elections official shall receive and canvass the absent voter ballots described in this section under the same procedure as other absent voter ballots, insofar as that procedure is not inconsistent with this section.

SEC. 14. Section 3305 of the Elections Code is amended to read:

3305. Upon receipt of an application for registration and an absent voter ballot by a person who meets the requirements of Section 3302 the county elections official shall determine the following:

(a) That the last domicile of the applicant in the United States was in the county to which the person has applied. If the last domicile of the

applicant in the United States was in another county, the elections official shall forward the application to that county.

(b) That the applicant is not currently registered. If the applicant is registered as a resident of the county, the elections official shall cancel the affidavit of registration.

SEC. 15. Section 3306 of the Elections Code is repealed.

SEC. 16. Section 3307 of the Elections Code is amended to read:

3307. (a) As soon as possible after the 60th day before the federal election, the county elections official shall mail or deliver a ballot to each person who has requested registration as an overseas voter since the last regularly scheduled federal election.

(b) The overseas voter shall be informed of the following:

(1) That the affidavit must be correctly completed and returned with the ballot in order for the vote to be tallied.

(2) That the voter's registration is valid, that the voter has permanent absentee voter status, and that the ballots for future elections will be sent to the voter at the mailing address provided by the voter.

(3) The provisions of Section 3206.

(c) Absent voter ballots mailed or delivered pursuant to this section shall be modified pursuant to regulations adopted by the Secretary of State so as to show only those offices for which the overseas resident is entitled to vote.

SEC. 17. Section 3308 of the Elections Code is amended to read:

3308. Upon timely receipt of the application for absentee ballot, the county elections official shall examine the application to ascertain that it is properly executed in accordance with this code. If the county elections official is satisfied of this fact, the applicant shall be deemed a duly registered voter as of the date appearing on the application to the same extent and with the same effect as though he or she had registered in proper time prior to the election.

SEC. 18. Section 3309 of the Elections Code is repealed.

SEC. 19. 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. 20. (a) Section 11.5 of this bill incorporates amendments to Section 3206 of the Elections Code proposed by both this bill and AB 593. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3206 of the Elections Code, and (3) AB 1681 is not enacted or

as enacted does not amend that section, and (4) this bill is enacted after AB 593, in which case Sections 11, 11.6, and 11.7 of this bill shall not become operative.

(b) Section 11.6 of this bill incorporates amendments to Section 3206 of the Elections Code proposed by both this bill and AB 1681. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3206 of the Elections Code, (3) AB 593 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1681, in which case Sections 11, 11.5, and 11.7 of this bill shall not become operative.

(c) Section 11.7 of this bill incorporates amendments to Section 3206 of the Elections Code proposed by this bill, AB 593, and AB 1681. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 3206 of the Elections Code, and (3) this bill is enacted after AB 593 and AB 1681, in which case Sections 11, 11.5, and 11.6 of this bill shall not become operative.

CHAPTER 348

An act to amend Section 2221 of, and to add Section 2232 to, the Business and Professions Code, relating to medicine.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 2221 of the Business and Professions Code is amended to read:

2221. (a) The Division of Licensing may deny a physician's and surgeon's license to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the division in its sole discretion, may issue a probationary license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(b) The Division of Licensing may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee.

(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the Division of Medical Quality in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code, and the review procedures set forth in Section 2335.

(d) The Division of Licensing shall deny a physician's and surgeon's license to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

SEC. 2. Section 2232 is added to the Business and Professions Code, to read:

2232. (a) (1) Except as provided in paragraph (2), the board shall promptly revoke the license of any person who is subject to or becomes subject to Section 290 of the Penal Code.

(2) This section shall not apply to a person who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(b) (1) Five years after the effective date of the revocation and three years after successful discharge from parole, probation, or both parole and probation if under simultaneous supervision, an individual may petition the superior court in the county in which the individual has resided for, at minimum, five years prior to filing the petition to hold a hearing within one year of the date of the petition, in order for the court to determine whether the individual no longer poses a possible risk to patients. The individual shall provide notice of the petition to the Attorney General and to the board at the time of its filing. The Attorney General and the board may present written and oral argument to the court on the merits of the petition.

(2) If the court finds that the individual no longer poses a possible risk to patients, and there are no other underlying reasons that the board pursued disciplinary action, the court shall order, in writing, the board to reinstate the individual's license within 180 days of the date of the

order. The board may issue a probationary license to a person subject to this section subject to terms and conditions, including, but not limited to, any of the conditions of probation specified in Section 2221.

(3) If the court finds that the individual continues to pose a possible risk to patients, the court shall deny relief. The court's decision shall be binding on the individual and the medical board, and the individual is prohibited from filing a subsequent petition under this section based on the same conviction.

CHAPTER 349

An act to amend Sections 52323, 52324, and 52325 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 52323 of the Food and Agricultural Code is amended to read:

52323. The department's cost of carrying out this chapter shall be funded from money that is received by the secretary pursuant to this chapter. The secretary shall also pay annually, in arrears, one hundred twenty thousand dollars ($120,000), to counties as an annual subvention for costs incurred in the enforcement of this chapter. The department's costs of administering this chapter shall be paid before allocating funds to the counties under this section.

This section shall become inoperative on July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 52324 of the Food and Agricultural Code is amended to read:

52324. The subvention program under Section 52323 is an optional program available to counties. The subvention to counties under Section 52323 shall be annually apportioned as follows:

(a) Counties with no registered seed labelers shall annually receive one hundred dollars ($100).

(b) Counties with registered seed labeler operations shall receive subventions based upon units of enforcement activity generated by the registered seed labeler operations within the county and upon the

performance of enforcement activities necessary to carry out this chapter. The units of activity shall be determined by the secretary, taking into consideration the number of lots and kinds of seed labeled by each registered seed labeler operation within the county. The rate per unit of activity shall be established by dividing the total statewide units of activity into the annual funds available to the counties under Section 52323 after deducting the amount required for subventions in subdivision (a). Apportionment to individual counties shall be based upon the county's total units of activity performed times the established rate. In no case shall a county receive less than one hundred dollars ($100).

This section shall become inoperative on July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 52325 of the Food and Agricultural Code is amended to read:

52325. (a) Commissioners of counties that choose to participate in the subvention program shall enter into a cooperative agreement with the secretary, whereby the commissioner agrees to maintain a statewide compliance level, determined by the secretary, on all seed within the county. The cooperative agreement shall be in effect for a five-year period. The units of activity and apportionment calculated under subdivision (b) of Section 52324 to each individual participating county shall be established annually in a memorandum of understanding between the commissioner and the director.

(b) The secretary, upon recommendation of the board or upon the secretary's own initiative, may withhold a portion of the funds designated to a county pursuant to subdivision (b) of Section 52324 if that county fails to meet the performance standards established by the secretary and set forth in the cooperative agreement with that county.

(c) The secretary shall provide a written justification to the board for any action taken by the secretary that does not fully implement a recommendation made by the board pursuant to subdivision (b).

(d) This section shall become inoperative on July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 350

An act to amend Section 78636 of the Food and Agricultural Code, relating to food and agriculture.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 78636 of the Food and Agricultural Code is amended to read:

78636. (a) ''Tomatoes'' means all tomatoes that are produced for commercial purposes and are handled within the state in fresh form, except cherry tomatoes and tomatoes grown in a greenhouse.

(b) For purposes of this section, ''tomatoes grown in a greenhouse'' means tomatoes grown in a fixed steel structure using irrigation and climate control, in an artificial medium that substitutes for soil.

(c) Cherry tomatoes and tomatoes grown in a greenhouse may be included in the definition of tomatoes in subdivision (a) if approved by the producers and handlers of those tomatoes pursuant to a referendum conducted in accordance with the procedures in Article 5 (commencing with Section 78690) of Part 2 of Division 22.

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 351

An act to amend Sections 21670, 21674.7, 21676, 21676.5, 21677, and 21678 of the Public Utilities Code, relating to airports.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 21670 of the Public Utilities Code is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, ''commission'' means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an ''expertise in aviation'' means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.

(f) It is the intent of the Legislature to clarify that, for the purposes of this article, that special districts, school districts, and community college districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.

SEC. 2. Section 21674.7 of the Public Utilities Code is amended to read:

21674.7. (a) An airport land use commission that formulates, adopts, or amends an airport land use compatibility plan shall be guided by information prepared and updated pursuant to Section 21674.5 and referred to as the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation.

(b) It is the intent of the Legislature to discourage incompatible land uses near existing airports. Therefore, prior to granting permits for the renovation or remodeling of an existing building, structure, or facility, and before the construction of a new building, it is the intent of the Legislature that local agencies shall be guided by the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations, to the extent that the criteria has been incorporated into the plan prepared by a commission pursuant to Section 21675. This subdivision does not limit the jurisdiction of a commission as established by this article. This subdivision does not limit the authority of local agencies to overrule commission actions or recommendations pursuant to Sections 21676, 21676.5, or 21677.

SEC. 3. Section 21676 of the Public Utilities Code is amended to read:

21676. (a) Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use

commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan. If the plan or plans are inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its airport land use compatibility plans. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the public record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(c) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the public agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the public agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the public agency governing body may act without them. The comments by the division or the commission are advisory to the public agency governing body. The public agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the airport land use compatibility plan.

SEC. 4. Section 21676.5 of the Public Utilities Code is amended to read:

21676.5. (a) If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670, the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made. If, in the determination of the commission, an action, regulation, or permit of the local agency is inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall hold a hearing to reconsider its plan. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency

governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(b) Whenever the local agency has revised its general plan or specific plan or has overruled the commission pursuant to subdivision (a), the proposed action of the local agency shall not be subject to further commission review, unless the commission and the local agency agree that individual projects shall be reviewed by the commission.

SEC. 5. Section 21677 of the Public Utilities Code is amended to read:

21677. Notwithstanding the two-thirds vote required by Section 21676, any public agency in the County of Marin may overrule the Marin County Airport Land Use Commission by a majority vote of its governing body. At least 45 days prior to the decision to overrule the commission, the public agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the public agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the public agency governing body may act without them. The comments by the division or the commission are advisory to the public agency governing body. The public agency governing body shall include comments from the commission and the division in the public record of the final decision to overrule the commission, which may be adopted by a majority vote of the governing body.

SEC. 6. Section 21678 of the Public Utilities Code is amended to read:

21678. With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676, 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's action or recommendation.

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

CHAPTER 352

An act to amend Sections 10506.4, 10507.5, and 12957 of the Insurance Code, relating to life insurers.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 10506.4 of the Insurance Code is amended to read:

10506.4. (a) An admitted life insurer that is financially qualified pursuant to subdivision (b) and complies with the provisions of this section and those of Section 10506 that expressly refer to this section or are not inconsistent with it, may guarantee, pursuant to an approved policy, contract, or agreement, the value of the assets allocated to a separate account, which as provided under the applicable policy, contract, or agreement is not chargeable with liabilities arising out of any other business the company may conduct, or the investment results thereof, or the income thereon, or the benefits payable pursuant to the approved policy, contract, or agreement, and may transfer to the separate account cash to maintain its reserves for those guarantees pursuant to paragraph (2) of subdivision (f) of Section 10506. The general account of the insurer shall be paid reasonable and sufficient compensation not less frequently than quarterly, for risks and other expenses incurred, from any separate account that receives a guarantee authorized by this section.

(b) For the purposes of this section ''approved policy, contract, or agreement'' means a policy, contract, or agreement, the form of which has been approved by the commissioner, for issue or marketing in this state, and which in addition to meeting the requirements of all pertinent provisions of this code, meets the requirements of one of the following paragraphs:

(1) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The weighted asset valuation reserve factor for the assets held in the separate account pursuant to the terms of the policy, contract, or agreement shall not exceed 2 percent.

(B) Guarantees of interest that extend beyond 14 months at any time shall be no greater than 3 percent per annum.

(C) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(D) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts other than on the conversion date or guarantee effective date, if any, the withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(2) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The weighted asset valuation reserve factor for the assets held in the separate account pursuant to the terms of the policy, contract, or agreement shall not exceed 4 percent.

(B) The market value of the assets held in the separate account plus any reserves described in subparagraph (C) shall exceed the current aggregate liabilities determined by discounting the guaranteed benefit liability cashflows at the rate of 105 percent of the then current yields as quoted on United States Government issued securities having substantially similar maturities by at least the following applicable amount:

(i) For assets consisting of debt instruments, an amount equal to the asset valuation reserve ''maximum reserve factor,'' provided, however, that the factor shall be reduced by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities (as confirmed in the actuarial statement referred to in subparagraph (B) of paragraph (1) of subdivision (d)) are one year or less.

(ii) For assets that are not debt instruments, 20 percent.

(C) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(D) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts other than on the conversion date or guarantee effective date, if any, the withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(3) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The guarantees contained in the policy, contract, or agreement applicable to the value of the assets held in the separate account by the insurer shall be based upon a publicly available interest rate series or an index of the aggregate market value of a group of publicly traded financial instruments, the interest rate series or index to be specified in the policy, contract, or agreement.

(B) Assets held in the separate account and the accumulations thereon shall be invested in accordance with the requirements of subdivision (a) of Section 10506 applicable to policies, contracts, or agreements governed by this section and shall comply with all of the following:

(i) Interest-bearing bonds, notes, or other obligations shall be publicly traded or meet applicable requirements of the United States Securities and Exchange Commission enabling the securities to be publicly traded.

(ii) Investments in capital stock shall be traded on an exchange regulated by the United States Securities and Exchange Commission, and investments in any futures contracts with respect thereto shall be traded on an exchange regulated under the Commodities Exchange Act (Title 7, United States Code).

(iii) Issuers of interest-bearing obligations held in the separate account must be rated by an independent nationally recognized financial rating agency approved by the commissioner or by the Securities Valuation Office of the National Association of Insurance Commissioners.

(iv) With respect to any investments in shares of investment companies registered under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) the assets of the entity must qualify as investments directly allowed for separate accounts pursuant to the requirements of subdivision (a) of Section 10506 applicable to policies, contracts, or agreements governed by this section.

(v) The type, quality, industry diversification, prepayment characteristics, expected duration, and other factors pertaining to investments shall be set forth in the approved method of operations which shall contain a demonstration satisfactory to the commissioner that the investments are likely to achieve the performance of the applicable index or interest rate series.

(C) The period between the commencement date of the guaranty of the value of the assets held in the separate account and the conversion date, if any, shall not exceed five years.

(D) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(E) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts other than on the conversion date or guarantee effective date, if any, the withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(4) For the purposes of this section, ''conversion date'' means the date, if any, specified in the policy, contract, or agreement upon which the assets held pursuant to it shall be converted or applied to the purchase of annuities or returned to the owner of the policy, contract, or agreement, or its designee.

(5) For the purposes of this section, the ''asset valuation reserve factor'' for each asset will be determined by the application of the asset valuation reserve factor, ''maximum reserve factor,'' as contained in the National Association of Insurance Commissioners (NAIC) Life, Accident and Health Annual Statement Instructions (Instructions) and Valuation of Securities Manual, or if not contained therein, an asset valuation reserve factor of 20 percent shall be assigned. To determine the

weighted asset valuation reserve factor, the asset valuation reserve factor shall be applied to the market value of each asset.

(6) For the purposes of this section, ''market value'' means the policy, contract, or agreement's proportionate share of the actual market value of the separate account at the time of withdrawal or if the determination of market value is by formula, the formula shall be set forth in the policy, contract, or agreement and shall be designed to closely match actual market value.

(7) For the purposes of this section, ''guarantee effective date'' means the date guarantees authorized by this section may result in payments from the general account to the separate account.

(c) No admitted life insurer may issue or market in this state, nor may any domestic life insurer issue or market anywhere, a policy, contract, or agreement, or coverage thereunder by certificate or otherwise, which contains the guarantees referred to in subdivision (a) unless both of the following apply:

(1) It has received from the commissioner authority to issue policies or contracts providing for the payment of variable benefits pursuant to subdivision (h) of Section 10506.

(2) The commissioner has determined after application by the insurer in the form and content as the commissioner may require, review of the insurer's applicable proposed method of operations relating to policies, contracts, or agreements containing the guarantees authorized by subdivision (a), payment of fees specified in Section 736 and consideration of the matters set forth in subdivision (h) of Section 10506, that the insurer is financially qualified to issue policies, contracts, or agreements that contain the guarantees referred to in subdivision (a) including by meeting or exceeding the financial standards in subdivision (d).

(d) (1) No admitted life insurer that has been financially qualified pursuant to subdivision (c) may issue or market or continue to issue or market in this state, nor may any domestic life insurer issue or market anywhere or continue to issue or market anywhere, policies, contracts, or agreements, or coverage thereunder by certificate or otherwise, providing the guarantees referred to in subdivision (a) unless all of the following apply:

(A) It has at least one billion dollars ($1,000,000,000) of admitted assets or at least one hundred million dollars ($100,000,000) of aggregate capital and surplus.

(B) It annually complies with the requirement to furnish an actuarial statement as a part of or in addition to the statement required by Section 10489.15, provided the actuarial statement is in form and substance satisfactory to the commissioner. This actuarial statement shall meet all the following requirements:

(i) The statement shall state that, after taking into account risk charges payable from the assets of the separate account with respect to the guarantee, the assets of the separate account, together with any reserves in excess of the account value, make good and sufficient provision for the liabilities of the insurer with respect thereto.

(ii) The statement shall provide an opinion of the reasonableness and sufficiency of the pricing of any general account guarantees and any other fees for administration paid to the general account from the separate account.

(iii) The statement shall be supported by a memorandum by a qualified actuary, also in form and substance satisfactory to the commissioner, that describes the calculations made in support of the actuarial statement and includes the assumptions used in the calculations.

(C) Its ratio of aggregate capital and surplus to its aggregate liabilities is not lower than 75 percent of that ratio as of the December 31 prior to its receiving financial qualification from the commissioner except as allowed under paragraph (4) of subdivision (d).

For the purposes of this section, ''capital and surplus'' includes capital and surplus plus the asset valuation reserve and one-half of the liability for dividends, all as reflected on the most recent financial statement on file with the commissioner. ''Liabilities'' means the total liabilities as reflected on the financial statement excluding therefrom liabilities for policies, contracts, and agreements issued in connection with separate accounts, liabilities in connection with contracts issued pursuant to this section and excluding both of the following:

(i) The liability for any asset valuation reserve.

(ii) One-half the liability for dividends.

(2) If the commissioner, following notice to the insurer and a hearing, determines that an insurer that has received financial qualification pursuant to subdivision (c) no longer maintains the financial strength needed to initially receive the qualification, the commissioner may issue an order requiring the insurer to cease issuing new policies, contracts, or agreements providing for guarantees contemplated by subdivision (a).

(3) In the event an insurer that has received financial qualification pursuant to subdivision (c) determines that it does not meet the requirements of subdivision (d), it shall promptly comply with paragraph (2) as if an order had been issued by the commissioner after notice and hearing, and within 45 days, notify the commissioner in writing at the place designated by the commissioner that it has ceased to meet the requirements specified in the written notice.

(4) In the event the insurer thereafter meets or exceeds all of the requirements of subdivision (d), it may notify the commissioner at the place designated by the commissioner, in writing, and upon the passage

of 45 days following receipt by the commissioner of the notice, may resume issuing policies, contracts, or agreements that provide for guarantees contemplated by subdivision (a) as long as it meets the requirements of subdivision (d). However, if the insurer believes that the resumption of the issuance of the policies, contracts, or agreements that provide for the guarantees contemplated by subdivision (a) would not be hazardous to its policyholders or the citizens of California, even though it does not meet the requirements specified in subparagraph (C) of paragraph (1), the insurer shall include in the notice a demonstration that the issuance of policies, contracts, or agreements containing the guarantees referred to in subdivision (a) is not hazardous to its policyholders or the citizens of California. Within the 45-day period, the commissioner may issue an order containing the requirements of paragraph (2) if, in the commissioner's opinion, any of the requirements of subdivision (d) are not met, or resumption would violate any provision of this code or, resumption may be hazardous to the insurer, policyholders, creditors, or the public. The failure to issue an order within 45 days shall not be deemed an approval of the activities. The order shall specify the grounds upon which the commissioner is basing the order. The insurer may, within 10 days of the order, request a hearing. The hearing shall be a private hearing and shall commence not less than 10 days, nor more than 20 days, after the request for hearing is served on the commissioner.

(e) Policies, contracts, and agreements referred to in subdivision (a), that are not otherwise subject to filing under applicable law and regulation, shall be filed, before being marketed or issued in this state, by the insurer with the commissioner. If the commissioner finds that the policies, contracts, or agreements submitted pursuant to subdivision (a) contemplate practices that are unfair or unreasonable or otherwise inconsistent with the provisions of this code, he or she may disapprove of the forms of policies, contracts, or agreements specifying in what regard the policies, contracts, or agreements are unfair or unreasonable or otherwise inconsistent with the provisions of this code.

(f) As an alternative to the filing and approval procedure set forth in subdivision (e), an insurer that satisfies eligibility criteria specified in the bulletin authorized by subdivision (g) may file with the commissioner the proposed form of the policy, contract, or agreement, together with an officer's certificate, accompanied by an actuarial certification and demonstration, and other supporting material, all in accordance with procedures set forth in the bulletin authorized by subdivision (g). An insurer may issue and deliver a policy, contract, or agreement the day following approval by the commissioner of a filing under this subdivision. Absent explicit approval, an insurer may, no sooner than 30 working days after the filing of the policy, contract, or

agreement and all required supporting documentation, issue and deliver any policy, contract, or agreement that has been filed pursuant to this subdivision if the commissioner has not notified the insurer in writing that the filing lacks the required documentation or that he or she objects to the filing upon grounds sufficient to disapprove the policy, contract, or agreement. The bulletin shall set forth procedures providing the insurer an opportunity to respond to any objections. If the commissioner finds that the officer's certificate or the actuarial certification or demonstration filed in support of the policy, contract, or agreement is false or incorrect, the commissioner may, in addition to taking any other lawful measures, including suspension of authority to use the policy, contract, or agreement, declare the insurer ineligible to utilize the alternative procedure authorized by this subdivision for a period not to exceed three years from the date of the filing of the policy, contract, or agreement. The commissioner may summarily suspend the use of any policy, contract, or agreement used by the insurer pursuant to this subdivision on any grounds sufficient to disapprove the policy, contract, or agreement, or if the filing fails to include the required documents. This suspension may be prospective only. Suspension of use of a policy, contract, or agreement shall be in writing and shall specify the reasons for the suspension. Unless the commissioner in the suspension order or subsequent thereto specifies a later effective date for the suspension, any suspension shall be effective on the day following the receipt of the suspension order by the insurer. An insurer affected by any suspension, issued pursuant to this subdivision, of a policy, contract or agreement may refile the policy, contract, or agreement with the commissioner pursuant to subdivision (e). The commissioner may suspend or discontinue filings of policies, contracts, or agreements under this subdivision at any time upon notice to affected insurers. Any filing by an insurer of a policy, contract, or agreement under this subdivision that is not accepted by the commissioner may be filed by the insurer pursuant to subdivision (e).

(g) The commissioner may issue, and amend from time to time thereafter, as he or she deems appropriate, a bulletin setting forth reasonable requirements for insurers that issue policies, contracts, or agreements referred to in subdivision (a) relating to all of the following:

(1) The reserves to be maintained by insurers for those policies, contracts, or agreements.

(2) The accounting and reporting of funds credited under, assets held with respect to, and transfers to and from the insurer's general account and separate accounts pertaining to, those policies, contracts, or agreements.

(3) The disclosure of information to be given to holders and prospective holders of those policies, contracts, or agreements.

(4) The qualification of persons selling those policies, contracts, or agreements on behalf of the insurers.

(5) The filing of those policies, contracts, or agreements with the commissioner.

(6) The filing with the commissioner of specified sales and financial information pertaining to those policies, contracts and agreements.

(7) The eligibility criteria and procedure for filing under subdivision (f).

(8) Other matters relating to those policies, contracts, and agreements as the commissioner considers necessary, proper, and advisable that are not inconsistent with this section. This bulletin shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as regulations issued by the commissioner until the time that the commissioner issues additional or amended regulations.

(h) The authority granted in this section is in addition to the authority granted to life insurers by other provisions of this code and the requirements of this section shall not contravene that authority. No policy, contract, or agreement that constitutes investment return assurance pursuant to Section 10203.10 or Section 10507 may be issued pursuant to this section.

(i) Guarantees authorized by this section may only be made in connection with policies, contracts, or agreements issued to an owner that is not a natural person, and is an ''accredited investor'' as defined in Regulation D-Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 Code of Federal Regulations Section 230.501 et seq., as promulgated by the United States Securities and Exchange Commission, in transactions where the aggregate single premium or deposit for all policies, contracts, or agreements (excluding certificates issued under a group or master policy) issued to the owner containing guarantees authorized by this section is at least one million dollars ($1,000,000). Notwithstanding the foregoing, an insurer may issue policies, contracts, or agreements qualifying under paragraph (1) of subdivision (b) above, to a pension, retirement, or retirement medical benefit or profit-sharing plan reasonably expected to receive contributions in excess of two hundred fifty thousand dollars ($250,000) within the first 12 months following issuance of the policy, contract, or agreement and that has more than 10 participants. Policies, contracts, or agreements providing coverage in this state, by certificate or otherwise, that contain guarantees authorized by this section issued on a group basis shall be issued only to groups referred to in Chapter 2 (commencing with Section 10200) of Part 2 of Division 2.

SEC. 2. Section 10507.5 of the Insurance Code is amended to read:

10507.5. (a) An insurer may deliver or issue for delivery one or more policies, contracts, or agreements that establish the insurer's obligations under the policies, contracts, or agreements by reference to a portfolio of assets that is not owned by or possessed by the insurer, if the following requirements are met:

(1) The insurer is authorized to deliver, or issue for delivery, life insurance policies in this state.

(2) The insurer has at least one billion dollars ($1,000,000,000) in admitted assets or one hundred million dollars ($100,000,000) in capital and surplus, as reflected by the most recent financial statements on file with the commissioner. For the purposes of this section, ''capital and surplus'' includes capital and surplus plus the asset valuation reserve and one-half of the liability for dividends, all as reflected on the most recent financial statement on file with the commissioner.

(b) Policies, contracts, and agreements referred to in subdivision (a), that are not otherwise subject to filing under applicable law and regulation, shall be filed, before being marketed or issued in this state, by the insurer with the commissioner. If the commissioner finds that the policies, contracts, or agreements submitted pursuant to subdivision (a) contemplate practices that are unfair or unreasonable or otherwise inconsistent with the provisions of this code, he or she may disapprove of the forms of policies, contracts, or agreements specifying in what regard the policies, contracts, or agreements are unfair or unreasonable or otherwise inconsistent with the provisions of this code.

(c) As an alternative to the filing and approval procedure set forth in subdivision (b), if a bulletin is issued by the commissioner pursuant to subdivision (d), an insurer that satisfies eligibility criteria specified in that bulletin may file with the commissioner the proposed form of the policy, contract, or agreement, together with an officer's certificate, accompanied by an actuarial certification and demonstration, and other supporting material, all in accordance with procedures set forth in the bulletin authorized by subdivision (d). An insurer may issue and deliver a policy, contract, or agreement the day following approval by the commissioner of a filing under this subdivision. Absent explicit approval, an insurer may, no sooner than 30 working days after the filing of the policy, contract, or agreement and all required supporting documentation, issue and deliver any policy, contract, or agreement that has been filed pursuant to this subdivision if the commissioner has not notified the insurer in writing that the filing lacks the required documentation or that he or she objects to the filing upon grounds sufficient to disapprove the policy, contract, or agreement. The bulletin authorized in subdivision (d) shall set forth procedures providing the insurer an opportunity to respond to any objections. If the commissioner finds that the officer's certificate or the actuarial certification or

demonstration filed in support of the policy, contract, or agreement is false or incorrect, the commissioner may, in addition to taking any other lawful measures, including suspension of authority to use the policy, contract, or agreement, declare the insurer ineligible to utilize the alternative procedure authorized by this subdivision for a period not to exceed three years from the date of the filing of the policy, contract or agreement. The commissioner may summarily suspend the use of any policy, contract, or agreement used by the insurer pursuant to this subdivision on any grounds sufficient to disapprove the policy, contract, or agreement, or if the filing fails to include the required documents. This suspension may be prospective only. Suspension of use of a policy, contract, or agreement shall be in writing and shall specify the reasons for the suspension. Unless the commissioner in the suspension order or subsequent thereto specifies a later effective date for the suspension, any suspension shall be effective on the day following the receipt of the suspension order by the insurer. An insurer affected by any suspension, issued pursuant to this subdivision, of a policy, contract, or agreement may refile the policy, contract, or agreement with the commissioner pursuant to subdivision (b). The commissioner may suspend or discontinue filings of policies, contracts, or agreements under this subdivision at any time upon notice to affected insurers. Any filing by an insurer of a policy, contract, or agreement under this subdivision that is not accepted by the commissioner may be filed by the insurer pursuant to subdivision (b).

(d) The commissioner may issue, and amend from time to time thereafter, as he or she deems appropriate, a bulletin setting forth reasonable requirements for insurers that issue policies, contracts, or agreements referred to in subdivision (a), relating to all of the following:

(1) The reserves to be maintained by insurers for those policies, contracts, or agreements.

(2) The accounting and reporting of those policies, contracts, or agreements.

(3) The disclosure of information to be given to holders and prospective holders of those policies, contracts, or agreements.

(4) The qualification of persons selling those policies, contracts, or agreements on behalf of the insurers.

(5) The filing of those policies, contracts, or agreements with the commissioner.

(6) The filing with the commissioner of specified sales and financial information pertaining to those policies, contracts and agreements.

(7) The eligibility criteria and procedure for filing under subdivision (c).

(8) Other matters relating to those policies, contracts, and agreements as the commissioner considers necessary, proper, and advisable that are not inconsistent with this section.

This bulletin shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as regulations issued by the commissioner until the time that the commissioner issues additional or amended regulations.

(e) Upon completion of the determination of qualification required by subdivision (a), and, whether authorization to issue policies, contracts, or agreements referred to in subdivision (a) is granted or denied, the commissioner shall require the payment of the fee specified in Section 736 for the determination of qualification.

SEC. 3. Section 12957 of the Insurance Code is amended to read:

12957. The commissioner shall not withdraw approval of a policy theretofore approved by him except upon those grounds as, in his opinion, would authorize disapproval upon original submission thereof. Any withdrawal of approval shall be in writing and shall specify the ground thereof. If the insurer demands a hearing on a withdrawal, the hearing shall be granted and commenced within thirty days of filing of a written demand therefor with the commissioner. Unless the hearing is so commenced, the notice of withdrawal shall become ineffective upon the thirty-first day from and after the date of filing of the demand.

This section shall not apply to policies subject to the provisions of subdivision (f) of Section 10291.5, or to policies, contracts, or agreements that were approved under an alternative filing and approval procedure as provided for in subdivision (f) of Section 10506.4 or subdivision (c) of Section 10507.5.

CHAPTER 353

An act to add Section 219.5 to the Code of Civil Procedure, relating to jurors.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 219.5 is added to the Code of Civil Procedure, to read:

219.5. The Judicial Council shall adopt a rule of court, on or before January 1, 2005, requiring the trial courts to establish procedures for jury

service that gives peace officers, as defined by Section 830.5 of the Penal Code, scheduling accommodations when necessary.

CHAPTER 354

An act to amend Sections 99246 and 99314.6 of, and to add, repeal, and add Section 99268.17 of, the Public Utilities Code, relating to transportation.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 99246 of the Public Utilities Code is amended to read:

99246. (a) The transportation planning agency shall designate entities other than itself, a county transportation commission, a transit development board, or an operator to make a performance audit of its activities and the activities of each operator to whom it allocates funds. The transportation planning agency shall consult with the entity to be audited prior to designating the entity to make the performance audit.

Where a transit development board created pursuant to Division 11 (commencing with Section 120000) or a county transportation commission exists, the board or commission, as the case may be, shall designate entities other than itself, a transportation planning agency, or an operator to make a performance audit of its activities and those of operators located in the area under its jurisdiction to whom it directs the allocation of funds. The board or commission shall consult with the entity to be audited prior to designating the entity to make the performance audit.

(b) The performance audit shall evaluate the efficiency, effectiveness, and economy of the operation of the entity being audited and shall be conducted in accordance with the efficiency, economy, and program results portions of the Comptroller General's ''Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.'' Performance audits shall be conducted triennially pursuant to a schedule established by the transportation planning agency, transit development board, or county transportation commission having jurisdiction over the operator.

(c) The performance audit of the transportation planning agency, county transportation commission, or transit development board shall be submitted to the director. The transportation planning agency, county

transportation commission, or transit development board, as the case may be, shall certify in writing to the director that the performance audit of operators located in the area under its jurisdiction has been completed.

(d) With respect to an operator providing public transportation services, the performance audit shall include, but not be limited to, a verification of the operator's operating cost per passenger, operating cost per vehicle service hour, passengers per vehicle service hour, passengers per vehicle service mile, and vehicle service hours per employee, as defined in Section 99247. The performance audit shall include, but not be limited to, consideration of the needs and types of the passengers being served and the employment of part-time drivers and the contracting with common carriers of persons operating under a franchise or license to provide services during peak hours, as defined in subdivision (a) of Section 99260.2.

The performance audit may include performance evaluations both for the entire system and for the system excluding special, new, or expanded services instituted to test public transportation service growth potential.

(e) The performance audit prepared pursuant to this section shall be made available to the public pursuant to the provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 2. Section 99268.17 is added to the Public Utilities Code, to read:

99268.17. (a) Notwithstanding subdivision (a) of Section 99247, the following costs shall be excluded from the definition of operating cost for the purposes of calculating any required ratios of fare revenues to operating cost specified in this article:

(1) The additional operating costs required to provide comparable complementary paratransit service as required by Section 37.121 of Title 49 of the Code of Federal Regulations, pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as identified in the operator's paratransit plan pursuant to Section 37.139 of Title 49 of the Code of Federal Regulations that exceed the operator's costs required to provide comparable complementary paratransit service in the prior year as adjusted by the Consumer Price Index.

(2) The additional costs of liability insurance premiums that exceed the operator's liability insurance premiums in the prior year as adjusted by the Consumer Price Index.

(b) The exclusion of costs from the definition of operating costs in subdivision (a) applies solely for the purpose of this section and does not authorize an operator to report an operating cost other than as defined in subdivision (a) of Section 99247 or a ratio of fare revenue to operating cost other than as that ratio is described elsewhere in this article, to any of the following entities:

(1) The Controller pursuant to Section 99243.

(2) The entity conducting the fiscal audit pursuant to Section 99245.

(3) The entity conducting the performance audit pursuant to Section 99246.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. Section 99268.17 is added to the Public Utilities Code, to read:

99268.17. (a) Notwithstanding subdivision (a) of Section 99247, the additional operating costs required to provide comparable complementary paratransit service as required by Section 37.121 of Title 49 of the Code of Federal Regulations, pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as identified in the operator's paratransit plan pursuant to Section 37.139 of Title 49 of the Code of Federal Regulations that exceed the operator's costs required to provide comparable complementary paratransit service in the prior year as adjusted by the Consumer Price Index, shall be excluded from the definition of operating cost for the purposes of calculating any required ratios of fare revenues to operating cost specified in this article.

(b) The exclusion of costs from the definition of operating costs in subdivision (a) applies solely for the purpose of this section and does not authorize an operator to report an operating cost other than as defined in subdivision (a) of Section 99247 or a ratio of fare revenue to operating cost other than as that ratio is described elsewhere in this article, to any of the following entities:

(1) The Controller pursuant to Section 99243.

(2) The entity conducting the fiscal audit pursuant to Section 99245.

(3) The entity conducting the performance audit pursuant to Section 99246.

(c) This section shall become operative on January 1, 2007.

SEC. 4. Section 99314.6 of the Public Utilities Code is amended to read:

99314.6. Except as provided in Section 99314.7, the following eligibility standards apply:

(a) Except as provided in subdivision (b), funds shall not be allocated for operating purposes pursuant to Sections 99313 and 99314 to an operator unless the operator meets either of the following efficiency standards:

(1) The operator's total operating cost per revenue vehicle hour in the latest year for which audited data are available does not exceed the sum of the preceding year's total operating cost per revenue vehicle hour and an amount equal to the product of the percentage change in the Consumer

Price Index for the same period multiplied by the preceding year's total operating cost per revenue vehicle hour.

(2) The operator's average total operating cost per revenue vehicle hour in the latest three years for which audited data are available does not exceed the sum of the average of the total operating cost per revenue vehicle hour in the three years preceding the latest year for which audited data are available and an amount equal to the product of the average percentage change in the Consumer Price Index for the same period multiplied by the average total operating cost per revenue vehicle hour in the same three years.

(b) The transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, shall adjust the calculation of operating costs and revenue vehicle hours pursuant to subdivision (a) to account for either or both of the following factors:

(1) Exclusion of costs increases beyond the change in the Consumer Price Index for fuel; alternative fuel programs; power, including electricity; insurance premiums and payments in settlement of claims arising out of the operator's liability; or state or federal mandates, including the additional operating costs required to provide comparable complementary paratransit service as required by Section 37.121 of Title 49 of the Code of Federal Regulations, pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as identified in the operator's paratransit plan pursuant to Section 37.139 of Title 49 of the Code of Federal Regulations.

(2) Exclusion of startup costs for new services for a period of not more than two years.

(c) Funds withheld from allocation to an operator pursuant to subdivision (a) shall be retained by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, for reallocation to that operator for two years following the year of ineligibility. In a year in which an operator's funds are allocated pursuant to subdivision (a), funds withheld from allocation during a preceding year shall also be allocated. Funds not allocated before the commencement of the third year following the year of ineligibility shall be reallocated to cost effective high priority regional transit activities, as determined by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be. If that agency or commission, or the board, determines that no cost effective high priority regional transit activity exists, the unallocated funds shall revert to the Controller for reallocation.

(d) As used in this section, the following terms have the following meanings:

(1) ''Operating cost'' means the total operating cost as reported by the operator under the Uniform System of Accounts and Records, pursuant to Section 99243 and subdivision (a) of Section 99247.

(2) ''Revenue vehicle hours'' has the same meaning as ''vehicle service hours,'' as defined in subdivision (h) of Section 99247.

(3) ''Consumer Price Index,'' as applied to an operator, is the regional Consumer Price Index for that operator's region, as published by the United States Bureau of Labor Statistics. If a regional index is not published, the index for the State of California applies.

(4) ''New service'' has the same meaning as ''extension of public transportation services'' as defined in Section 99268.8.

(e) The restrictions in this section do not apply to allocations made for capital purposes.

(f) The exclusion of costs increases described in subdivision (b) applies solely for the purpose of calculating an operator's eligibility to claim funds pursuant to this section and does not authorize an operator to report an operating cost per revenue vehicle hour other than as described in this section and in Section 99247, to any of the following entities:

(1) The Controller pursuant to Section 99243.

(2) The entity conducting the fiscal audit pursuant to Section 99245.

(3) The entity conducting the performance audit pursuant to Section 99246.

CHAPTER 355

An act to amend Section 602 of the Penal Code, relating to baby stalking.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the

premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he

or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(u) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal

to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(v) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 1.1. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (u), subdivision (w), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for

tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or

request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(u) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(v) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(w) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 1.2. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support

vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(w) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 1.3. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (v), subdivision (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without

the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(x) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 602 of the Penal Code proposed by both this bill and AB 1263. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 602 of the Penal Code, and (3) SB 993 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1263, 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 602 of the Penal Code proposed by both this bill and SB 993. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 602 of the Penal Code, (3) AB 1263 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 993 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 602 of the Penal Code proposed by this bill, AB 1263, and SB 993. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 602 of the Penal Code, and (3) this bill is enacted after AB 1263, and SB

993, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 356

An act to amend Section 1372 of the Penal Code, and to amend Sections 4100, 7200, and 7200.06 of, and to repeal Sections 7229 and 7233 of, the Welfare and Institutions Code, relating to state hospitals.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 1372 of the Penal Code is amended to read:

1372. (a) (1) If the medical director of the state hospital or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested. For purposes of this section, the date of filing shall be the date on the return receipt.

(2) The court's order committing an individual to a state hospital or other treatment facility pursuant to Section 1370 shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving from the state hospital or treatment facility a copy of the certificate of restoration.

(3) The defendant shall be returned to the committing court in the following manner:

(A) A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person from the state hospital or other treatment facility to the court for further proceedings.

(B) The patient who is on outpatient status shall be returned by the sheriff to court through arrangements made by the outpatient treatment supervisor.

(C) all cases, the patient shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration. The state shall only pay for 10 hospital days for patients following the filing of a certificate of restoration of competency. The State Department of Mental Health shall report to the fiscal and appropriate policy committees of the Legislature on an annual basis in February, on the number of days that exceed the 10-day limit prescribed in this subparagraph. This report shall include, but not be limited to, a data sheet that itemizes by county the number of days that exceed this 10-day limit during the preceding year.

(b) If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Section 1370, the conservator shall certify that fact to the sheriff and district attorney of the county in which the defendant's case is pending, defendant's attorney of record, and the committing court.

(c) When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence.

(d) Where the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. Where the superior court approves the certificate of restoration to competence regarding a person on outpatient status, unless it appears that the person has refused to come to court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. Where the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted.

(e) A defendant subject to either subdivision (a) or (b) who is not admitted to bail or released under subdivision (d) may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or

facility of his or her original commitment or other appropriate secure facility approved by the community program director, the county mental health director, or the regional center director. The recommendation submitted to the court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed.

(f) Notwithstanding subdivision (e), if a defendant is returned by the court to a hospital or other facility for the purpose of maintaining competency to stand trial and that defendant is already under civil commitment to that hospital or facility from another county pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or as a developmentally disabled person committed pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, the costs of housing and treating the defendant in that facility following return pursuant to subdivision (e) shall be the responsibility of the original county of civil commitment.

SEC. 2. Section 4100 of the Welfare and Institutions Code is amended to read:

4100. The department has jurisdiction over the following institutions:

(a) Atascadero State Hospital.

(b) Coalinga State Hospital.

(c) Metropolitan State Hospital.

(d) Napa State Hospital.

(e) Patton State Hospital.

SEC. 3. Section 7200 of the Welfare and Institutions Code is amended to read:

7200. There are in the state the following state hospitals for the care, treatment, and education of the mentally disordered:

(a) Metropolitan State Hospital near the City of Norwalk, Los Angeles County.

(b) Atascadero State Hospital near the City of Atascadero, San Luis Obispo County.

(c) Napa State Hospital near the City of Napa, Napa County.

(d) Patton State Hospital near the City of San Bernardino, San Bernardino County.

(e) Coalinga State Hospital near the City of Coalinga, Fresno County.

SEC. 4. Section 7200.06 of the Welfare and Institutions Code is amended to read:

7200.06. (a) Of the 1,362 licensed beds at Napa State Hospital, at least 20 percent of these beds shall be available in any given fiscal year for use by counties for contracted services. Of the remaining beds, in no case shall the population of patients whose placement has been required pursuant to the Penal Code, exceed 980.

(b) After construction of the perimeter security fence is completed at Napa State Hospital, no patient whose placement has been required pursuant to the Penal Code shall be placed outside the perimeter security fences, with the exception of placements in the General Acute Care and Skilled Nursing Units. The State Department of Mental Health shall ensure that appropriate security measures are in place for the general acute care and skilled nursing units.

(c) Any alteration to the security perimeter structure or policies will be made in conjunction with representatives of the City of Napa, the County of Napa, and local law enforcement agencies.

SEC. 5. Section 7229 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 7233 of the Welfare and Institutions Code is repealed.

CHAPTER 357

An act to add Section 525.5 to the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 525.5 is added to the Harbors and Navigation Code, to read:

525.5. (a) On or before January 1, 2005, the department shall submit recommendations to the Legislature on strategies to prevent recreational vessels from being abandoned and to facilitate the ability of owners to turn in their recreational vessels to public agencies for disposal in lieu of abandonment.

(b) The recommendations shall be based on the expertise and data available to the department in relation to the existing abandoned watercraft abatement program administered by the department.

(c) The recommendations shall consider all of the following:

(1) The needs and desires of the recreational boating community in being able to properly and economically dispose of recreational vessels in lieu of abandoning them.

(2) Any environmental, economic, safety, or practical problems that need to be addressed before initiating a program to allow recreational vessels to be turned in to a public agency in lieu of abandonment, and the associated benefits of that program or any program that can prevent recreational vessels from being abandoned.

(3) An estimate of the number of vessels that may be turned in to local agencies in lieu of abandonment.

(d) (1) The director shall appoint an Abandoned Vessel Advisory Committee to assist the department in preparing recommendations.

(2) The membership of the committee shall include, but need not be limited to, representatives of all of the following:

(A) Boating law enforcement agencies.

(B) Entities that engage in the salvage or disposal of recreational vessels.

(C) Boat dealers.

(D) Boating, sailing, and yachting organizations.

(E) Owners and operators of public and private marina facilities.

(3) The members of the committee shall serve without compensation and may not be reimbursed by the state for expenses.

(4) The department shall assist the committee in carrying out its duties.

CHAPTER 358

An act to add Sections 17070.755 and 17584.3 to the Education Code, relating to public schools.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 17070.755 is added to the Education Code, immediately following Section 17070.75, to read:

17070.755. A priority for the use of funds in the restricted account established pursuant to Section 17070.75, shall be to ensure that facilities, including, but not limited to, restroom facilities for pupils, are functional and that they meet local hygiene standards generally applicable to public facilities.

SEC. 2. Section 17584.3 is added to the Education Code, to read:

17584.3. (a) A priority for use of funds appropriated pursuant to Section 17584 shall be to ensure that facilities, including, but not limited to, restroom facilities for pupils, are functional and that they meet local hygiene standards generally applicable to public facilities.

(b) This section does not authorize the use of funds apportioned pursuant to Section 17584 for regular operational and maintenance costs of restrooms and other facilities. The funds apportioned pursuant to Section 17584 may only be used for the deferred maintenance of those facilities consistent with subdivision (a) of Section 17582.

CHAPTER 359

An act to amend, repeal, and add Section 209 of the Code of Civil Procedure, relating to jurors.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 209 of the Code of Civil Procedure is amended to read:

209. (a) Any prospective trial juror who has been summoned for service, and who fails to attend as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

(b) In lieu of imposing sanctions for contempt as set forth in subdivision (a), the court may impose reasonable monetary sanctions, as provided in this subdivision, on a prospective juror who has not been excused pursuant to Section 204 after first providing the prospective juror with notice and an opportunity to be heard. If a juror fails to respond to the initial summons within 12 months, the court may issue a second summons indicating that the person failed to appear in response to a previous summons and ordering the person to appear for jury duty. Upon the failure of the juror to appear in response to the second summons, the court may issue a failure to appear notice informing the person that failure to respond may result in the imposition of money sanctions. If the prospective juror does not attend the court within the time period as directed by the failure to appear notice, the court shall issue an order to show cause. Payment of monetary sanctions imposed pursuant to this

subdivision does not relieve the person of his or her obligation to perform jury duty.

(c) (1) The court may give notice of its intent to impose sanctions by either of the following means:

(A) Verbally to a prospective juror appearing in person in open court.

(B) The issuance on its own motion of an order to show cause requiring the prospective juror to demonstrate reasons for not imposing sanctions. The court may serve the order to show cause by certified or first-class mail.

(2) The monetary sanctions imposed pursuant to subdivision (b) may not exceed two hundred fifty dollars ($250) for the first violation, seven hundred fifty dollars ($750) for the second violation, and one thousand five hundred dollars ($1,500) for the third and any subsequent violation. Monetary sanctions may not be imposed on a prospective juror more than once during a single juror pool cycle. The prospective juror may be excused from paying sanctions pursuant to subdivision (b) of Section 204 or in the interests of justice. Notwithstanding any other provision of law, the full amount of any sanction paid shall be deposited in a special account in the county treasury and transmitted from that account monthly to the Controller for deposit in the Trial Court Trust Fund. It is the intent of the Legislature that the funds derived from the monetary sanctions authorized in this section be allocated, to the extent feasible, to the family courts and the civil courts. The Judicial Council shall, by rule, provide for a procedure by which a prospective juror against whom a sanction has been imposed by default may move to set aside the default.

(d) On or before December 31, 2005, the Judicial Council shall report to the Legislature regarding the effects of the implementation of subdivisions (b) and (c). The report shall include, but not be limited to, information regarding any change in rates of response to juror summons, the amount of moneys collected pursuant to subdivision (c), the efficacy of the default procedures adopted in rules of court, and how, if at all, the Legislature may wish to alter this chapter to further attainment of its objectives.

(e) 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 209 is added to the Code of Civil Procedure, to read:

209. Any prospective trial juror who has been summoned for service, and who fails to attend the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

This section shall become operative on January 1, 2007.

CHAPTER 360

An act to add Section 381.1 to the Insurance Code, relating to automobile insurance.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 381.1 is added to the Insurance Code, to read:

381.1. (a) The information described in subdivision (b) shall be provided to the policyholder at the time of application for, or issuance of, a policy of automobile insurance, as defined in Section 660, and in each renewal notice sent prior to the renewal of the policy. However, information described in paragraphs (1) and (2) of subdivision (b) may be provided to the policyholder separately upon request. The information shall not be presented as an abbreviation or code unless a key to the abbreviations or codes used is also included.

(b) For each rated driver or vehicle, as applicable, the number of incidents or other relevant data that apply to each of the following categories:

(1) Traffic convictions.

(2) At-fault accidents (property damage or bodily injury).

(3) Estimated annual mileage driven.

(4) Years of driving experience.

(5) Vehicle use (e.g., pleasure, commute, business).

(6) ZIP Code of the location where the vehicle is garaged, if different from the mailing address of the policyholder.

(7) Driver-related discounts applied.

(8) Vehicle-related discounts or surcharges applied.

(c) The disclosure of information required by this section may contain additional provisions that are not in conflict with, or derogation of, these provisions.

(d) Each insurer shall comply with this section no later than March 1, 2004.

CHAPTER 361

An act to amend Section 602 of the Penal Code, relating to trespass.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (u) and in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to

be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately

upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(u) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(v) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

SEC. 1.1. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (u), subdivision (w), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the

premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he

or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(u) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(v) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(w) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 1.2. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (v) and in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of

the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly

closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

SEC. 1.3. Section 602 of the Penal Code is amended to read:

602. Except as provided in paragraph (2) of subdivision (v), subdivision (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) must be displayed at intervals not less than

three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(*l*) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of

the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning

or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, as defined in Section 171.5.

(2) A violation of this subdivision that is responsible for the evacuation of an airport terminal and is responsible in any part for delays or cancellations of scheduled flights is punishable by imprisonment of not more than one year in a county jail if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(x) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein.

Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or both, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 602 of the Penal Code proposed by both this bill and AB 936. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 602 of the Penal Code, and (3) SB 993 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 936, 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 602 of the Penal Code proposed by both this bill and SB 993. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 602 of the Penal Code, (3) AB 936 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 993 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 602 of the Penal Code proposed by this bill, AB 936, and SB 993. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 602 of the Penal Code, and (3) this bill is enacted after AB 936, and SB 993, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates

a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 362

An act to amend Sections 25200.19, 25250.1, 25250.7, and 25250.9 of, and to add Sections 25160.4 and 25160.6 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 25160.4 is added to the Health and Safety Code, to read:

25160.4. (a) On and after January 1, 2005, and except as provided in subdivision (b), if an offsite hazardous waste facility operator either rejects a partial shipment of hazardous waste, or rejects an entire shipment of hazardous waste after signing the manifest accompanying the shipment, the facility operator shall prepare a new manifest to accompany the rejected hazardous waste when it is returned to the generator or shipped to an alternate facility designated by the generator.

(b) To the extent that the United States Environmental Protection Agency adopts regulations under the federal act that preempt or are more stringent than the requirements of this section, an offsite hazardous waste facility, generator, and transporter shall instead comply with those regulations on and after the date those federal regulations become effective in California, or on and after the effective date of regulations adopted by the department in accordance with those federal regulations, whichever date occurs first.

SEC. 2. Section 25160.6 is added to the Health and Safety Code, to read:

25160.6. (a) (1) If a hazardous waste shipment is rejected in its entirety before the original manifest is signed by an offsite hazardous waste facility operator, the original manifest shall be used to transport the rejected load to either the generator or an alternate facility designated by the generator.

(2) An offsite hazardous waste facility operator is not required to sign a manifest pursuant to this subdivision until the hazardous waste listed on the manifest is fully unloaded at the facility. If the transporter leaves

a loaded or partially loaded trailer at the facility, the facility operator shall sign the manifest before the transporter departs the facility.

(3) The hazardous waste facility operator shall, when preparing a manifest to accompany a rejected load of hazardous waste, enter the number of the original manifest in Box 19 on the new manifest, and the facility operator shall enter the number of the new manifest in Box 19 on those copies of the original manifest still in the facility operator's possession. The facility operator shall enter this information elsewhere on the manifest if required by regulations adopted by the department. The facility operator shall also use Box 19 on the new manifest, or any other box that is required by the department's regulations, to identify the shipment as a rejected load.

(4) After an offsite hazardous waste facility operator rejects a shipment of hazardous waste, the transporter shall transport the hazardous waste, accompanied by the original manifest or a new manifest, to either the generator or an alternate facility designated by the generator. The transporter shall obtain a signature on the manifest from the operator of the alternate designated facility or the generator, whichever receives the rejected shipment.

(b) For purposes of receiving hazardous waste rejected by an offsite hazardous waste facility operator, the generator of the hazardous waste shall be considered a designated facility for the receipt of hazardous waste generated by that generator. For purposes of this section, ''designated facility'' has the same meaning as that term is defined in Section 66260.10 of Title 22 of the California Code of Regulations, including any amendments thereto.

(c) (1) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section is not the generator of that hazardous waste for purposes of this chapter, including any regulations adopted pursuant to this chapter, nor an arranger for disposal of the waste, nor a transporter who chooses the location for disposal of waste.

(2) (A) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section is the offeror of the rejected hazardous waste.

(B) For purposes of this chapter and regulations adopted pursuant to this chapter, ''offeror'' means a person who ships hazardous waste and is responsible for ensuring that the hazardous waste is properly prepared for shipment but who is not an arranger for disposal or a transporter who chooses the location for disposal of the waste.

(3) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section shall comply with the department's regulations concerning manifest use, container condition and management, and container

packaging, labeling, marking, and placarding with respect to the rejected hazardous waste.

(d) Except as provided in subdivision (e), the generator of hazardous waste who receives a rejected shipment of that hazardous waste may accumulate the rejected hazardous waste onsite for 90 days or less, in accordance with the requirements of paragraph (1) of subdivision (a) of Section 66262.34 of Title 22 of the California Code of Regulations. The generator of the rejected hazardous waste shall label or mark the hazardous waste in a manner that indicates that it is rejected hazardous waste and shall include the date it was received by the generator. If the generator of the rejected hazardous waste commingles it with other hazardous wastes, the shorter of any applicable accumulation time limits shall apply to the commingled hazardous waste.

(e) A transporter of hazardous waste, that consolidates shipments of waste pursuant to Section 25160.2 and whose consolidated shipment is rejected by an offsite hazardous waste facility, may hold that shipment on the transport vehicle at the transporter's facility for no more than 10 days from the date the shipment is rejected, consistent with paragraph (3) of subdivision (b) of Section 25123.3. The transporter may not commingle the consolidated shipment with any other waste.

(f) A generator of hazardous waste who receives a shipment of rejected waste shall comply with the requirements of Section 66265.71 and 66265.72 of Title 22 of the California Code of Regulations.

(g) To the extent that the United States Environmental Protection Agency adopts regulations under the federal act that preempt or are more stringent than the requirements of this section, offsite hazardous waste facilities, generators, and transporters shall instead comply with those regulations on and after the date those federal regulations become effective in California, or on and after the effective date of regulations adopted by the department in accordance with those federal regulations, whichever date occurs first.

SEC. 3. Section 25200.19 of the Health and Safety Code is amended to read:

25200.19. (a) A hazardous waste facility that obtains a hazardous waste facilities permit to receive hazardous wastes from offsite locations may conduct bulk, packaged, or containerized hazardous waste unloading operations in accordance with the requirements of this section, except to the extent that the facility is subject to conditions and limitations in the permit concerning the receipt and unloading of hazardous wastes from offsite locations.

(b) A hazardous waste facility that has a hazardous waste facilities permit may conduct bulk, packaged, or containerized hazardous waste loading operations in accordance with the requirements of this section, except to the extent that the facility is subject to conditions and

limitations in the permit concerning the shipment and loading for shipment of hazardous wastes to offsite locations.

(c) Unloading and loading operations subject to subdivisions (a) and (b) shall be conducted in accordance with all of the following requirements, unless otherwise specified in the hazardous waste facilities permit:

(1) As part of a loading or unloading operation conducted within the boundary of a hazardous waste facility, the hazardous waste shall not be held longer than 10 days outside of an authorized unit at the facility. The hazardous waste shall be moved directly between the authorized unit and the transport vehicle and shall not be held for any time off the transport vehicle outside of the authorized unit, except for that incidental period of time that is necessary to safely and effectively move the waste from the transport vehicle to the authorized unit or from the authorized unit to the transport vehicle.

(2) All loading and unloading operations shall be conducted within the boundary of the hazardous waste facility.

(3) There shall be adequate capacity within an authorized unit at the hazardous waste facility for all hazardous waste being loaded or unloaded in accordance with this section. Hazardous waste may not be held on any transport vehicle which, if unloaded, would exceed the permitted capacity of the originating or receiving unit at the hazardous waste facility, unless the waste is held on the transport vehicle as part of an authorized transfer operation.

(4) (A) The loading or unloading of bulk hazardous waste shall be conducted within the hazardous waste facility with a containment device or other system capable of collecting and containing leaks and spills that may reasonably be anticipated to occur during loading and unloading operations until the leaked or spilled material is removed, unless otherwise approved by the department in a regulation or permit.

(B) The department may establish specific secondary containment regulations for bulk transfer areas to effectuate the purposes of subparagraph (A). In addition to, or in lieu of, these regulations, the department may specify secondary containment requirements for bulk transfer areas in individual facility permits. Those regulations and permit conditions shall be designed to allow the practical use of trucks and railcars. The standards may include the use of movable containment devices or other systems meeting this criteria.

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

(1) ''Loading'' means activities associated with removing packaged or containerized hazardous waste from an authorized unit or removing bulk hazardous waste from an authorized container, tank, or unit within a permitted hazardous waste facility, placing it on a transport vehicle

within the facility, and shipping the waste offsite to another location in accordance with this chapter.

(2) ''Transport vehicle'' means a device, including a trailer, to propel, move or draw hazardous wastes by air, rail, highway, or water that is operated pursuant to the requirements of this chapter.

(3) ''Unloading'' means activities associated with the receipt of bulk, packaged, or containerized hazardous waste at a permitted hazardous waste facility from an offsite location, by means of a transport vehicle, and placing that packaged or containerized hazardous waste into an authorized unit or placing that bulk hazardous waste into an authorized container, tank, or unit within the facility in accordance with this chapter.

(e) The requirements of this section do not apply to hazardous waste being held or transferred pursuant to subparagraph (B) of paragraph (6) of subdivision (b) of Section 25123.3.

SEC. 4. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) ''Used oil'' means all of the following:

(i) Oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities.

(ii) Material that is subject to regulation as used oil under Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) Examples of used oil are spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and bearing oil; hydraulic oil; metal-working oil; refrigeration oil; and railroad drainings.

(C) ''Used oil'' does not include any of the following:

(i) Oil that has a flashpoint below 100 degrees Fahrenheit or that has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) (I) Wastewater, the discharge of which is subject to regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b)) or 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil.

(II) For purposes of this clause, ''de minimis quantities of used oil'' are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of

oil lost to the wastewater treatment system during washing or draining operations.

(III) This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewaters.

(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) (I) Oil containing more than 1000 ppm total halogens, which shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Title 40 of the Code of Federal Regulations.

(II) A person may rebut the presumption specified in subclause (I) by demonstrating that the used oil does not contain hazardous waste, including, but not limited to, in the manner specified in subclause (III).

(III) The presumption specified in subclause (I) is rebutted if it is demonstrated that the used oil that is the source of total halogens at a concentration of more than 1000 ppm is solely either household waste, as defined in Section 261.4(b)(1) of Title 40 of the Code of Federal Regulations, or is collected from conditionally exempt small quantity generators, as defined in Section 261.5 of Title 40 of the Code of Federal Regulations. Nothing in this subclause authorizes any person to violate the prohibition specified in Section 25250.7.

(2) ''Board'' means the California Integrated Waste Management Board.

(3) (A) ''Recycled oil'' means any oil that meets all of the following requirements specified in clauses (i) to (iii), inclusive:

(i) Is produced either solely from used oil, or is produced solely from used oil that has been mixed with one or more contaminated petroleum products or oily wastes, other than wastes listed as hazardous under the federal act, provided that if the resultant mixture is subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations, the mixture is managed as a hazardous waste in accordance with all applicable hazardous waste regulations, and the recycled oil produced from the mixture is not subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations. If the oily wastes with which the used oil is mixed were recovered from a unit treating hazardous wastes that are not oily wastes, these recovered oily wastes are not excluded from being considered as oily wastes for purposes of this section or Section 25250.7.

(ii) The recycled oil meets one of the following requirements:

(I) The recycled oil is produced by a generator lawfully recycling its oil.

(II) The recycled oil is produced at a used oil recycling facility that is authorized to operate pursuant to Section 25200 or 25200.5 solely by means of one or more processes specifically authorized by the department. The department may not authorize a used oil recycling facility to use a process in which used oil is mixed with one or more contaminated petroleum products or oily wastes unless the department determines that the process to be authorized for mixing used oil with those products or wastes will not substantially contribute to the achievement of compliance with the specifications of subparagraph (B).

(III) The recycled oil is produced in another state, and the used oil recycling facility where the recycled oil is produced, and the process by which the recycled oil is produced, are authorized by the agency authorized to implement the federal act in that state.

(iii) Has been prepared for reuse and meets all of the following standards:

(I) The oil meets the standards of purity set forth in subparagraph (B).

(II) If the oil was produced by a generator lawfully recycling its oil or the oil is lawfully produced in another state, the oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B).

(III) The oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Title 40 of the Code of Federal Regulations.

(IV) The oil is not subject to regulation as a hazardous waste under the federal act.

(V) If the oil was produced lawfully at a used oil recycling facility in this state, the oil is not hazardous pursuant to any characteristic or constituent for which the department has made the finding required by subparagraph (B) of paragraph (2) of subdivision (a) of Section 25250.19, except for one of the characteristics or constituents identified in the standards of purity set forth in subparagraph (B).

(B) The following standards of purity are in effect for recycled oil, in liquid form, unless the department, by regulation, establishes more stringent standards:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However, recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100 degrees Fahrenheit.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Title 40 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): less than 2 mg/kg.

(C) Compliance with the specifications of subparagraph (B) or with the requirements of clauses (iv) and (v) of subparagraph (B) of paragraph (1) shall not be met by blending or diluting used oil with crude or virgin oil, or with a contaminated petroleum product or oily waste, except as provided in subclause (II) of clause (ii) of subparagraph (A), and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(D) This paragraph does not apply to oil that is to be disposed of or used in a manner constituting disposal.

(4) ''Used oil recycling facility'' means a facility that reprocesses or re-refines used oil.

(5) ''Used oil storage facility'' means a storage facility, as defined in subdivision (b) of Section 25123.3, that stores used oil.

(6) ''Used oil transfer facility'' means a transfer facility, as defined in subdivision (a) of Section 25123.3, that either stores used oil for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning agency, or that transfers used oil from one container to another.

(7) (A) For purposes of this section and Section 25250.7 only, ''contaminated petroleum product'' means a product that meets all of the following conditions:

(i) It is a hydrocarbon product whose original intended purpose was to be used as a fuel, lubricant, or solvent.

(ii) It has not been used for its original intended purpose.

(iii) It is not listed in Subpart D of Part 261 (commencing with Section 261.1) of Title 40 of the Code of Federal Regulations.

(iv) It has not been mixed with a hazardous waste other than another contaminated petroleum product.

(B) Nothing in this section or Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous waste to any requirements of this chapter.

(b) Unless otherwise specified, used oil that meets either of the following conditions is not subject to regulation by the department:

(1) The used oil has not been treated by the generator of the used oil, the generator claims the used oil is exempt from regulation by the department, and the used oil meets all of the following conditions:

(A) The used oil meets the standards set forth in subparagraph (B) of paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B) of paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Title 40 of the Code of Federal Regulations.

(D) The used oil is not subject to regulation as either hazardous waste or used oil under the federal act.

(E) The generator of the used oil has complied with the notification requirements of subdivision (c) and the testing and recordkeeping requirements of Section 25250.19.

(F) The used oil is not disposed of or used in a manner constituting disposal.

(2) The used oil meets all the requirements for recycled oil specified in paragraph (3) of subdivision (a), the requirements of subdivision (c), and the requirements of Section 25250.19.

(c) Used oil recycling facilities and generators lawfully recycling their own used oil that are the first to claim that recycled oil meets the requirements specified in paragraph (2) of subdivision (b) shall maintain an operating log and copies of certification forms, as specified in Section 25250.19. Any person who generates used oil, and who claims that the used oil is exempt from regulation pursuant to paragraph (1) of subdivision (b), shall notify the department, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator or recycling facility, whichever first claimed that the used oil or recycled oil meets the standards and criteria, and on the transporter or the user of the used oil or recycled oil, whichever has possession, to prove that the oil meets those standards and criteria.

(d) Used oil shall be managed in accordance with the requirements of this chapter and any additional applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

SEC. 5. Section 25250.7 of the Health and Safety Code is amended to read:

25250.7. (a) Except as provided in subdivision (b) or (c), no person who generates, stores, or transfers used oil shall intentionally contaminate used oil with other hazardous waste other than minimal amounts of vehicle fuel.

(b) A used oil transfer or recycling facility authorized by the department pursuant to Section 25200, 25200.5, or 25201.6 may mix used oil with a contaminated petroleum product or with an oily waste other than wastes listed as hazardous under the federal act, if all of the following conditions are met:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a hazardous waste in accordance with all applicable hazardous waste regulations.

(2) The resultant mixture is used to produce recycled oil, as defined in paragraph (3) of subdivision (a) of Section 25250.1, at a used oil recycling facility solely by means of a process that has been specifically authorized by the department to treat these mixtures.

(3) The mixing of the used oil with a contaminated petroleum product or an oily waste is specifically authorized in the facility's permit.

(c) A generator or transporter may mix used oil with one or more contaminated petroleum products if the mixture is managed in accordance with Section 25143.2 or if all of the following conditions apply:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a hazardous waste in accordance with all applicable hazardous waste regulations.

(2) (A) Except as provided in subparagraph (B), the resultant mixture is transported to a used oil recycling facility that issues a statement, in writing, to the generator or transporter that the mixture will be used to produce recycled oil, as defined in paragraph (3) of subdivision (a) of Section 25250.1, at a facility authorized to operate pursuant to Section 25200 or 25200.5 solely by means of a process that has been specifically authorized by the department to treat these mixtures.

(B) If the resultant mixture is transported to a used oil recycling facility located in another state, that facility is authorized by the agency authorized to implement the federal act in that state.

(3) The mixing is not conducted in a manner that violates subparagraph (C) of paragraph (3) of subdivision (a) of Section 25250.1.

(4) The transporter tests the halogen content of the used oil to demonstrate compliance with clause (vi) of subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 before mixing the used oil with the contaminated petroleum product.

SEC. 6. Section 25250.9 of the Health and Safety Code is amended to read:

25250.9. (a) (1) Except as provided in subdivision (b), a hazardous waste transporter who transports used oil shall provide a written notification in the form below to each generator from whom the transporter receives used oil:

IMPORTANT NOTICE REGARDING THE DISPOSITION OF YOUR USED OIL
PLEASE SIGN AFTER READING

_____ (used oil transporter) hereby advises _____ (used oil generator) that _____ (generator's) shipment of used oil may be transported to a facility that is required to comply with federal regulations applicable to management of used oil, but that is not required to comply with the more stringent requirements applicable to hazardous waste management facilities. California facilities that handle or process used oil are required to meet those more stringent requirements, and some out-of-state facilities that process used oil also meet those requirements. These include more stringent leak detection and prevention requirements, engineering certifications of tank integrity, and financial assurances for closure and accidental releases. It is lawful to send used oil to out-of-state facilities that comply only with federal used oil management standards and not these more stringent requirements.

This notification is for information purposes only.

_____ (signed, Transporter) Date: _____

_____ (signed, Generator) Date: _____

(2) A hazardous waste transporter shall provide the notice required pursuant to paragraph (1) at least once each year, except if the notice is provided pursuant to subdivision (g).

(b) A transporter is not required to provide a generator with the notification specified in subdivision (a) if either of the following apply:

(1) The generator from whom the transporter receives used oil specifically designates in writing that the used oil is to be transported to a specified facility and that facility either is authorized by the department to produce used oil into recycled oil or it is operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(2) The transporter annually certifies to the generator, in writing, that any used oil that the transporter receives from the generator will be transported only to a facility that is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(c) A transporter may make the certification specified in subdivision (a) even if the used oil the transporter receives from the generator is first transported to a transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, or a storage facility authorized by the department to store used oil, before the used oil is sent to a facility that is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(d) Any person who makes a material misrepresentation in the course of implementing the requirements of this section is in violation of this chapter. A transporter that relies in reasonable good faith upon a statement made by a facility to comply with this section is not in violation of this chapter.

(e) Each transporter subject to this section shall retain the documents necessary to demonstrate compliance with this section, including, but not limited to, each signed notification form, for as long as the transporter is required to retain the manifest for the used oil to which the documents apply.

(f) This section shall not be construed to prohibit the transportation of used oil to any facility located outside the state, or to impose liability upon, or in any way affect the liability of a generator whose used oil is transported to a facility located outside the state in accordance with the requirements of this section.

(g) A transporter may place the notification and signature and date block specified in subdivision (a) on the back of the service order the transporter provides to the generator, if the notification language and associated signature and date block specified in subdivision (a) is the only wording appearing on that side of the service order and the transporter and generator sign the signature and date block each time the generator receives a service order.

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 363

An act to amend Sections 7071.17, 7085.5, 7085.6, 7090.1, 7099.2, 7121, 7122.1, and 7143 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 7071.17 of the Business and Professions Code is amended to read:

7071.17. (a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an unsatisfied final judgment, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the bond is filed with the board. The bond required by this section is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the bond, satisfaction of judgment, or notarized copy of any accord applicable under this section is filed.

(b) Notwithstanding any other provision of law, all licensees shall notify the registrar in writing of any unsatisfied final judgment imposed on the licensee. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied final judgment. The suspension shall not be removed until proof of satisfaction of the judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar. If the licensee notifies the registrar in writing within 90 days of the imposition of any unsatisfied final judgment, the licensee shall, as a condition to the continual maintenance of the license, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to all unsatisfied judgments applicable under this section. The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. In lieu of filing the bond required by this section, the licensee may provide the board with a notarized copy of any accord reached with any individual holding an unsatisfied final judgment.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to comply with the provisions of this section can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord has been filed as set forth under this section.

(e) This section applies only with respect to an unsatisfied final judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) Except as otherwise provided, this section shall not apply to an applicant or licensee when the financial obligation covered by this section has been discharged in a bankruptcy proceeding.

(g) Except as otherwise provided, the bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the financial obligations covered by this section, the board may authorize the bond to be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term ''judgment'' also includes any final arbitration award where the time to file a petition for

a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(j) The qualifying person and any member of the licensee or personnel of the licensee named as a judgment debtor in an unsatisfied final judgment shall be automatically prohibited from serving as an officer, director, associate, partner, owner, qualifying individual, or other personnel of record of another licensee. This prohibition shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, a cash deposit may be submitted in lieu of the bond.

(*l*) Notwithstanding subdivision (f), the failure of a licensee to notify the registrar of any unsatisfied final judgment in accordance with this section is cause for disciplinary action.

SEC. 2. Section 7085.5 of the Business and Professions Code is amended to read:

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

(a) All ''agreements to arbitrate'' shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars or any other remedy sought. The appropriate fee shall be paid by the board from the Contractors' License Fund.

(b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the

board or appointed arbitration association, in its discretion, directs that a greater number of arbitrators be appointed.

(2) In all cases in which a complaint has been referred to arbitration pursuant to subdivision (b) of Section 7085, the board or the appointed arbitration association shall have the power to appoint an arbitrator to hear the matter.

(3) The board shall adopt regulations setting minimum qualification standards for listed arbitrators based upon relevant training, experience, and performance.

(c) No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(d) The board or appointed arbitration association may appoint another arbitrator if a vacancy occurs, or if an appointed arbitrator is unable to serve in a timely manner.

(e) (1) The board or appointed arbitration association shall provide the parties with a list of the times and dates, and locations of the hearing to be held. The parties shall notify the arbitrator, within seven calendar days of the mailing of the list, of the times and dates convenient to each party. If the parties fail to respond to the arbitrator within the seven-day period, the arbitrator shall fix the time, place, and location of the hearing. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who so desires may be present at the inspection.

(2) The board or appointed arbitration association shall fix the time, place, and location of the hearing for all cases referred to arbitration pursuant to subdivision (b) of Section 7085. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who desires may be present at the inspection.

(f) Any person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be

discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(g) Hearings shall be adjourned by the arbitrator only for good cause.

(h) A record is not required to be taken of the proceedings. However, any party to the proceeding may have a record made at its own expense. The parties may make appropriate notes of the proceedings.

(i) The hearing shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the case by both parties. Consistent with the expedited nature of arbitration, the arbitrator shall establish the extent of, and schedule for, the production of relevant documents and other information, the identification of any witnesses to be called, and a schedule for any hearings to elicit facts solely within the knowledge of one party. The complaining party shall present its claims, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

(j) The arbitration may proceed in the absence of any party who, after due notice, fails to be present. The arbitrator shall require the attending party to submit supporting evidence in order to make an award. An award for the attending party shall not be based solely on the fact that the other party has failed to appear at the arbitration hearing.

(k) The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be required.

(*l*) The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing. However, a copy shall be simultaneously transmitted to all other parties and to the board or appointed arbitration association for transmittal to the arbitrator or board appointed arbitrator.

(m) The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearing closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as requested by the arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

(n) The hearing may be reopened on the arbitrator's own motion.

(o) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state his or her objections to the arbitrator in writing, within 10 calendar days of close of hearing, shall be deemed to have waived his or her right to object.

(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith, or for the entry of judgment on an award made thereunder, may be served upon any party (A) by regular mail addressed to that party or his or her attorney at the party's last known address, or (B) by personal service.

(2) Notwithstanding paragraph (1), in all cases referred to arbitration pursuant to subdivision (b) of Section 7085 in which the contractor fails or refuses to return an executed copy of the notice to arbitrate within the time specified, any papers or process specified in paragraph (1) to be sent to the contractor, including the notice of hearing, shall be mailed by certified mail to the contractor's address of record.

(q) The award shall be made promptly by the arbitrator, and unless otherwise agreed by the parties, no later than 30 calendar days from the date of closing the hearing, closing a reopened hearing, or if oral hearing has been waived, from the date of transmitting the final statements and proofs to the arbitrator.

The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any extension and the reason therefor.

(r) (1) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board. The arbitrator, in his or her sole discretion, may award costs or expenses.

(2) The amendments made in paragraph (1) during the 2003–04 Regular Session shall not be interpreted to prevent an arbitrator from awarding a complainant all direct costs and expenses for the completion or repair of the project.

(s) The award shall become final 30 calendar days from the date the arbitration award is issued. The arbitrator, upon written application of a party to the arbitration, may correct the award upon the following grounds:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, things, or property referred to in the award.

(2) There is any other clerical error in the award, not affecting the merits of the controversy.

An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the

application on the arbitrator, and all other parties to the arbitration. Any party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.

The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the arbitrator or appointed arbitration association within 30 calendar days after the award has become final. The award shall be in writing, and shall be signed by the arbitrator or a majority of them. If no appeal is filed within the 30-calendar day period, it shall become a final order of the registrar.

(t) Service of the award by certified mail shall be effective if a certified letter containing the award, or a true copy thereof, is mailed by the arbitrator or arbitration association to each party or to a party's attorney of record at their last known address, address of record, or by personally serving any party. Service may be proved in the manner authorized in civil actions.

(u) The board shall pay the expenses of one expert witness appointed by the board when the services of an expert witness are requested by either party involved in arbitration pursuant to this article and the case involves workmanship issues that are itemized in the complaint and have not been repaired or replaced. Parties who choose to present the findings of another expert witness as evidence shall pay for those services. Payment for expert witnesses appointed by the board shall be limited to the expert witness costs for inspection of the problem at the construction site, preparation of the expert witness' report, and expert witness fees for appearing or testifying at a hearing. All requests for payment to an expert witness shall be submitted on a form that has been approved by the registrar. All requests for payment to an expert witness shall be reviewed and approved by the board prior to payment. The registrar shall advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

(v) The arbitrator shall interpret and apply these rules insofar as they relate to his or her powers and duties.

(w) The following shall apply as to court procedure and exclusion of liability:

(1) The board, the appointed arbitration association, or any arbitrator in a proceeding under these rules is not a necessary party in judicial proceedings relating to the arbitration.

(2) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(3) The board, the appointed arbitration association, or any arbitrator is not liable to any party for any act or omission in connection with any arbitration conducted under these rules.

SEC. 3. Section 7085.6 of the Business and Professions Code is amended to read:

7085.6. (a) (1) The failure of a licensee to comply with an arbitration award rendered under this article shall result in the automatic suspension of a license by operation of law.

(2) The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator's award, and that the license shall be automatically suspended 30 calendar days from the date of that notice.

(3) The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar.

(4) Reinstatement may be made at any time following the suspension by complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within 90 days of the date of the automatic suspension, the license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the arbitration award. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.

(b) The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of that person by another licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

SEC. 4. Section 7090.1 of the Business and Professions Code is amended to read:

7090.1. (a) (1) Notwithstanding any other provisions of law, the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in the automatic suspension of a license by operation of law 30 days after noncompliance with the terms of the order.

(2) The registrar shall notify the licensee in writing of the failure to comply with the final order and that the license shall be suspended 30 days from the date of the notice.

(3) The licensee may contest the determination of noncompliance within 15 days after service of the notice, by written notice to the registrar. Upon receipt of the written notice, the registrar may reconsider the determination and after reconsideration may affirm or set aside the suspension.

(4) Reinstatement may be made at any time following the suspension by complying with the final order of the citation. If no reinstatement of the license is made within one year of the date of the automatic suspension, the cited license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the final order of the citation. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.

(b) The cited licensee shall also be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar, and the employment, election, or association of that person by a licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days of the date of disassociation. Upon failure to replace the qualifier within 90 days of the prohibition, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

SEC. 5. Section 7099.2 of the Business and Professions Code is amended to read:

7099.2. (a) The board shall promulgate regulations covering the assessment of civil penalties under this article which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation.

(2) The good faith of the licensee or applicant for licensure being charged.

(3) The history of previous violations.

(b) Except as otherwise provided by this chapter, no civil penalty shall be assessed in an amount greater than five thousand dollars ($5,000). A civil penalty not to exceed fifteen thousand dollars ($15,000) may be assessed for a violation of Section 7114 or 7118.

SEC. 6. Section 7121 of the Business and Professions Code is amended to read:

7121. Any person who has been denied a license for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, or associate of any partnership, corporation, firm, or association whose application for a license has been denied for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as a member, officer, director, or associate had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended, or revoked, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, and the employment, election, or association of this type of person by a licensee shall constitute grounds for disciplinary action.

SEC. 7. Section 7122.1 of the Business and Professions Code is amended to read:

7122.1. Notwithstanding Section 7068.2 or any other provision of this chapter, the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license after the act or omission has occurred that resulted in a citation pursuant to Section 7099 shall not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with the citation. Section 7122.5 shall apply to any qualifying partner, responsible managing officer, or responsible managing employee of a licensee that fails to comply with a citation after it is final.

SEC. 8. Section 7143 of the Business and Professions Code is amended to read:

7143. A license that is suspended for any reason which constitutes a basis for suspension under this chapter, is subject to expiration and shall be renewed as provided in this chapter, but this renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in any activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

CHAPTER 364

An act to amend Section 14311 of the Elections Code, relating to elections.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 14311 of the Elections Code is amended to read:

14311. (a) A voter who has moved from one address to another within the same county and who has not reregistered to vote at that new address may, at his or her option, vote on the day of the election at the polling place at which he or she is entitled to vote based on his or her current residence address, or at the office of the county elections official or other central location designated by that elections official. The voter shall be reregistered at the place of voting for future elections.

(b) Voters casting ballots under this section shall be required to vote by provisional ballot, as provided in Section 14310.

CHAPTER 365

An act to amend Section 7121 of the Family Code, to amend Sections 68087 and 77209 of the Government Code, to amend Section 1465.7 of, and to add Section 11105.04 to, the Penal Code, and to amend Sections 213.5 and 355 of, and to add Section 213.6 to, the Welfare and Institutions Code, relating to courts.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 7121 of the Family Code is amended to read:

7121. (a) Before the petition for a declaration of emancipation is heard, notice the court determines is reasonable shall be given to the minor's parents, guardian, or other person entitled to the custody of the minor, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.

(b) The clerk of the court shall also notify the local child support agency of the county in which the matter is to be heard of the proceeding. If the minor is a ward of the court, notice shall be given to the probation department. If the child is a dependent child of the court, notice shall be given to the county welfare department.

(c) The notice shall include a form whereby the minor's parents, guardian, or other person entitled to the custody of the minor may give their written consent to the petitioner's emancipation. The notice shall include a warning that a court may void or rescind the declaration of emancipation and the parents may become liable for support and medical insurance coverage pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 and Sections 17400, 17402, 17404, and 17422.

SEC. 2. Section 68087 of the Government Code is amended to read:

68087. (a) A state surcharge of 10 percent shall be levied on any fee specified in paragraph (1) of subdivision (c) of Section 68085, except those fees established pursuant to Section 631.3 of the Code of Civil Procedure, and Section 68086. This surcharge shall be in addition to any other court-related fee.

(b) The clerk of the court shall cause the amount collected to be transmitted to the Trial Court Trust Fund.

(c) It is the intent of the Legislature that nothing in this section shall change the existing distribution or amounts of the fees specified in paragraph (1) of subdivision (c) of Section 68085 provided to local jurisdictions and the state.

(d) This section 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 that date.

SEC. 3. Section 77209 of the Government Code is amended to read:

77209. (a) There is in the State Treasury the Trial Court Improvement Fund.

(b) The Judicial Council shall reserve funds for the following projects by allocating 1 percent of the annual appropriation for the trial courts to the Trial Court Improvement Fund as follows:

(1) At least one-half of 1 percent of the total appropriation for trial court operations shall be set aside as a reserve which shall not be

allocated prior to March 15 of each year unless allocated to a court or courts for urgent needs.

(2) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund to courts which have fully unified to the extent permitted by law and which meet additional criteria as may be established by the Judicial Council.

(3) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund for statewide projects or programs for the benefit of the trial courts.

(c) Any funds in the Trial Court Improvement Fund that are unencumbered at the end of the fiscal year shall be reappropriated to the Trial Court Improvement Fund for the following fiscal year.

(d) Moneys deposited in the Trial Court Improvement Fund shall be placed in an interest bearing account. Any interest earned shall accrue to the fund and shall be disbursed pursuant to subdivision (e).

(e) Moneys deposited in the Trial Court Improvement Fund may be disbursed for purposes of this section.

(f) Moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council for automated recordkeeping system improvements pursuant to that section and in furtherance of Rule 991 of the California Rules of Court, as it read on July 1, 1996.

(g) Moneys deposited in the Trial Court Improvement Fund shall be administered by the Judicial Council. The Judicial Council may, with appropriate guidelines, delegate to the Administrative Director of the Courts the administration of the fund. Moneys in the fund may be expended to implement trial court projects approved by the Judicial Council. Expenditures may be made to vendors or individual trial courts that have the responsibility to implement approved projects.

(h) Notwithstanding other provisions of this section, the 2 percent automation fund moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council to individual courts of the counties for deposit in the Trial Court Operations Fund of the county from which the money was collected in an amount not less than the revenues collected in the local 2 percent automation funds in fiscal year 1994–95. The Judicial Council shall allocate the remainder of the moneys deposited in the Trial Court Improvement Fund as specified in this section.

For the purposes of this subdivision, the term ''2 percent automation fund'' means the fund established pursuant to Section 68090.8 as it read on June 30, 1996.

(i) Royalties received from the publication of uniform jury instructions shall be deposited in the Trial Court Improvement Fund and used for the improvement of the jury system.

(j) The Judicial Council shall present an annual report to the Legislature on the use of the Trial Court Improvement Fund. The report shall include appropriate recommendations.

SEC. 4. Section 1465.7 of the Penal Code is amended to read:

1465.7. (a) A state surcharge of 20 percent shall be levied on the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464.

(b) This surcharge shall be in addition to the state penalty assessed pursuant to Section 1464 of the Penal Code and may not be included in the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464.

(c) After a determination by the court of the amount due, the clerk of the court shall cause the amount of the state surcharge collected to be transmitted to the General Fund.

(d) Notwithstanding Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code and subdivision (b) of Section 68090.8 of the Government Code, the full amount of the surcharge shall be transmitted to the State Treasury to be deposited in the General Fund. Of the amount collected from the total amount of the fines, penalties, and surcharges imposed, the amount of the surcharge established by this section shall be transmitted to the State Treasury to be deposited in the General Fund.

(e) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the surcharge prescribed by this section.

(f) When amounts owed by an offender as a result of a conviction are paid in installment payments, payments shall be credited pursuant to Section 1203.1d. The amount of the surcharge established by this section shall be transmitted to the State Treasury prior to the county retaining or disbursing the remaining amount of the fines, penalties, and forfeitures imposed.

(g) Notwithstanding Sections 40512.6 and 42007 of the Vehicle Code, the term ''total bail'' as used in subdivision (a) of Section 42007 of the Vehicle Code does not include the surcharge set forth in this section. The surcharge set forth in this section shall be levied on what would have been the base fine had the provisions of Section 42007 not been invoked and the proceeds from the imposition of the surcharge shall be treated as otherwise set forth in this section.

(h) This section 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 that date.

SEC. 5. Section 11105.04 is added to the Penal Code, to read:

11105.04. (a) A designated Court Appointed Special Advocate (CASA) program may submit to the Department of Justice fingerprint images and related information of employment and volunteer candidates for the purpose of obtaining information as to the existence and nature of any record of state or federal level convictions or state or federal level arrests for which the department establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the department pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the department.

(b) When requesting state level criminal offender record information pursuant to this section, the designated CASA program shall request subsequent arrest notification, pursuant to Section 11105.2 of the Penal Code, for all employment and volunteer candidates.

(c) The department shall respond to the designated CASA program with information as delineated in subdivision (p) of Section 11105 of the Penal Code.

(d) The department shall charge a fee sufficient to cover the cost of processing the requests for state and federal level criminal offender record information.

(e) For purposes of this section, a designated CASA program is a local court-appointed special advocate program that has adopted and adheres to the guidelines established by the Judicial Council and which has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers to be appointed by the court to help define the best interests of children in juvenile court dependency and wardship proceedings. For purposes of this section, there shall be only one designated CASA program in each California county.

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

SEC. 6. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court issuing an ex parte order pursuant to this

subdivision may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and to reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search shall be conducted as described in subdivision (a) of Section 6306 of the Family Code.

(2) Prior to deciding whether to issue an order under this part, the court shall consider the following information obtained pursuant to a search conducted under paragraph (1): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an outstanding warrant exists against the subject of the search, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, as appropriate and as soon as practicable.

(B) If the results of the search conducted pursuant to paragraph (1) indicate that the subject of the search is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer so notified shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the subject person, as appropriate and as soon as practicable.

(*l*) Upon making any order for custody or visitation pursuant to this section, the court shall follow the procedures specified in subdivisions (c) and (d) of Section 6323 of the Family Code.

SEC. 7. Section 213.6 is added to the Welfare and Institutions Code, to read:

213.6. (a) If a person named in a temporary restraining order or emergency protective order issued under this part is personally served with the order and notice of hearing with respect to a subsequent restraining order or protective order based thereon, but the person does not appear at the hearing either in person or by counsel, and the terms and conditions of the restraining order or protective order are identical to those of the prior temporary restraining order, except for the duration

of the order, the subsequent restraining order or protective order may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(b) The judicial forms for temporary restraining orders or emergency protective orders issued under this part shall contain a statement in substantially the following form:

''If you have been personally served with a temporary restraining order or emergency protective order and notice of hearing, but you do not appear at the hearing either in person or by counsel, and a restraining order or protective order is issued at the hearing that does not differ from the prior temporary restraining order or protective order except with respect to the duration of the order, a copy of the order will be served upon you by mail at the following address: ____ . If that address is not correct or if you wish to verify that the temporary order was made permanent without substantive change, call the clerk of the court at ____.''

SEC. 8. Section 355 of the Welfare and Institutions Code is amended to read:

355. (a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300. Objections that could have been made to evidence introduced shall be deemed to have been made by any parent or guardian who is present at the hearing and unrepresented by counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of the right to counsel. Objections that could have been made to evidence introduced shall be deemed to have been made by any unrepresented child.

(b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).

(1) For the purposes of this section, ''social study'' means any written report furnished to the juvenile court and to all parties or their counsel by the county probation or welfare department in any matter involving the custody, status, or welfare of a minor in a dependency proceeding pursuant to Articles 6 (commencing with Section 300) to 12 (commencing with Section 385), inclusive, of Chapter 2 of Division 2.

(2) The preparer of the social study shall be made available for cross-examination upon a timely request by any party. The court may deem the preparer available for cross-examination if it determines that

the preparer is on telephone standby and can be present in court within a reasonable time of the request.

(3) The court may grant a reasonable continuance not to exceed 10 days upon request by any party if the social study is not provided to the parties or their counsel within a reasonable time before the hearing.

(c) (1) If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions:

(A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay.

(B) The hearsay declarant is a minor under the age of 12 years who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under the age of 12 years shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

(C) The hearsay declarant is a peace officer as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, a health practitioner described in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7 of the Penal Code, a social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code, or a teacher who holds a credential pursuant to Chapter 2 (commencing with Section 44200) of Part 24 of Division 3 of Title 2 of the Education Code. For the purpose of this subdivision, evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court.

(D) The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.

(2) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed hearsay evidence and it gives the petitioner a reasonable period of time to meet the objection prior to a contested hearing.

(d) This section shall not be construed to limit the right of any party to the jurisdictional hearing to subpoena a witness whose statement is contained in the social study or to introduce admissible evidence

relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

CHAPTER 366

An act to amend Section 8617 of the Business and Professions Code, and to amend Sections 11732 and 13000 of the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 8617 of the Business and Professions Code is amended to read:

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars ($1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or Chapter 14.5, or any regulations adopted pursuant to these chapters, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action

shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of issuance of the written notice of proposed action.

A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.

If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(e) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 20 days after the Disciplinary Review Committee has ruled on the appeal.

(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any inspection stamps, notice of completion stamps, or pesticide use stamps until the assessed fine has been paid.

Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's

license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

(g) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(h) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) of this section, ''commissioner'' as used in subdivisions (c), (d), and (e) includes the board's registrar.

SEC. 2. Section 11732 of the Food and Agricultural Code is amended to read:

11732. It is unlawful for any person to advertise, solicit, or operate as a pest control business in any county unless the person has registered with the commissioner for the current calendar year.

The registration shall be in the form prescribed by the commissioner and shall show all of the following information:

(a) Name and address of the registrant.

(b) Number and kind of units to be operated in the county.

(c) Type of pests that are intended to be controlled.

(d) Any other information as the commissioner may require.

SEC. 3. Section 13000 of the Food and Agricultural Code is amended to read:

13000. (a) Except as provided in subdivisions (b) and (c), an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within two years of the occurrence of the violation.

(b) When a commissioner submits a completed investigation to the director for action by the director or the Attorney General, the action shall be commenced within one year of that submission. However, nothing in this subdivision precludes the director from returning the investigation to the commissioner for action to be commenced by the commissioner, the district attorney, the city prosecutor, or the city attorney, as provided in subdivision (a).

(c) An action brought by the director to collect unpaid mill assessments and delinquent fees required by Article 4.5 (commencing with Section 12841) or an action brought by the director to collect civil penalties pursuant to Section 12999.4 for violations of Article 4.5

(commencing with Section 12841), Section 12993, or Section 12995 shall be commenced within four years of the occurrence of the violation.

CHAPTER 367

An act to add Section 68511.6 to the Government Code, relating to courts.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 68511.6 is added to the Government Code, to read:

68511.6. The Judicial Council shall adopt appropriate rules providing for notice to the public and for public input to decisions concerning administrative and financial functions of a trial court, including, but not limited to, decisions relating to the budget of the trial court prior to submittal to the Judicial Council and subsequent to budget approval. The Judicial Council shall also adopt appropriate rules requiring trial courts to give notice to the public of other appropriate decisions concerning the administrative and financial functions of the trial courts. The provisions of this section do not apply to the judicial or adjudicative functions of the trial courts or to the assignment of judges.

CHAPTER 368

An act to amend Sections 56329, 56505, 56505.1, and 56506 of the Education Code, relating to special education.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 56329 of the Education Code is amended to read:

56329. As part of the assessment plan given to parents or guardians pursuant to Section 56321, the parent or guardian of the pupil shall be provided with a written notice that shall include all of the following information:

(a) Upon completion of the administration of tests and other assessment materials, an individualized education program team meeting, including the parent or guardian and his or her representatives, shall be scheduled, pursuant to Section 56341, to determine whether the pupil is an individual with exceptional needs as defined in Section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent or guardian.

(b) A parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(c) The public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent or guardian still has the right for an independent educational assessment, but not at public expense.

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free, appropriate public education to the child, and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with Section 56500) regarding the child. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(d) If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian. Any observation conducted pursuant to this subdivision shall only be of the pupil who is the subject of the observation and may not include the observation or assessment of any other pupil in the proposed placement. The observation or assessment by a public education agency of a pupil other than the pupil who is the subject of the observation pursuant to this subdivision may be conducted, if at all, only with the consent of the parent or guardian pursuant to this article. The results of any observation or assessment of any other pupil in violation of this subdivision shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other pupil.

SEC. 2. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil.

(c) The hearing shall be conducted by a person knowledgeable in the laws governing special education and administrative hearings pursuant to Section 56504.5, and who has satisfactorily completed training pursuant to this subdivision. The superintendent shall establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control mechanisms to be used to ensure that the hearings are fair and the decisions are accurate. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) Pursuant to subsection (a) of Section 300.514 of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.526 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed. As provided in subsection (c) of Section 300.514 of Title 34 of the Code of Federal Regulations, if the decision of a hearing officer in a due process hearing or a state review official in an administrative appeal agrees with the pupil's parent or guardian that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local agency and the parent or guardian.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written, or, at the option of the parents or guardians, electronic verbatim record of the hearing.

(5) The right to written, or, at the option of the parent or guardian, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents or guardians in accordance with paragraph (2) of subsection (c) of Section 300.509 of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to paragraph (4) of subsection (h) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to paragraph (3) of subsection (a) of Section 300.509 of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for

a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(h) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(i) Nothing in this chapter shall preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.512 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), unless the public education agency and the parents of the child agree otherwise, the child involved in the hearing shall remain in his or her present educational placement. Any action brought under this subdivision shall adhere to the provisions of subsection (b) of Section 300.512 of Title 34 of the Code of Federal Regulations.

(j) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

SEC. 3. Section 56505.1 of the Education Code is amended to read:

56505.1. The hearing officer may do any of the following during the hearing:

(a) Question a witness on the record prior to any of the parties doing so.

(b) With the consent of both parties to the hearing, request that conflicting experts discuss an issue or issues with each other while on the record.

(c) Visit the proposed placement site or sites when the physical attributes of the site or sites are at issue.

(d) Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony or the hearing is continued for at least five days after the witness is identified and before the witness testifies.

(e) Order that an impartial assessment of the pupil be conducted for purposes of the hearing and continue the hearing until the assessment has

been completed. The cost of any assessment ordered under this subdivision shall be included in the contract between the department and the organization or entity conducting the hearing.

(f) Bar introduction of any documents or the testimony of any witnesses not disclosed to the hearing officer at least five business days prior to the hearing and bar introduction of any documents or the testimony of any witnesses at the hearing without the consent of the other party not disclosed to the parties at least five business days prior to the hearing pursuant to paragraph (7) of subdivision (e) of Section 56505.

(g) In decisions relating to the provision of related services by other public agencies, the hearing officer may call as witnesses independent medical specialists qualified to present evidence in the area of the pupil's medical disability. The cost for any witness called to testify under this subdivision shall be included in the contract between the department and the organization or entity conducting the hearing.

(h) Set a reasonable limit on the length of the hearing after consideration of all of the following:

(1) The issues to be heard.

(2) The complexity of the facts to be proven.

(3) The ability of the parties and their representatives, if any, to present their respective cases.

(4) The estimate of the parties as to the time needed to present their respective cases.

SEC. 4. Section 56506 of the Education Code is amended to read:

56506. In addition to the due process hearing rights enumerated in subdivision (b) of Section 56501, the following due process rights extend to the pupil and the parent:

(a) Written notice to the parent of his or her rights in language easily understood by the general public and in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible. The written notice of rights shall include, but not be limited to, those prescribed by Section 56341.

(b) The right to initiate a referral of a child for special education services pursuant to Section 56303.

(c) The right to obtain an independent educational assessment pursuant to subdivision (b) or (c) of Section 56329.

(d) The right to participate in the development of the individualized education program and to be informed of the availability under state and federal law of free appropriate public education and of all available alternative programs, both public and nonpublic.

(e) Written parental consent pursuant to Section 56321 shall be obtained before any assessment of the pupil is conducted unless the public education agency prevails in a due process hearing relating to the assessment. Informed parental consent need not be obtained in the case

of a reassessment of the pupil if the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the pupil's parent has failed to respond.

(f) Written parental consent pursuant to Section 56321 shall be obtained before the pupil is placed in a special education program.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

CHAPTER 369

An act to amend Sections 11100, 11100.1, 11104, 11106, 11107, and 11107.1 of the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.

(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0).
(35) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4).
(36) Red phosphorous, including white phosphorous, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite.
(37) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, ''proper identification'' for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller's permit identification number; city or county business license number; license issued by the California Department of Health Services; registration number issued by the Federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the California Department of Justice; motor vehicle operator's license; or other identification issued by a state.

(2) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the

identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(5) (A) Any sale, transfer, furnishing, or receipt of any product that contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption

pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(6) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be

punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(h) For the purposes of this article, the following terms have the following meanings:

(1) ''Drug store'' is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) ''General merchandise store'' is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) ''Grocery store'' is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) ''Pediatric liquid'' means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) ''Retail distributor'' means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. ''Retail distributor'' includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) ''Sale for personal use'' means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). ''Sale for personal use'' also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor

of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 2. Section 11100.1 of the Health and Safety Code is amended to read:

11100.1. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that obtains from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of that transaction to the Department of Justice 21 days in advance of obtaining the substance. However, the Department of Justice may authorize the submission of reports within 72 hours, or within a timeframe and in a manner acceptable to the Department of Justice, after the actual physical obtaining of a specified substance with respect to repeated transactions between a furnisher and an obtainer involving the substances, if the Department of Justice determines that the obtainer has established a record of utilization of the substances for lawful purposes. This section does not apply to any person whose prescribing or dispensing activities are subject to the reporting requirements set forth in Section 11164, or to any manufacturer, wholesaler, retailer, or other person who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice, or to any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(b) (1) Any person specified in subdivision (a) who does not submit a report as required by that subdivision shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment.

SEC. 3. Section 11104 of the Health and Safety Code is amended to read:

11104. (a) Any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes any of the substances listed in subdivision (a) of Section 11100 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture a controlled substance is guilty of a felony.

(b) Any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof,

where the value of the goods in the transaction exceeds one hundred dollars ($100), or any chemical substance specified in Section 11107.1, with knowledge that the recipient will use the goods or chemical substance to unlawfully manufacture a controlled substance, is guilty of a misdemeanor.

(c) Any person who receives or distributes any substance listed in subdivision (a) of Section 11100, or any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, where the value of the goods in the transaction exceeds one hundred dollars ($100), or any chemical substance specified in Section 11107.1, with the intent of causing the evasion of the recordkeeping or reporting requirements of this article, is guilty of a misdemeanor.

SEC. 4. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) (1) (A) Any manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. For any substance added to the list set forth in subdivision (a) of Section 11100 on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for a permit for a period not to exceed six months from the listing date of the substance.

(B) An intracompany transfer does not require a permit if the transferor is a permittee. Transfers between company partners or between a company and an analytical laboratory do not require a permit if the transferor is a permittee and a report as to the nature and extent of the transfer is made to the Department of Justice pursuant to Section 11100 or 11100.1.

(C) This paragraph shall not apply to any manufacturer, wholesaler, retailer, or other person or entity that is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice, or to any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(2) Except as provided in paragraph (3), no permit shall be required of any manufacturer, wholesaler, retailer, or other person or entity for the sale, transfer, furnishing, or obtaining of any product which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription

pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(3) A permit shall be required for the sale, transfer, furnishing, or obtaining of preparations in solid or liquid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, unless (A) the transaction involves the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products by retail distributors as defined by this article over the counter and without a prescription, or (B) the transaction is made by a person or business entity exempted from the permitting requirements of this subdivision under paragraph (1).

(b) (1) The department shall provide application forms, which are to be completed under penalty of perjury, in order to obtain information relating to the identity of any applicant applying for a permit, including, but not limited to, the business name of the applicant or the individual name, and if a corporate entity, the names of its board of directors, the business in which the applicant is engaged, the business address of the applicant, a full description of any substance to be sold, transferred, or otherwise furnished or to be obtained, the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100, the training, experience, or education relating to this use, and any additional information requested by the department relating to possible grounds for denial as set forth in this section, or by applicable regulations adopted by the department.

(2) The requirement for the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100 does not require applicants or permittees to reveal their chemical processes that are typically considered trade secrets and proprietary business information.

(c) Applicants and permittees shall authorize the department, or any of its duly authorized representatives, as a condition of being permitted, to make any examination of the books and records of any applicant, permittee, or other person, or visit and inspect the business premises of any applicant or permittee during normal business hours, as deemed necessary to enforce this chapter.

(d) An application may be denied, or a permit may be revoked or suspended, for reasons which include, but are not limited to, the following:

(1) Materially falsifying an application for a permit or an application for the renewal of a permit.

(2) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, is or has been convicted of a misdemeanor or felony relating to any of

the substances listed under subdivision (a) of Section 11100, any misdemeanor drug-related offense, or any felony under the laws of this state or the United States.

(3) Failure to maintain effective controls against the diversion of precursors to unauthorized persons or entities.

(4) Failure to comply with this article or any regulations of the department adopted thereunder.

(5) Failure to provide the department, or any duly authorized federal or state official, with access to any place for which a permit has been issued, or for which an application for a permit has been submitted, in the course of conducting a site investigation, inspection, or audit; or failure to promptly produce for the official conducting the site investigation, inspection, or audit any book, record, or document requested by the official.

(6) Failure to provide adequate documentation of a legitimate business purpose involving the applicant's or permittee's use of any substance listed in subdivision (a) of Section 11100.

(7) Commission of any act which would demonstrate actual or potential unfitness to hold a permit in light of the public safety and welfare, which act is substantially related to the qualifications, functions, or duties of a permitholder.

(8) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, willfully violates or has been convicted of violating, any federal, state, or local criminal statute, rule, or ordinance regulating the manufacture, maintenance, disposal, sale, transfer, or furnishing of any of those substances.

(e) Notwithstanding any other provision of law, an investigation of an individual applicant's qualifications, or the qualifications of an applicant's owner, manager, agent, representative, or employee who has direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for a permit may include review of his or her summary criminal history information pursuant to Sections 11105 and 13300 of the Penal Code, including, but not limited to, records of convictions, regardless of whether those convictions have been expunged pursuant to Section 1203.4 of the Penal Code, and any arrests pending adjudication.

(f) The department may retain jurisdiction of a canceled or expired permit in order to proceed with any investigation or disciplinary action relating to a permittee.

(g) The department may grant permits on forms prescribed by it, which shall be effective for not more than one year from the date of issuance and which shall not be transferable. Applications and permits

shall be uniform throughout the state, on forms prescribed by the department.

(h) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department which shall not exceed the application processing costs of the department.

(i) A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, following the timely filing of a complete renewal application with all supporting documents, the payment of a permit renewal fee not to exceed the application processing costs of the department, and a review of the application by the department.

(j) Selling, transferring, or otherwise furnishing or obtaining any substance specified in subdivision (a) of Section 11100 without a permit is a misdemeanor or a felony.

(k) (1) No person under 18 years of age shall be eligible for a permit under this section.

(2) No business for which a permit has been issued shall employ a person under 18 years of age in the capacity of a manager, agent, or representative.

(*l*) (1) An applicant, or an applicant's employees who have direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for an initial permit shall submit with the application two sets of 10-print fingerprint cards for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant, unless the applicant's employees are exempted from this requirement by the Department of Justice. These exemptions may only be obtained upon the written request of the applicant.

(2) In the event of subsequent changes in ownership, management, or employment, the permittee shall notify the department in writing within 15 calendar days of the changes, and shall submit one set of 10-print fingerprint cards for each individual not previously fingerprinted under this section.

SEC. 5. Section 11107 of the Health and Safety Code is amended to read:

11107. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells to any person or entity in this state or any other state, any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, where the value of the goods sold in the transaction exceeds one hundred dollars ($100) shall do the following:

(1) Notwithstanding any other law, in any face-to-face or will-call sale, the seller shall prepare a bill of sale which identifies the date of sale, cost of product, method of payment, specific items and quantities purchased, and the proper purchaser identification information, all of

which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(A) For the purposes of this section, ''proper purchaser identification'' includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, and the signature of the purchaser.

(B) The seller shall retain the original bill of sale containing the purchaser identification information for five years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by the Department of Justice for a period of not less than five years.

(2) (A) Notwithstanding any other law, in all sales other than face-to-face or will-call sales the seller shall maintain for a period of five years the following sales information: the name and address of the purchaser, date of sale, product description, cost of product, method of payment, method of delivery, delivery address, and valid identifying information.

(B) For the purposes of this paragraph, ''valid identifying information'' includes two or more of the following: federal tax identification number; resale tax identification number; city or county business license number; license issued by the State Department of Health Services; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the Department of Justice; motor vehicle operator's license; or other identification issued by a state.

(C) The seller shall, upon the request of any law enforcement officer or any authorized representative of the Attorney General, produce a report or record of sale containing the information in a readily presentable manner.

(D) If a common carrier is used, the seller shall maintain a manifest regarding the delivery in a readily presentable manner and for a period of five years.

(b) This section shall not apply to any wholesaler who is licensed by the California State Board of Pharmacy and registered with the federal Drug Enforcement Administration of the United States Department of Justice and who sells laboratory glassware or apparatus, any chemical

reagent or solvent, or any combination thereof, to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(c) A violation of this section is a misdemeanor.

(d) For the purposes of this section, the following terms have the following meanings:

(1) ''Laboratory glassware'' includes, but is not limited to, condensers, flasks, separatory funnels, and beakers.

(2) ''Apparatus'' includes, but is not limited to, heating mantles, ring stands, and rheostats.

(3) ''Chemical reagent'' means a chemical that reacts chemically with one or more precursors, but does not become part of the finished product.

(4) ''Chemical solvent'' means a chemical that does not react chemically with a precursor or reagent and does not become part of the finished product. A ''chemical solvent'' helps other chemicals mix, cools chemical reactions, and cleans the finished product.

SEC. 6. Section 11107.1 of the Health and Safety Code is amended to read:

11107.1. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells to any person or entity in this state or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, paladium black, iodine, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride shall do the following:

(1) (A) Notwithstanding any other provision of law, in any face-to-face or will-call sale, the seller shall prepare a bill of sale which identifies the date of sale, cost of sale, method of payment, the specific items and quantities purchased and the proper purchaser identification information, all of which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(B) For the purposes of this paragraph, ''proper purchaser identification'' includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the Environmental Protection Agency certification number or resale tax identification number assigned to the individual or business

entity for which the individual is purchasing any chlorofluorocarbon product, and the signature of the purchaser.

(C) The seller shall retain the original bill of sale containing the purchaser identification information for five years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by the Department of Justice for a period of not less than five years.

(2) (A) Notwithstanding any other law, in all sales other than face-to-face or will-call sales the seller shall maintain for a period of five years the following sales information: the name and address of the purchaser, date of sale, product description, cost of product, method of payment, method of delivery, delivery address, and valid identifying information.

(B) For the purposes of this paragraph, ''valid identifying information'' includes two or more of the following: federal tax identification number; resale tax identification number; city or county business license number; license issued by the State Department of Health Services; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the Department of Justice; motor vehicle operator's license; or other identification issued by a state.

(C) The seller shall, upon the request of any law enforcement officer or any authorized representative of the Attorney General, produce a report or record of sale containing the information in a readily presentable manner.

(D) If a common carrier is used, the seller shall maintain a manifest regarding the delivery in a readily presentable manner for a period of five years.

(b) Any manufacturer, wholesaler, retailer, or other person or entity in this state that purchases any item listed in subdivision (a) of Section 11107.1 shall do the following:

(1) Provide on the record of purchase information on the source of the items purchased, the date of purchase, a description of the specific items, the quantities of each item purchased, and the cost of the items purchased.

(2) Retain the record of purchase for three years in a readily presentable manner and present the record of purchase upon demand to any law enforcement officer or authorized representative of the Attorney General.

(c) (1) Except as provided in paragraph (2), no manufacturer, wholesaler, retailer, or other person or entity shall sell to any individual,

and no individual shall buy, more than eight ounces of iodine in any 30-day period.

(2) For purposes of this section, these requirements do not apply to either of the following:

(A) Any sale of tincture of iodine or any topical solution containing iodine that is equal to or less than one hundred dollars ($100).

(B) Any sale of iodine made to a licensed health care facility, any manufacturer licensed by the State Department of Health Services, or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes the iodine to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(d) (1) A first violation of this section is a misdemeanor.

(2) Any person who has previously been convicted of a violation of this section shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or both the fine and imprisonment.

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 more closely conform California law with federal requirements and streamline procedures for the sales of controlled precursors as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 370

An act to amend, repeal, and add Section 18533 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 18533 of the Revenue and Taxation Code is amended to read:

18533. (a) (1) Notwithstanding subdivision (a) and the first sentence of subdivision (b) of Section 19006:

(A) An individual who has made a joint return may elect to seek relief under the procedures prescribed under subdivision (b), and

(B) If the individual is eligible to elect the application of subdivision (c), the individual may, in addition to any election under subparagraph (A), elect to limit the individual's liability for any deficiency with respect to the joint return in the manner prescribed under subdivision (c).

(2) Any determination under this section shall be made without regard to community property laws.

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,

(B) On that return there is an understatement of tax attributable to erroneous items of one individual filing the joint return,

(C) The other individual filing the joint return establishes that in signing the return he or she did not know of, and had no reason to know of, that understatement,

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

(E) The other individual elects (in the form and manner as the Franchise Tax Board may prescribe) the benefits of this subdivision not later than the date that is two years after the date the Franchise Tax Board has begun collection activities with respect to the individual making the election,

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to that understatement.

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term ''understatement'' has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) that is not allocable to the individual under subdivision (d), that election may not apply to that deficiency (or portion). This subparagraph does not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term ''disqualified asset'' means any property or right to property transferred to an individual making the election under this subdivision with respect to a joint return by the other individual filing the joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) (I) For purposes of clause (i), except as provided in subclause (II), any transfer that is made after the date that is one year before the date on which the first notice of proposed assessment under Article 3 (commencing with Section 19031) of Chapter 4 is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Subclause (I) does not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to that decree or to any transfer that an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) For purpose of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount that bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency (or portion thereof) is attributable to—

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to one individual under paragraph (3), that deficiency (or portion) shall be allocated to that individual. Any item so allocated may not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the election under subdivision (b) or (c) may appeal to the board at any time after the date that is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of

paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief that was not an issue in that proceeding. The exception contained in the preceding sentence does not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(f) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(g) (1) The Franchise Tax Board may prescribe regulations providing methods for allocation of items other than the methods under paragraph (3) of subdivision (d).

(2) It is the intent of the Legislature that, in construing this section and any other sections that are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(h) (1) Except as provided in paragraph (2), the amendments made by the act adding this subdivision shall apply to any liability for tax arising after the effective date of the act adding this subdivision and any liability for tax arising on or before that date but remaining unpaid as of that date.

(2) The four-year period under subparagraph (E) of paragraph (1) of subdivision (b) or subparagraph (B) of paragraph (3) of subdivision (c) does not expire before the date that is four years after the date of the first collection activity after the effective date of the act adding this subdivision.

(i) (1) An individual who has made a joint return and has been granted relief under Section 6015 of the Internal Revenue Code, relating to joint and several liability with respect to a federal joint income tax return, shall be eligible for relief under this section if all of the following conditions are satisfied:

(A) The individual requests relief under this section.

(B) The facts and circumstances that apply to the understatement and liabilities for which the relief is requested are the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under Section 6015 of the Internal Revenue Code.

(C) The individual requesting relief under this subdivision furnishes the Franchise Tax Board with a copy of the federal determination granting that individual relief under Section 6015 of the Internal Revenue Code. If the federal determination does not clearly identify the issues and liabilities for which the individual was granted relief under Section 6015 of the Internal Revenue Code, the Franchise Tax Board may request, from the individual requesting relief, any supporting documentation reasonably necessary to substantiate that the issues and liabilities for which relief is requested under this section are the same as the issues and liabilities for which the individual received relief under Section 6015 of the Internal Revenue Code.

(2) This subdivision does not apply if, prior to the expiration of the 30-day period described in clause (i) of subparagraph (A) of paragraph (1) of subdivision (e), the other individual that filed the joint return for which the relief is requested under this subdivision submits information to the Franchise Tax Board that indicates that relief should not be granted. For purposes of this paragraph, ''information that indicates that relief should not be granted'' is limited to the following:

(A) Information that indicates that the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under Section 6015 of the Internal Revenue Code.

(B) Information that indicates that there has not been a federal determination granting relief under Section 6015 of the Internal Revenue Code or that the federal determination granting relief under Section 6015 of the Internal Revenue Code has been modified, altered, withdrawn, canceled, or rescinded.

(C) Information indicating that the other individual, as described in the first sentence of this paragraph, did not have the opportunity to participate, within the meaning of Section 6015 of the Internal Revenue Code and the regulations thereunder, in the federal administrative or judicial proceeding that resulted in relief under Section 6015 of the Internal Revenue Code.

(j) If, prior to the date the Franchise Tax Board issues its determination with respect to a request for relief under this section, the individual requesting relief demonstrates to the Franchise Tax Board that a request for relief has been filed with the Internal Revenue Service

pursuant to Section 6015 of the Internal Revenue Code and demonstrates that the request for relief involves the same facts and circumstances as the request for relief that is pending before the Franchise Tax Board, the Franchise Tax Board may not deny relief with respect to that request, in whole or in part, until federal action on the request for relief under Section 6015 of the Internal Revenue Code is final.

(k) The provisions of subdivisions (i) and (j) shall apply to both of the following:

(1) Any tax liability that becomes final on or after the effective date of the act adding subdivisions (i) and (j) to this section.

(2) Any unpaid tax liability that became final prior to the effective date of the act adding subdivisions (i) and (j) to this section.

(*l*) An individual may not be granted relief under this section if a court has revised the tax liability in a proceeding for dissolution of the marriage in accordance with subdivision (b) of Section 19006.

(m) This section shall cease to be operative on January 1, 2009, and as of that date is repealed.

SEC. 2. Section 18533 is added to the Revenue and Taxation Code, to read:

18533. (a) (1) Notwithstanding subdivision (a) and the first sentence of subdivision (b) of Section 19006:

(A) An individual who has made a joint return may elect to seek relief under the procedures prescribed under subdivision (b), and

(B) If the individual is eligible to elect the application of subdivision (c), the individual may, in addition to any election under subparagraph (A), elect to limit the individual's liability for any deficiency with respect to the joint return in the manner prescribed under subdivision (c).

(2) Any determination under this section shall be made without regard to community property laws.

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,

(B) On that return there is an understatement of tax attributable to erroneous items of one individual filing the joint return,

(C) The other individual filing the joint return establishes that in signing the return he or she did not know of, and had no reason to know of, that understatement,

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

(E) The other individual elects (in the form and manner as the Franchise Tax Board may prescribe) the benefits of this subdivision not later than the date that is two years after the date the Franchise Tax

Board has begun collection activities with respect to the individual making the election,

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to that understatement.

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term ''understatement'' has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to the individual under subdivision (d), that election shall not apply to that deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term ''disqualified asset'' means any property or right to property transferred to an individual making the election under this subdivision with respect to a joint return by the other individual filing the joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) (I) For purposes of clause (i), except as provided in subclause (II), any transfer that is made after the date that is one year before the date on which the first notice of proposed assessment under Article 3 (commencing with Section 19031) of Chapter 4 is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Subclause (I) shall not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to that decree or to any transfer that an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) For purpose of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency (or portion thereof) is attributable to—

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to one individual under paragraph (3), that deficiency (or portion) shall be allocated to that individual. Any item so allocated shall not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the election under subdivision (b) or (c) may appeal to the board at any time after the date which is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief which was not an issue in that proceeding. The exception contained in the preceding sentence shall not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(f) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(g) (1) The Franchise Tax Board may prescribe regulations providing methods for allocation of items other than the methods under paragraph (3) of subdivision (d).

(2) It is the intent of the Legislature that, in construing this section and any other sections which are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(h) (1) Except as provided in paragraph (2), the amendments made by Chapter 931 of the Statutes of 1999 shall apply to any liability for tax arising after October 10, 1999, and any liability for tax arising on or before that date but remaining unpaid as of that date.

(2) The four-year period under subparagraph (E) of paragraph (1) of subdivision (b) or subparagraph (B) of paragraph (3) of subdivision (c) shall not expire before the date which is four years after the date of the first collection activity after October 10, 1999.

(i) An individual may not be granted relief under this section if a court has revised the tax liability in a proceeding for dissolution of the marriage in accordance with subdivision (b) of Section 19006.

(j) This section shall become operative on January 1, 2009.

SEC. 3. On or before January 1, 2008, the Franchise Tax Board shall report to the Legislature regarding the impact of this act on requests for innocent spouse relief. To the extent that data are available, the report shall include the total number and dollar value of innocent spouse claims received each year, as well as the number of claims and the dollar value of claims, on which the Franchise Tax Board automatically deferred to the Internal Revenue Service pursuant to the provisions of this act.

CHAPTER 371

An act to amend Section 20090.1 of the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 20090.1 of the Government Code is amended to read:

20090.1. (a) Notwithstanding any other provision of law to the contrary, the member of the board who is an elected official of a contracting agency appointed by the Governor, pursuant to subdivision (e) of Section 20090, may designate a deputy, who is employed under the official's authority, to act in his or her place and stead on the board or any of its committees. The deputy, while sitting on the board or any of its committees, may exercise the same powers that the elected official could exercise if he or she were personally present. The elected official shall be responsible for the acts of the deputy acting under this designation.

(b) Notwithstanding any other provision of law to the contrary, the Director of the Department of Personnel Administration may designate a deputy, who is employed under the director's authority, to act in his or her place and stead on the board or any of its committees. The deputy, while sitting on the board or any of its committees, may exercise the

same powers that the director could exercise if he or she were personally present. The director shall be responsible for the acts of the deputy acting under this designation.

CHAPTER 372

An act to amend Section 19605.52 of the Business and Professions Code, relating to horse racing, and making an appropriation therefor.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 19605.52 of the Business and Professions Code is amended to read:

19605.52. Notwithstanding subdivision (a) of Section 19605, and Section 19605.1, any fair in Kern or 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.

CHAPTER 373

An act to add and repeal Section 10553.3 of the Welfare and Institutions Code, relating to tribal health.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. It is the intent of the Legislature to enact legislation to establish a three-year pilot project to determine the feasibility of allowing Indian tribes to provide child welfare services to a broad population of Indian children within Indian reservations or rancherias. It is further the intent of the Legislature to preserve the ability of the county affected by agreements reached pursuant to this project to appropriately serve children and families.

SEC. 2. Section 10553.3 is added to the Welfare and Institutions Code, to read:

10553.3. (a) The director may establish a three-year pilot project to determine the feasibility of allowing Indian tribes to provide child welfare services pursuant to an agreement under Section 10553.1 to a broad population of Indian children and families residing on tribal reservations or rancherias.

(b) For purposes of this section, ''Indian child'' shall have the same meaning as a person who is under the age of 18 years and is among those individuals described in Section 1603(c) or 1679(b) of Title 25 of the United States Code.

(c) For purposes of this section, the pilot project shall be limited to the Washoe Tribe of California and Nevada and shall allow for the provision of child welfare services to Indian children who are Washoe members, are eligible for Washoe membership, or are residing on Washoe tribal lands.

(d) Prior to the implementation of this pilot project, the director shall establish an implementation workgroup. Members shall include representatives of the tribe and county that would be impacted by the pilot project. The purpose of the implementation workgroup shall be to establish guidelines for defining the service population, the allocation methodology, and the roles and responsibilities of all parties impacted by the pilot project.

(e) An agreement entered into pursuant to this section shall be governed by Section 10553.2, as added by Section 5 of Chapter 724 of the Statutes of 1995. An agreement pursuant to this pilot project shall be based on a clear delineation of the respective responsibilities of the tribe and the affected county, and an agreement on the allocation methodology required by Section 10553.2.

(f) Implementation of an agreement pursuant to this section that would delegate county responsibility for child welfare services or AFDC-FC assistance payments to a tribe shall not be construed to impose liability on, or to require indemnification by, the participating county or the state for any act or omission by an officer, agent, or employee of the participating tribe.

(g) Nothing in this section shall be construed to prohibit the director from entering into agreements authorized by Section 10553.1.

(h) This section shall remain effective 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 374

An act to amend Sections 2557 and 2558 of, and to add Section 2551.6 to, the Streets and Highways Code, and to amend Sections 2421.5, 2430.1, 2430.2, 2435, and 2436 of, and to repeal Sections 2437, 2438, 2439, and 2440 of, the Vehicle Code, relating to streets and highways.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

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

SECTION 1. Section 2551.6 is added to the Streets and Highways Code, to read:

2551.6. A service authority may agree to operate the freeway service patrol in the county or region in which the service authority was created. If another agency is operating a freeway service patrol in the county or region, the service authority shall obtain approval from that agency before operating the freeway service patrol.

SEC. 2. Section 2557 of the Streets and Highways Code is amended to read:

2557. (a) Except as provided in subdivisions (c) and (d), the moneys received by each authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code shall be used for the implementation, maintenance, and operation of a motorist aid system of call boxes, including the lease or lease-purchase of facilities and equipment for the system, on the portions of the California Freeway and Expressway System and a county expressway system, and the unincorporated county roads in that county, and on state highway routes that connect segments of these systems, which are located within the county in which the authority is established. The Department of Transportation and the Department of the California Highway Patrol shall each review and approve plans for implementation of a motorist aid system of call boxes proposed for any state highway route and shall be reimbursed by the service authority for all costs incurred due to review and approval of the plan.

(b) An authority or any other public entity may construct and maintain, and lease or lease-purchase on terms and conditions it deems appropriate, the facilities of a motorist aid system or it may contract with a private person or entity to do so.

(c) If leases or lease-purchase agreements are entered into pursuant to subdivision (a), or if revenue bonds are issued and sold pursuant to Section 2558, the moneys received by each authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code shall be used to the extent necessary to make lease payments or to pay the principal of,

and interest on, the amount of bonded indebtedness outstanding, as the case may be. Facilities and equipment acquired through the expenditure of proceeds from the sale of those bonds shall have a useful life at least equal to the term of the bonds.

(d) (1) Any money received by an authority pursuant to subdivision (b) of Section 9250.10 of the Vehicle Code that exceeds the amount needed for full implementation and ongoing costs to maintain and operate the motorist aid system of call boxes, installed pursuant to subdivision (a), may be used for purposes of paragraph (2) and for additional motorist aid services or support, including, but not limited to, the following safety-related projects:

(A) Changeable message signs.

(B) Lighting for call boxes.

(C) Support for traffic operations centers.

(D) Contracting for removal of disabled vehicles from the traveled portion of the right-of-way, including operation of the freeway service patrol pursuant to Chapter 15 (commencing with Section 2560).

(2) Any amendment to an existing plan for a motorist aid system of call boxes adopted by an authority for any state highway route shall, prior to implementation, be submitted to the Department of Transportation and the Department of the California Highway Patrol for review and approval and shall not be implemented until so reviewed and approved. The authority shall reimburse each department for the costs of that review.

(e) An authority may develop policies for the retention of records, including, but not limited to, authority operations, contracts, and programs, and the length of the retention period.

(f) A motorist aid system constructed, maintained, or operated pursuant to this section shall meet the applicable standards of Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto.

SEC. 3. Section 2558 of the Streets and Highways Code is amended to read:

2558. (a) Subject to subdivision (b), a service authority may issue revenue bonds pursuant to Chapter 6 (commencing with Section 54300) of Division 2 of Title 5 of the Government Code, or Chapter 5 (commencing with Section 4950) of Part 3 of Division 5 of the Health and Safety Code, as nearly as practicable, for the implementation and maintenance of a motorist aid program and shall pledge revenues to be received from fees referred to in Section 2555 as security for the payment of principal or of interest or other amounts due on those revenue bonds. In addition, a service authority that has entered into one or more leases or lease-purchase agreements for facilities of a motorist aid program may also pledge, as security for the payment of amounts due under the leases

or agreements, revenues to be received from those fees. The pledge of revenues provided for in this subdivision shall be a first and prior lien and, without any action other than the adoption by the members of a resolution providing for the pledge, the lien of the pledge shall attach and become perfected as to each fee imposed pursuant to Section 9250.10 of the Vehicle Code as and when the fee becomes due and payable. However, if a service authority has, at the same time, existing obligations under one or more issues of revenue bonds, one or more leases or lease-purchase agreements, or both, the respective priorities of the liens of pledges of revenue shall be determined on the basis of the respective dates on which resolutions providing for those pledges were adopted, with the highest priority being accorded the pledge of revenues provided for in the earliest of those resolutions. Bond proceeds shall not be used for operation of a motorist aid system of call boxes.

(b) A service authority may issue revenue bonds for each county within its jurisdiction.

SEC. 4. Section 2421.5 of the Vehicle Code is amended to read:

2421.5. (a) When any Service Authority for Freeway Emergencies has imposed additional fees on vehicles pursuant to Section 2555 of the Streets and Highways Code, the authority may contract with the department or a private or public entity to handle calls originating from the authority's motorist aid call box system.

(b) (1) If the contract is with the department, its terms shall comply with the requirements specified in paragraph (2) for the system on the portions of the California Freeway and Expressway System and on county roads in rural, unincorporated areas of the county and on state highway routes that connect segments of these systems, if they are located within the county in which the authority is established and the Department of the California Highway Patrol has law enforcement responsibility over them.

(2) The contract shall contain guidelines, as jointly agreed to between the authority and the department, following consultation with the authority, for services to be provided, including, but not limited to, reporting requirements, immediate transfer of emergency calls and traffic management information to the department, computer interface capability with the department, performance standards, and coordination with the eligible tow service providers.

(c) If the contract is with a private or public entity, the authority shall ensure that the specifications in the ''CHP/Cal Trans Call Box and Motorist Aid Guidelines'' are met and coordinate with the department to determine which calls will be transferred to it for response. The authority shall reimburse the department for all costs incurred under this subdivision in accordance with the ''CHP/Cal Trans Call Box and Motorist Aid Guidelines.'' If an authority has a contract with a private

or public entity having a commencement date of July 1, 2003, or prior, the performance standards of those contracts shall remain in effect until modifications are made to the applicable sections of the statewide guidelines.

(d) The authority may contract with the Department of the California Highway Patrol to perform duties as mutually agreed by the parties.

SEC. 5. Section 2430.1 of the Vehicle Code is amended to read:

2430.1. As used in this article, each of the following terms has the following meaning:

(a) ''Tow truck driver'' means a person who operates a tow truck, who renders towing service or emergency road service to motorists while involved in freeway service patrol operations, pursuant to an agreement with a regional or local entity, and who has or will have direct and personal contact with the individuals being transported or assisted. As used in this subdivision, ''towing service'' and ''emergency road service'' have the same meaning as defined in Section 2436.

(b) ''Employer'' means any person or organization that employs those persons defined in subdivision (a), or who is an owner-operator who performs the activity specified in subdivision (a), and who is involved in freeway service patrol operations pursuant to an agreement or contract with a regional or local entity.

(c) ''Regional or local entity'' means any public organization established as a public transportation planning entity pursuant to Title 7.1 (commencing with Section 66500) of the Government Code or authorized to impose a transaction and use tax for transportation purposes by the Public Utilities Code or the service authority for freeway emergencies described in Section 2551 of the Streets and Highways Code.

(d) ''Emergency road service'' has the same meaning as defined in Section 2436.

(e) ''Freeway service patrol'' has the same meaning as defined in Section 2561 of the Streets and Highway Code.

SEC. 6. Section 2430.2 of the Vehicle Code is amended to read:

2430.2. ''Regional or local entity,'' as defined by subdivision (c) of Section 2430.1, also includes the transportation planning entity established pursuant to Section 130050.1 of the Public Utilities Code or the service authority for freeway emergencies described in Section 2551 of the Streets and Highways Code.

SEC. 7. Section 2435 of the Vehicle Code is amended to read:

2435. (a) The Legislature finds and declares that the emergency roadside assistance provided by highway service organizations is a valuable service that benefits millions of California motorists. The Legislature further finds and declares that emergency roadside assistance is provided statewide, in cooperation with, and shares

resources with, public safety agencies. The Legislature also finds that the Department of the California Highway Patrol, in cooperation with the Department of Transportation, is responsible for the rapid removal of impediments to traffic on highways within the state and that the Department of the California Highway Patrol may enter into agreements with employers for freeway service patrol operations under an agreement or contract with a regional or local entity. The Legislature declares that it is important to the public safety that drivers who provide emergency roadside service not have criminal records that include violent crimes against persons.

(b) The Legislature also declares that the Department of the California Highway Patrol, in cooperation with the Department of Transportation, shall be responsible for establishing the minimum training standards for highway service organization employees and employers who participate in freeway service patrol operations pursuant to an agreement or contract with a regional or local entity.

SEC. 8. Section 2436 of the Vehicle Code is amended to read:

2436. For the purposes of this article, each of the following terms has the meaning given in this section:

(a) ''Emergency road service'' is the adjustment, repair, or replacement by a highway service organization of the equipment, tires, or mechanical parts of a motor vehicle so as to permit it to be operated under its own power. ''Towing service'' is the drafting or moving by a highway service organization of a motor vehicle from one place to another under power other than its own.

(b) ''Emergency roadside assistance'' means towing service or emergency road service.

(c) ''Employer'' has the same meaning as defined in Section 2430.1.

(d) ''Freeway service patrol'' has the same meaning as defined in Section 2561 of the Streets and Highways Code.

(e) ''Highway service organization'' means a motor club, as defined by Section 12142 of the Insurance Code and, in addition, includes any person or organization that operates or directs the operation of highway service vehicles to provide emergency roadside assistance to motorists, or any person or organization that is reimbursed or reimburses others for the cost of providing emergency roadside assistance, and any employer and includes any person or organization that directly or indirectly, with or without compensation, provides emergency roadside assistance.

(f) ''Regional or local entity'' has the same meaning as defined in Section 2430.1.

(g) ''Tow truck driver'' has the same meaning as defined in Section 2430.1.

SEC. 9. Section 2437 of the Vehicle Code is repealed.

SEC. 10. Section 2438 of the Vehicle Code is repealed.

SEC. 11. Section 2439 of the Vehicle Code is repealed.
SEC. 12. Section 2440 of the Vehicle Code is repealed.

CHAPTER 375

An act to add Section 1365.2 to the Civil Code, relating to common interest developments.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 1365.2 is added to the Civil Code, to read:

1365.2. (a) (1) The association shall make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as provided by this section.

(2) A member of the association may designate another person to inspect and copy the accounting books and records and the minutes of proceedings on the member's behalf. The member shall make this designation in writing.

(b) (1) The association shall make the accounting books and records and the minutes of proceedings available for inspection and copying in the association's business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the accounting books and records and minutes of proceedings available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies, the association may satisfy the requirement to make the accounting books and records and the minutes of proceedings available for inspection and copying by mailing copies of the requested records to the member by first-class mail within 10 days of receiving the member's request. The association may bill the requesting member for its actual, reasonable costs for copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs before sending the requested documents.

(c) (1) Except as provided in paragraph (2), the association may withhold or redact information from the accounting books and records and the minutes of proceedings for any of the following reasons:

(A) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, ''identity theft'' means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) The information is privileged under law.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(d) (1) The accounting books and records and the minutes of proceedings of an association, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An association may bring an action against any person who violates this section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from the accounting books and records and the minutes of proceedings pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this section.

(e) A member of an association may bring an action to enforce the member's right to inspect and copy the accounting books and records and the minutes of proceedings of the association. If a court finds that the association unreasonably withheld access to the accounting books and records and the minutes of proceedings, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars ($500) for each violation.

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CHAPTER 376

An act to amend Section 18724 of the Revenue and Taxation Code, relating to designated taxpayer contributions.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 18724 of the Revenue and Taxation Code is amended to read:

18724. (a) This article shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes that date.

(b) If the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2001, or the adjusted amount specified in subdivision (c) for any subsequent taxable year, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 2002, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

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CHAPTER 377

An act to amend Section 30061 of the Government Code, relating to law enforcement.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 30061 of the Government Code is amended to read:

30061. (a) There shall be established in each county treasury a Supplemental Law Enforcement Services Fund (SLESF), to receive all amounts allocated to a county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives money to be expended for the implementation of this chapter, the county auditor shall allocate moneys in the county's SLESF, including any interest or other return earned on the investment of those moneys, within 30 days of the deposit of those moneys into the fund, and shall allocate those moneys in accordance with the requirements set forth in this subdivision. However, the auditor shall not transfer those moneys to a recipient agency until the Supplemental Law Enforcement Oversight Committee certifies receipt of an approved expenditure plan from the governing board of that agency.

(1) Five and fifteen one-hundredths percent (5.15%) to the county sheriff for county jail construction and operation. In the case of Madera, Napa, and Santa Clara Counties, this allocation shall be made to the county director or chief of corrections.

(2) Five and fifteen one hundredths percent (5.15%) to the district attorney for criminal prosecution.

(3) Thirty-nine and seven-tenths percent (39.7%) to the county and the cities within the county, and, in the case of San Mateo, Kern, Siskiyou, and Contra Costa Counties, also to the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District, in accordance with the relative population of the cities within the county and the unincorporated area of the county, and the Broadmoor Police Protection District in the County of San Mateo, the Bear Valley Community Services District and the Stallion Springs Community Services District in Kern County, the Lake Shastina Community Services District in Siskiyou County, and the Kensington Police Protection and Community Services District in Contra Costa County, as specified in the most recent January estimate by the

population research unit of the Department of Finance, and as adjusted to provide a grant of at least one hundred thousand dollars ($100,000) to each law enforcement jurisdiction. For a newly incorporated city whose population estimate is not published by the Department of Finance but which was incorporated prior to July 1 of the fiscal year in which an allocation from the SLESF is to be made, the city manager, or an appointee of the legislative body, if a city manager is not available, and the county administrative or executive officer shall prepare a joint notification to the Department of Finance and the county auditor with a population estimate reduction of the unincorporated area of the county equal to the population of the newly incorporated city by July 15, or within 15 days after the Budget Act is enacted, of the fiscal year in which an allocation from the SLESF is to be made. No person residing within the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, or the Kensington Police Protection and Community Services District shall also be counted as residing within the unincorporated area of the County of San Mateo, Kern, Siskiyou, or Contra Costa, or within any city located within those counties. The county auditor shall allocate a grant of at least one hundred thousand dollars ($100,000) to each law enforcement jurisdiction. Moneys allocated to the county pursuant to this subdivision shall be retained in the county SLESF, and moneys allocated to a city pursuant to this subdivision shall be deposited in a SLESF established in the city treasury.

(4) Fifty percent (50%) to the county or city and county to implement a comprehensive multiagency juvenile justice plan as provided in this paragraph and to the Board of Corrections for administrative purposes. Funding for the Board of Corrections, as determined by the Department of Finance, shall not exceed two hundred seventy-five thousand dollars ($275,000). For the 2003–04 fiscal year, of the two hundred seventy-five thousand dollars ($275,000), up to one hundred seventy-six thousand dollars ($176,000) may be used for juvenile facility inspections. The juvenile justice plan shall be developed by the local juvenile justice coordinating council in each county and city and county with the membership described in Section 749.22 of the Welfare and Institutions Code. If a plan has been previously approved by the Board of Corrections, the plan shall be reviewed and modified annually by the council. The plan or modified plan shall be approved by the county board of supervisors, and in the case of a city and county, the plan shall also be approved by the mayor. The plan or modified plan shall be submitted to the Board of Corrections by May 1, 2002, and annually thereafter.

(A) Juvenile justice plans shall include, but not be limited to, all of the following components:

(i) An assessment of existing law enforcement, probation, education, mental health, health, social services, drug and alcohol and youth services resources that specifically target at-risk juveniles, juvenile offenders, and their families.

(ii) An identification and prioritization of the neighborhoods, schools, and other areas in the community that face a significant public safety risk from juvenile crime, such as gang activity, daylight burglary, late-night robbery, vandalism, truancy, controlled substances sales, firearm-related violence, and juvenile substance abuse and alcohol use.

(iii) A local juvenile justice action strategy that provides for a continuum of responses to juvenile crime and delinquency and demonstrates a collaborative and integrated approach for implementing a system of swift, certain, and graduated responses for at-risk youth and juvenile offenders.

(iv) Programs identified in clause (iii) that are proposed to be funded pursuant to this subparagraph, including the projected amount of funding for each program.

(B) Programs proposed to be funded shall satisfy all of the following requirements:

(i) Be based on programs and approaches that have been demonstrated to be effective in reducing delinquency and addressing juvenile crime for any elements of response to juvenile crime and delinquency, including prevention, intervention, suppression, and incapacitation.

(ii) Collaborate and integrate services of all the resources set forth in clause (i) of subparagraph (A), to the extent appropriate.

(iii) Employ information sharing systems to ensure that county actions are fully coordinated, and designed to provide data for measuring the success of juvenile justice programs and strategies.

(iv) Adopt goals related to the outcome measures that shall be used to determine the effectiveness of the local juvenile justice action strategy.

(C) The plan shall also identify the specific objectives of the programs proposed for funding and specified outcome measures to determine the effectiveness of the programs and an accounting for all program participants, including those who do not complete the programs. Outcome measures of the programs proposed to be funded shall include, but not be limited to, all of the following:

(i) The rate of juvenile arrests per 100,000 population.

(ii) The rate of successful completion of probation.

(iii) The rate of successful completion of restitution and court-ordered community service responsibilities.

(iv) Arrest, incarceration, and probation violation rates of program participants.

(v) Quantification of the annual per capita costs of the program.

(D) The Board of Corrections shall review plans or modified plans submitted pursuant to this paragraph within 30 days upon receipt of submitted or resubmitted plans or modified plans. The board shall approve only those plans or modified plans that fulfill the requirements of this paragraph, and shall advise a submitting county or city and county immediately upon the approval of its plan or modified plan. The board shall offer, and provide if requested, technical assistance to any county or city and county that submits a plan or modified plan not in compliance with the requirements of this paragraph. The SLESF shall only allocate funding pursuant to this paragraph upon notification from the board that a plan or modified plan has been approved.

(E) To assess the effectiveness of programs funded pursuant to this paragraph using the program outcome criteria specified in subparagraph (C), the following periodic reports shall be submitted:

(i) Each county or city and county shall report, beginning October 15, 2002, and annually each October 15 thereafter, to the county board of supervisors and the Board of Corrections, in a format specified by the Board of Corrections, on the programs funded pursuant to this chapter and program outcomes as specified in subparagraph (C).

(ii) The Board of Corrections shall compile the local reports and, by March 15, 2003, and annually thereafter, make a report to the Governor and the Legislature on program expenditures within each county and city and county from the appropriation for the purposes of this paragraph, on the outcomes as specified in subparagraph (C) of the programs funded pursuant to this paragraph and the statewide effectiveness of the comprehensive multiagency juvenile justice plans.

(c) Subject to subdivision (d), for each fiscal year in which the county, each city, the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District receive moneys pursuant to paragraph (3) of subdivision (b), the county, each city, and each district specified in this subdivision shall appropriate those moneys in accordance with the following procedures:

(1) In the case of the county, the county board of supervisors shall appropriate existing and anticipated moneys exclusively to provide frontline law enforcement services, other than those services specified in paragraphs (1) and (2) of subdivision (b), in the unincorporated areas of the county, in response to written requests submitted to the board by the county sheriff and the district attorney. Any request submitted pursuant to this paragraph shall specify the frontline law enforcement needs of the requesting entity, and those personnel, equipment, and programs that are necessary to meet those needs. The board shall, at a

public hearing held at a time determined by the board in each year that the Legislature appropriates funds for purposes of this chapter, or within 30 days after a request by a recipient agency for a hearing if the funds have been received by the county from the state prior to that request, consider and determine each submitted request within 60 days of receipt, pursuant to the decision of a majority of a quorum present. The board shall consider these written requests separate and apart from the process applicable to proposed allocations of the county general fund.

(2) In the case of a city, the city council shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with written requests submitted by the chief of police of that city or the chief administrator of the law enforcement agency that provides police services for that city. These written requests shall be acted upon by the city council in the same manner as specified in paragraph (1) for county appropriations.

(3) In the case of the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County, the legislative body of that special district shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with written requests submitted by the chief administrator of the law enforcement agency that provides police services for that special district. These written requests shall be acted upon by the legislative body in the same manner specified in paragraph (1) for county appropriations.

(d) For each fiscal year in which the county, a city, or the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County receives any moneys pursuant to this chapter, in no event shall the governing body of any of those recipient agencies subsequently alter any previous, valid appropriation by that body, for that same fiscal year, of moneys allocated to the county or city pursuant to paragraph (3) of subdivision (b).

(e) Funds received pursuant to subdivision (b) shall be expended or encumbered in accordance with this chapter no later than June 30 of the following fiscal year. A local agency that has not met this requirement shall remit unspent SLESF moneys to the Controller for deposit into the General Fund.

(f) If a county, a city, a city and county, or a qualifying special district does not comply with the requirements of this chapter to receive an SLESF allocation, the Controller shall revert those funds to the General Fund.

CHAPTER 378

An act to amend Sections 130110 and 130150 of the Health and Safety Code, relating to child development.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 130110 of the Health and Safety Code is amended to read:

130110. (a) There is hereby established a California Children and Families Commission, which may also be known as First 5 California, composed of seven voting members and two ex officio members.

(b) The voting members shall be selected, pursuant to Section 130115, from persons with knowledge, experience, and expertise in early child development, child care, education, social services, public health, the prevention and treatment of tobacco and other substance abuse, behavioral health, and medicine (including, but not limited to, representatives of statewide medical and pediatric associations or societies), upon consultation with public and private sector associations, organizations, and conferences composed of professionals in these fields.

(c) The Secretary of the California Health and Human Services Agency and the Secretary for Education, or their designees, shall serve as ex officio nonvoting members of the state commission.

SEC. 2. Section 130150 of the Health and Safety Code is amended to read:

130150. On or before October 15 of each year, each county commission shall conduct an audit of, and issue a written report on the implementation and performance of, its functions during the preceding fiscal year, including, at a minimum, the manner in which funds were expended, the progress toward, and the achievement of, program goals and objectives, and the measurement of specific outcomes through appropriate reliable indicators.

(a) The audits and reports of each county commission shall be transmitted to the state commission.

(b) The state commission shall, on or before January 31 of each year, do both of the following:

(1) Conduct an audit and prepare a written report on the implementation and performance of the state commission functions during the preceding fiscal year, including, at a minimum, the manner in which funds were expended and the progress toward, and the achievement of, program goals and objectives.

(2) Prepare a written report that consolidates, summarizes, analyzes, and comments on the annual audits and reports submitted by all of the county commissions for the preceding fiscal year. This report by the state commission shall be transmitted to the Governor, the Legislature, and each county commission.

(c) The state commission shall make copies of each of its annual audits and reports available to members of the general public on request and at no cost. The state commission shall furnish each county commission with copies of those documents in a number sufficient for local distribution by the county commission to members of the general public on request and at no cost.

(d) Each county commission shall make copies of its annual audits and reports available to members of the general public on request and at no cost.

SEC. 3. The Legislature finds and declares that this act furthers the California Children and Families Act of 1998, enacted by Proposition 10 at the November 3, 1998, general election, and is consistent with its purposes.

CHAPTER 379

An act to amend Sections 681.030, 700.010, 703.140, 704.010, 704.030, 704.040, 704.060, 704.080, 704.090, and 704.100 of, and to add Section 703.150 to, the Code of Civil Procedure, and to amend Section 17409 of the Welfare and Institutions Code, relating to exempt property.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 681.030 of the Code of Civil Procedure is amended to read:

681.030. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other papers to be used under this title. The Judicial Council may prescribe forms in languages other than English. The timely completion and return of a Judicial Council form prescribed in a language other than English has the same force and effect as the timely completion and return of an English language form.

(c) The Judicial Council shall prepare a form containing all of the following:

(1) A list of each of the federal and this state's exemptions from enforcement of a money judgment against a natural person.

(2) A citation to the relevant statute of the United States or this state which creates each of the exemptions.

(3) Information on how to obtain the list of exemption amounts published pursuant to subdivision (d) of Section 703.150.

SEC. 2. Section 700.010 of the Code of Civil Procedure is amended to read:

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030 and the list of exemption amounts published pursuant to subdivision (d) of Section 703.150.

(4) Any affidavit of identity, as defined in Section 680.135, for names of the debtor listed on the writ of execution.

(b) Service under this section shall be made personally or by mail.

SEC. 3. Section 703.140 of the Code of Civil Procedure is amended to read:

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

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

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the

provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

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

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

(1) The debtor's aggregate interest, not to exceed seventeen thousand four hundred twenty-five dollars ($17,425) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed two thousand seven hundred seventy-five dollars ($2,775) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four hundred fifty dollars ($450) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand one hundred fifty dollars ($1,150) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value nine hundred twenty-five dollars ($925) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty dollars ($1,750) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

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

(8) The debtor's aggregate interest, not to exceed in value nine thousand three hundred dollars ($9,300), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract

owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

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

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

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

(B) A veterans' benefit.

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

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

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

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

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

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

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

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

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

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

(D) A payment, not to exceed seventeen thousand four hundred twenty-five dollars ($17,425), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

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

SEC. 4. Section 703.150 is added to the Code of Civil Procedure, to read:

703.150. (a) On April 1, 2004, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section 703.140 in effect immediately before that date shall be adjusted as provided in subdivision (c).

(b) On April 1, 2007, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in Article 3 (commencing with Section 704.010) in effect immediately before that date shall be adjusted as provided in subdivision (c).

(c) The Judicial Council shall determine the amount of the adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars ($25).

(d) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 and in Article 3 (commencing with Section 704.010), together with the date of the next scheduled adjustment.

(e) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made under subdivision (b) is governed by Section 703.050.

SEC. 5. Section 704.010 of the Code of Civil Procedure is amended to read:

704.010. (a) Any combination of the following is exempt in the amount of two thousand three hundred dollars ($2,300):

(1) The aggregate equity in motor vehicles.

(2) The proceeds of an execution sale of a motor vehicle.

(3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of two thousand three hundred dollars ($2,300) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the

judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

SEC. 6. Section 704.030 of the Code of Civil Procedure is amended to read:

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed two thousand four hundred twenty-five dollars ($2,425) in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

SEC. 7. Section 704.040 of the Code of Civil Procedure is amended to read:

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed six thousand seventy-five dollars ($6,075).

SEC. 8. Section 704.060 of the Code of Civil Procedure is amended to read:

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Six thousand seventy-five dollars $6,075), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Six thousand seventy-five dollars ($6,075), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that

applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

(d) Notwithstanding subdivisions (a) and (b):

(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to four thousand eight hundred fifty dollars ($4,850).

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to twice the amount of the exemption provided in paragraph (1) of this subdivision.

SEC. 9. Section 704.080 of the Code of Civil Procedure is amended to read:

704.080. (a) For the purposes of this section:

(1) ''Deposit account'' means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.

(2) ''Social security benefits'' means payments authorized by the Social Security Administration for regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits. ''Public benefits'' means aid payments authorized pursuant to subdivision (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive services as described in Section 11323.2 of the Welfare and Institutions Code, and general assistance payments made pursuant to Section 17000.5 of the Welfare and Institutions Code.

(b) A deposit account is exempt without making a claim in the following amount:

(1) One thousand two hundred twenty-five dollars ($1,225) where one depositor is the designated payee of the directly deposited public benefits payments.

(2) Two thousand four hundred twenty-five dollars ($2,425) where one depositor is the designated payee of directly deposited social security payments.

(3) One thousand eight hundred twenty-five dollars ($1,825) where two or more depositors are the designated payees of the directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under paragraph (1) applies.

(4) Three thousand six hundred fifty dollars ($3,650) where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under paragraph (2) applies.

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments of public benefits or social security benefits.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of that amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the ''notice of opposition to the claim of exemption'' in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of

justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

SEC. 10. Section 704.090 of the Code of Civil Procedure is amended to read:

704.090. (a) The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of one thousand two hundred twenty-five dollars ($1,225). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

(b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or order imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the Penal Code, the funds held in

trust for, or to the credit of, a judgment debtor described in subdivision (a) are exempt in the amount of three hundred dollars ($300) without making a claim. The exemption provided in this subdivision is not subject to adjustment under Section 703.150.

SEC. 11. Section 704.100 of the Code of Civil Procedure is amended to read:

704.100. (a) Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim.

(b) The aggregate loan value of unmatured life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of nine thousand seven hundred dollars ($9,700). If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

SEC. 12. Section 17409 of the Welfare and Institutions Code is amended to read:

17409. There shall be exempt from the transfers and grants authorized by Section 17109 and from execution on claims under Section 17403 against property acquired by persons for the support of whom public moneys have been expended all of the following property:

(a) Cash not exceeding one hundred dollars ($100).

(b) Personal effects and household furniture not exceeding one thousand dollars ($1,000) in value.

(c) An interment space, crypt, or niche intended for the interment of the applicant or recipient of aid.

(d) Funds placed in trust for funeral or burial expenses not exceeding one thousand dollars ($1,000).

(e) Insurance policies having an actual cash surrender value not exceeding one thousand dollars ($1,000).

(f) Real or personal property of a recipient of public assistance, with respect to aid or county hospital care.

(g) For a period of six months from the date of receipt, the compensation received from a public entity which acquires for a public

use a dwelling actually owned and occupied by the recipient. Such compensation shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 704.730 of the Code of Civil Procedure.

(h) Relocation benefits shall be exempt as provided by Section 704.180 of the Code of Civil Procedure.

No county shall withhold emergency medical or hospital care from any person pending the person giving security for reimbursement to the county for the care or hospitalization to be provided to the person.

CHAPTER 380

An act to add Section 18304 to the Elections Code, and to repeal Section 25004.5 of the Government Code, relating to elections.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 18304 is added to the Elections Code, to read:

18304. (a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the county or the seal of a local government agency in any campaign literature or mass mailing, as defined in Section 82041.5 of the Government Code, with intent to deceive the voters, is guilty of a misdemeanor.

(b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

(c) For purposes of this section, the term ''local government agency'' means a school district, special or other district, or any other board, commission, or agency of local jurisdiction.

SEC. 2. Section 25004.5 of the Government Code is repealed.

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 381

An act to amend Sections 10168.1 and 10168.2 of, and to add Sections 10168.25 and 10168.92 to, the Insurance Code, relating to annuities.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 10168.1 of the Insurance Code is amended to read:

10168.1. In the case of contracts issued on or after the operative date of this article as defined in Section 10168.10, no contract of annuity, except as stated in Section 10168, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract.

(a) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of the value specified in Sections 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8.

(b) If a contract provides for a lump-sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit in the amount specified in Sections 10168.3, 10168.4, 10168.6, and 10168.8. The company may, after making written request and receiving the written approval of the commissioner, reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract. The request shall address the necessity and equitability to all policyholders of the deferral.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of those benefits.

(d) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the

minimum benefits required by any statute of the state in which the contract is delivered, and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to that period would be less than twenty dollars ($20) monthly, the company may at its option terminate the contract by payment in cash of the then present value of that portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and the interest rate specified in the contract for determining the paid-up annuity benefit, and by that payment shall be relieved of any further obligation under the contract.

SEC. 2. Section 10168.2 of the Insurance Code is amended to read:

10168.2. (a) This section shall apply to contracts issued before January 1, 2004, and may be applied by a company, on a contract-form-by-contract-form basis, to any contract issued on or after January 1, 2004, and before January 1, 2006. This section shall not apply to any contract issued on or after January 1, 2006.

(b) The minimum values as specified in Sections 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8 of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(c) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of 3 percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to that time, decreased by the sum of (i) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3 percent per annum and (ii) the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars ($30) and less a collection charge of one dollar and twenty-five cents ($1.25) per consideration credited to the contract

during that contract year. The percentages of net considerations shall be 65 percent of the net consideration for the first contract year and $87\frac{1}{2}$ percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 percent.

(d) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65 percent of the net consideration for the first contract year plus $22\frac{1}{2}$ percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(2) The annual contract charge shall be the lesser of thirty dollars ($30) or 10 percent of the gross annual consideration.

(e) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90 percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars ($75).

SEC. 3. Section 10168.25 is added to the Insurance Code, to read:

10168.25. (a) This section shall apply to contracts issued on and after January 1, 2006, and may be applied by a company, on a contract-form-by-contract-form basis, to any contract issued on or after January 1, 2004, and before January 1, 2006.

(b) The minimum values as specified in Sections 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(c) (1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time, at the rates of interest indicated in subdivision (d), of the net considerations (as hereinafter defined) paid prior to that time, decreased by the sum of all of the following:

(A) Any prior withdrawals from or partial surrenders of the contract, accumulated at the rates of interest indicated in subdivision (d).

(B) An annual contract charge of fifty dollars ($50), accumulated at the rates of interest indicated in subdivision (d).

(C) Any state premium tax paid by the company for the contract, accumulated at the rates of interest indicated in subdivision (d). However, the minimum nonforfeiture amount may not be decreased by this amount if the premium tax is subsequently credited back to the company.

(D) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to 87.5 percent of the gross considerations credited to the contract during that contract year.

(d) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of 3 percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(1) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or averaged over a period, rounded to the nearest one-twentieth of 1 percent, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under paragraph (2), reduced by 125 basis points, where the resulting rate is not less than 1 percent.

(2) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date, or average over a specified period, that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

(e) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in paragraph (2) of subdivision (d) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(f) The commissioner may adopt regulations to implement the provisions of subdivision (e) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts with respect to which the commissioner determines adjustments are justified.

SEC. 4. Section 10168.92 is added to the Insurance Code, to read:

10168.92. The commissioner may adopt regulations to implement the provisions of this article.

CHAPTER 382

An act to amend Sections 17209.3, 17312, 17314, 17321, 17331, and 17331.2 of the Financial Code, relating to escrow agents.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 17209.3 of the Financial Code is amended to read:

17209.3. The commissioner may refuse to issue any license being applied for, and shall refuse to issue any license being applied for if upon his or her examination and investigation, and after appropriate hearing, he or she finds any of the following:

(a) That the corporation is to be formed for any business other than legitimate escrow agent services, or proposes to use a name that is misleading or in conflict with the name of an existing licensee.

(b) That any incorporator, officer, or director of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(c) That there is no officer or manager possessing a minimum of five years of responsible escrow or joint control experience stationed or to be stationed at the main office of the corporation and that there is no officer, manager or employee possessing a minimum of four years of responsible escrow or joint control experience stationed or to be stationed at each branch.

(d) That the proposed licensee's financial program is unsound.

(e) A false statement of a material fact has been made in the application for license.

(f) The applicant or any officer, director, or incorporator of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(g) The applicant has failed to comply with the Fidelity Corporation's membership requirements set forth in subdivision (b) of Section 17312, in subdivision (a) of Section 17320, and in Sections 17331 and 17331.1.

SEC. 1.5. Section 17209.3 of the Financial Code is amended to read:

17209.3. The commissioner may refuse to issue any license being applied for, and shall refuse to issue any license being applied for if upon the commissioner's examination and investigation, and after appropriate hearing, the commissioner finds any of the following:

(a) That the corporation is to be formed for any business other than legitimate escrow agent services, or proposes to use a name that is misleading or in conflict with the name of an existing licensee.

(b) That any incorporator, officer, or director of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(c) That there is no officer or manager possessing a minimum of five years of responsible escrow or joint control experience stationed or to be stationed at the main office of the corporation and that there is no officer, manager or employee possessing a minimum of four years of responsible escrow or joint control experience stationed or to be stationed at each branch.

(d) That the proposed licensee's financial program is unsound.

(e) A false statement of a material fact has been made in the application for license.

(f) The applicant, any officer, director, general partner, or incorporator of the applicant, or any person owing or controlling, directly or indirectly, 10 percent or more of the outstanding 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.

(g) The applicant has failed to comply with the Fidelity Corporation's membership requirements set forth in subdivision (b) of Section 17312, in subdivision (a) of Section 17320, and in Sections 17331 and 17331.1.

SEC. 2. Section 17312 of the Financial Code is amended to read:

17312. (a) Each person licensed pursuant to this division who is engaged in the business of receiving escrows specified in subdivision (c) and whose escrow business location is located within the State of California shall participate as a member in Fidelity Corporation in accordance with this chapter and rules established by the board of directors of Fidelity Corporation. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license

under the Escrow Law who is required to be a member under this subdivision.

(b) Upon filing a new application for licensure as required by Section 17201, persons required to be a member of Fidelity Corporation shall file a copy thereof concurrently with Fidelity Corporation. If an application for licensure submitted to Fidelity Corporation contains personal or confidential information, Fidelity Corporation and its board shall maintain this information in confidence to protect the privacy of the information. The copy of the application shall include the three thousand dollar ($3,000) fee specified in subdivision (a) of Section 17320 and all required Fidelity Corporation Certificates set forth in Sections 17331 and 17331.1. Fidelity Corporation shall promptly furnish to the commissioner a compliance letter confirming that the applicant has satisfied the requirements to be a member of Fidelity Corporation.

(c) The required membership in Fidelity Corporation shall be limited to those licensees whose escrow business location is located within the State of California and who engage, in whole or in part, in the business of receiving escrows for deposit or delivery in the following types of transactions:

(1) Real property escrows, including, but not limited to, the sale, encumbrance, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

(2) Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

(3) Fund or joint control escrows, including, but not limited to, transactions specified in Section 17005.1, and contracts specified in Section 10263 of the Public Contract Code.

(4) The sale, transfer of title, or refinance escrows for manufactured homes or mobilehomes.

(5) Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code or by regulation of the Department of Real Estate to be held in an escrow account.

(6) Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

(d) Coverage required to be provided by Fidelity Corporation under this chapter shall be provided to members only for loss of trust obligations with respect to those types of transactions specified in subdivision (c). Indemnity coverage for those types of transactions not specified in subdivision (c) shall be provided by escrow agents in accordance with Section 17203.1.

SEC. 3. Section 17314 of the Financial Code is amended to read:

17314. (a) Fidelity Corporation shall pay a member for loss of trust obligations subject to the limitations set forth in this chapter. Fidelity Corporation shall pay or deny the claim within 90 days of receipt of the proof of loss filed by a member, or a member's successor in interest. Notwithstanding any other provision of this article, the protection to members provided by Fidelity Corporation and by the fidelity bond or insurance policy, if any, shall not extend to any transaction involving any member at any branch or business location outside the State of California, but shall extend only to escrow trust obligations and trust funds located within the State of California.

(b) Coverage shall be provided to members in accordance with the following schedule:

MONTHLY AVERAGE ESCROW LIABILITY PER LOCATION	COVERAGE
$0 – $ 1,000,000	$1,000,000
over $1,000,000 – $ 3,000,000	$2,000,000
over $3,000,000 – $ 5,000,000	$3,000,000
over $5,000,000 – $ 7,500,000	$4,000,000
over $7,500,000 – $10,000,000	$5,000,000

Pursuant to the schedule, the minimum coverage by Fidelity Corporation for each licensed location shall be one million dollars ($1,000,000) and the maximum coverage for each licensed location shall be five million dollars ($5,000,000).

(c) A member shall maintain minimum coverage in accordance with the schedule in subdivision (b) and shall monitor its escrow liability monthly. An increase in escrow liability above the monthly average escrow liability coverage as provided for in subdivision (b) shall be reported immediately to Fidelity Corporation. Upon receipt of this report, Fidelity Corporation shall immediately provide for the increase in coverage, and shall immediately bill and collect pursuant to Section 17321, an amount necessary to provide for the increased coverage.

(d) Any member with a licensed location or locations with a monthly average escrow liability greater than ten million dollars ($10,000,000) shall obtain a bond from a corporate surety which is an admitted insurer in the State of California insuring the balance of trust funds not covered by Fidelity Corporation, in a ratio of one dollar of coverage for every three dollars of trust obligations not covered by Fidelity Corporation. The Fidelity Corporation shall have the authority to obtain the excess coverage bond. The cost of the bond shall be shared pro rata by those members included in the coverage.

(e) If a member establishes, to the satisfaction of the commissioner, that a bond is not available or is impracticable under subdivision (d), then, at the member's election, either:

(1) The member shall place average trust obligations in excess of ten million dollars ($10,000,000) in a restricted escrow trust account. Each transfer or release of the funds to be made by specific resolution of the member's board of directors and the signature of a neutral third party and written approval of Fidelity Corporation; or

(2) The licensed location of the member with average trust balances in excess of ten million dollars ($10,000,000) shall be subject to examinations to be conducted at a frequency as deemed appropriate and necessary by the commissioner or Fidelity Corporation, but not less frequently than once a year.

(f) Any member subject to subdivision (e) shall within 10 business days after the effective date of this section notify Fidelity Corporation of its election. A member who subsequently becomes subject to subdivision (e) shall within a like period of time notify Fidelity Corporation of its election. Fidelity Corporation shall also be notified of any change of election in a like period of time. Fidelity Corporation shall notify the commissioner within 10 business days of receipt of any notice under this subdivision of the elections made. All notices under this subdivision shall be in writing.

SEC. 4. Section 17321 of the Financial Code is amended to read:

17321. Fidelity Corporation shall bill and collect from each member an annual premium that in the aggregate shall consist of assessments for the operations fund and the fidelity fund.

(a) The annual assessment for the operations fund shall be assessed no later than October 15 of each year for the current fiscal year in accordance with subdivision (b) of Section 17320. The payment of any invoice for assessments under this subdivision is payable by the member escrow agent in three equal and consecutive monthly installments with the first installment payable at or within 30 days after receipt of the Fidelity Corporation invoice. The assessment shall include:

(1) All costs and expenses of administration as budgeted by the board of directors for the current fiscal year.

(2) Any expenses actually incurred in the preceding fiscal year which exceeded the budgeted costs of expenses and administration except for expenses recovered pursuant to subdivision (a) of Section 17321.1.

Each member's assessment shall be determined pro rata based upon the ratio of each member's licensed locations to the total licensed locations of all members as of the preceding June 30.

Members licensed on or after July 1 of each year shall be assessed only for costs and expenses pursuant to paragraph (1) of this subdivision. This assessment shall be prorated on a monthly basis.

(b) The annual assessment for the fidelity fund shall be assessed no later than May 1. The assessment shall include any amount necessary to replenish the membership fund pursuant to Section 17234, and shall be based upon the balances of the membership fund and the fidelity fund as of December 31 of the previous year and the escrow liability schedule of each licensed location as provided in Section 17348, and shall be calculated as follows:

(1) If the membership fund and fidelity fund in the aggregate equal an amount less than five million dollars ($5,000,000), or if the balance in the fidelity fund is less than two million five hundred thousand dollars ($2,500,000), then the assessment shall be the greater of: (A) the amount necessary to bring the membership fund and fidelity fund in the aggregate up to five million dollars ($5,000,000), but not to exceed one million dollars ($1,000,000) per assessment, or (B) the amount necessary to maintain a minimum fidelity fund balance of two million five hundred thousand dollars ($2,500,000), including the amount of the assessment, or (C) four hundred thousand dollars ($400,000).

(2) If the membership fund and fidelity fund in the aggregate equal an amount that is at least five million dollars ($5,000,000), and the balance in the fidelity fund is at least two million five hundred thousand dollars ($2,500,000), then the assessment shall be four hundred thousand dollars ($400,000).

Each member's fidelity fund assessment for paragraphs (1) and (2) shall be the amount derived by multiplying the amount to be assessed by the ratio that each member's risk factors bear to the total of all members' risk factors.

A member's risk factors shall be computed in accordance with the following formula, except that the total factors of a member shall be reduced by one for each licensed branch location:

Coverage per Licensed Location	Factors
$1,000,000	3
$2,000,000	5
$3,000,000	7
$4,000,000	8
$5,000,000	9

(c) Notwithstanding subdivision (b), the assessment for the fidelity fund for the fiscal year beginning July 1, 1989, shall be made immediately upon 90-day notice of cancellation of the fidelity bond or insurance policy permitted by paragraph (2) of subdivision (c) of Section 17310, but in no event later than 60 days prior to the date of cancellation.

(d) Every licensed member as of March 31 shall pay the fidelity fund assessment, without any pro rata adjustment, notwithstanding that the member may have surrendered a license or have a license revoked prior to the date that the assessment is mailed.

SEC. 5. Section 17331 of the Financial Code is amended to read:

17331. (a) An applicant applying for licensure as an escrow agent under this division is required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, for each proposed shareholder, officer, director, trustee, manager, or employee who is to be directly or indirectly compensated by the escrow agent, prior to licensure of the escrow agent by the commissioner.

(b) Within 30 days following written notice by Fidelity Corporation to an escrow agent a shareholder, officer, director, trustee, manager, or employee of an escrow agent, directly or indirectly compensated by an escrow agent within this state, is required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, as a condition of his or her employment or entitlement to compensation, before the person may continue the regular discharge of his or her duties, or have access to moneys or negotiable securities belonging to or in the possession of the escrow agent, or draw checks upon the escrow agent or the trust funds of the escrow agent.

(c) Fidelity Corporation Certificates may also be known as Escrow Agent's Fidelity Corporation Certificates or EAFC Certificates. The certificate at all times remains the property of Fidelity Corporation, and is not transferable by either a member or employee. The certificate is not a warranty or guarantee by Fidelity Corporation of the integrity, veracity, or competence of the person.

(d) An application for a Fidelity Corporation Certificate shall be in writing and in the form prescribed by Fidelity Corporation. The application may include (1) a fee not to exceed fifty dollars ($50), (2) two passport-size photographs, and (3) a set of fingerprints on the form established by the Department of Justice for requesting state summary criminal history information, plus the fee charged by the Department of Justice for processing noncriminal applicant fingerprints. The Department of Justice shall honor the Fidelity Corporation report request form and issue a report to Fidelity Corporation, notwithstanding any other provision of law or regulation to the contrary. Fidelity Corporation is also entitled to submit a set of fingerprints on the specified noncriminal applicant fingerprint form for the purpose of requesting and obtaining a report from the Department of Justice, for the officers and employees of Fidelity Corporation. A member shall cause the filing of applications for all existing employees as required by this section within 30 days of written notice by Fidelity Corporation to the member.

(e) The application form shall include a provision for binding arbitration to allow for arbitration of any appeal or dispute as to a decision by Fidelity Corporation concerning the certificate, as follows:

A DISPUTE AS TO WHETHER THE DENIAL OF THIS CERTIFICATE APPLICATION OR ANY SUBSEQUENT SUSPENSION OR REVOCATION OF THE CERTIFICATE IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM A DECISION BY FIDELITY CORPORATION TO DENY THIS CERTIFICATE APPLICATION OR TO SUSPEND OR REVOKE THE CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE APPLICATION LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW. ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(f) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for statements made by Fidelity Corporation in reports or recommendations made pursuant to this division, or for reports or recommendations made pursuant to this division to Fidelity Corporation by its members, directors, officers, employees or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, unless the information provided is false and the party making the statement or providing the false information does so with knowledge and malice. Reports or recommendations made pursuant to this section, or Section 17331.1, 17331.2, or 17331.3 are not public documents.

(g) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or an officer, agent, or employee of the state or the Department of Corporations for the release of any information furnished to Fidelity Corporation pursuant to this section unless the information released is false and the party, including Fidelity Corporation, its members, directors, officers, employees, or agents, the state, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, who releases the false information does so with knowledge and malice.

(h) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its directors, officers, employees, or agents, for any decision to deny an application for a certificate or to suspend or revoke the certificate of any person or for the timing of any decision or the timing of any notice to persons or members thereof, or for any failure to deny an application under subdivision (a) of Section 17331.2. This subdivision does not apply to acts performed in bad faith or with malice.

(i) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized by this chapter is guilty of a misdemeanor.

(j) Section 17331, 17331.1, or 17331.2 does not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate does not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(k) As of January 1, 1992, notwithstanding Section 11105 of the Penal Code, Fidelity Corporation is entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint cards submitted to the Department of Justice by the Department of Corporations, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of Corporations shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

SEC. 6. Section 17331.2 of the Financial Code is amended to read:

17331.2. (a) Fidelity Corporation shall deny the application for a certificate or revoke the certificate of any person, upon any of the following grounds:

(1) The application contains a material misrepresentation of fact or fails to disclose a material fact so as to render the application false or misleading, or if any fact or condition exists which, if it had existed at the time of the original application for a certificate, reasonably would have warranted Fidelity Corporation to refuse originally to issue that certificate.

(2) That the person has been convicted of, or pleaded nolo contendere to, a crime or offense, whether a felony, an offense punishable as a felony, or a misdemeanor, which involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, misappropriation of property, or any other crime reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division. If, however, the conviction is more than 10 years old, or the conviction has been expunged, or the person has obtained a certificate of rehabilitation, as allowed by the Penal Code, or if the conviction was an infraction, then the person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty that the conviction is no longer reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division or that person's employment with a member.

(3) That the person has been held liable in a civil action by final judgment of any court if the judgment involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property or the person has been ordered to make restitution to a victim in any criminal case involving a crime or offense set forth in paragraph (2). The person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty that the judgment or restitution order is no longer reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division or that person's employment with a member.

(4) That the person has (A) committed or caused to be committed an act which caused any member to suffer a loss; (B) committed or caused to be committed or colluded with any other person committing any act which caused a loss, for which Fidelity Corporation or the insurer on any insurance policy or fidelity bond purchased by Fidelity Corporation, or both, to become liable to indemnify any member; or (C) committed or caused to be committed an act of dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, to the material damage of a member or for which the member has been held liable to any third party, by final judgment.

(5) That the person has been barred from employment by final order of the commissioner pursuant to Section 17423.

(6) That the person has been deemed not qualified to serve in any capacity as a director or officer or in any other position involving management duties with a financial institution, pursuant to Division 1.8 (commencing with Section 4990).

(7) That the person has been denied coverage or reinstatement by any insurer under any fidelity bond or crime policy, unless a decision of reinstatement of coverage has been made after that denial. A person who obtained a decision of reinstatement of coverage prior to the effective date of this section may have a Fidelity Corporation certificate notwithstanding paragraphs (2) and (3) of this subdivision, unless any other ground for denial or revocation applies to that person.

(b) Fidelity Corporation may suspend the certificate of any person upon any of the following grounds:

(1) That the person has been censured or suspended from any position of employment or management or control of any escrow agent, by final order of the commissioner. The certificate suspension shall be for a term concurrent with the final order of the commissioner.

(2) That there is an action commenced by the commissioner to either suspend or bar that person, under Section 17423.

(3) That the person has been barred from any position of employment or management or control of any escrow agent, for a term less than permanent, by final order of the commissioner. The certificate suspension shall be for a term concurrent with the final order of the commissioner.

(4) That any member with whom the person was employed has given a proof of loss or a notice of an occurrence which may give rise to a claim for a loss of trust obligations either of which identifies the person as the person responsible for the loss or as a person acting in collusion with the person causing the loss.

(c) Upon denial of an application for, or upon suspension or revocation of the certificate of any person, Fidelity Corporation shall provide written notice to the member with whom that person is employed of the decision, pending any appeal therefrom which might be made. Thereafter, the member shall not allow that person to have access to money or negotiable instruments or securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Fidelity Corporation shall notify the person in writing of the decision to deny, suspend, or revoke the certificate and of the person's right of appeal, together with the notice of appeal. The grounds and basis for the decision shall be stated in the notice thereof. All notices may be served either personally or by mail,

properly addressed to the address of record for the member and the person.

(d) Any person whose application for a certificate has been denied, or whose certificate has been suspended or revoked, may appeal the decision, as provided in Section 17331.3. While that appeal is pending, the person may not have access to money or negotiable instruments or securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Failure to remove the person whose application has been denied, or whose certificate has been suspended or revoked, as a signer on the trust accounts may be subject to action by the commissioner as provided for in this division and shall be subject to penalties as set forth in Section 17331.1.

(e) Upon expiration of the time for an appeal, or upon conclusion of the appeal, the decision to deny an application for or to suspend or revoke the certificate of any person shall become final. Fidelity Corporation shall give written notice to the member and to the person of the final decision within 10 days. Thereafter, Fidelity Corporation shall disclose in writing to all members the identity of persons whose application has been denied or whose certificate has been revoked.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 17209.3 of the Financial Code proposed by both this bill and AB 1031. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 17209.3 of the Financial Code, and (3) this bill is enacted after AB 1031, in which case Section 1 of this bill shall not become operative.

CHAPTER 383

An act to amend Section 1569.2 of, and to add Section 1569.7 to, the Health and Safety Code, relating to Alzheimer's disease.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Alzheimer's disease is a devastating disease that destroys certain vital cells of the brain, and affects more than 1,500,000 Americans.

(b) Alzheimer's disease and related disorders are responsible for 50 percent of all nursing home admissions and Alzheimer's disease is the fourth leading cause of death in adults.

(c) Alzheimer's disease has serious emotional, financial, and social consequences for its victims and their families.

(d) It is important to provide for the best quality of life for those affected by this disease by providing activities that are adapted for the unique needs of persons with Alzheimer's disease and other forms of dementia, including activities designed to decrease the effects of sundowning. With less light, these individuals may lose visual clues that help them compensate for their sensory impairments.

SEC. 2. Section 1569.2 of the Health and Safety Code is amended to read:

1569.2. As used in this chapter:

(a) ''Administrator'' means the individual designated by the licensee to act on behalf of the licensee in the overall management of the facility. The licensee, if an individual, and the administrator may be one and the same person.

(b) ''Care and supervision'' means the facility assumes responsibility for, or provides or promises to provide in the future, ongoing assistance with activities of daily living without which the resident's physical health, mental health, safety, or welfare would be endangered. Assistance includes assistance with taking medications, money management, or personal care.

(c) ''Department'' means the State Department of Social Services.

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

(e) ''Health-related services'' mean services that shall be directly provided by an appropriate skilled professional, including a registered nurse, licensed vocational nurse, physical therapist, or occupational therapist.

(f) ''Instrumental activities of daily living'' means any of the following: housework, meals, laundry, taking of medication, money management, appropriate transportation, correspondence, telephoning, and related tasks.

(g) ''License'' means a basic permit to operate a residential care facility for the elderly.

(h) ''Personal activities of daily living'' means any of the following: dressing, feeding, toileting, bathing, grooming, and mobility and associated tasks.

(i) ''Personal care'' means assistance with personal activities of daily living, to help provide for and maintain physical and psychosocial comfort.

(j) ''Protective supervision'' means observing and assisting confused residents, including persons with dementia, to safeguard them against injury.

(k) ''Residential care facility for the elderly'' means a housing arrangement chosen voluntarily by persons 60 years of age or over, or

their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. Persons under 60 years of age with compatible needs may be allowed to be admitted or retained in a residential care facility for the elderly as specified in Section 1569.316.

This subdivision shall be operative only until the enactment of legislation implementing the three levels of care in residential care facilities for the elderly pursuant to Section 1569.70.

(*l*) ''Residential care facility for the elderly'' means a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. Persons under 60 years of age with compatible needs may be allowed to be admitted or retained in a residential care facility for the elderly as specified in Section 1569.316.

This subdivision shall become operative upon the enactment of legislation implementing the three levels of care in residential care facilities for the elderly pursuant to Section 1569.70.

(m) ''Sundowning'' means a condition in which persons with cognitive impairment experience recurring confusion, disorientation, and increasing levels of agitation that coincide with the onset of late afternoon and early evening.

(n) ''Supportive services'' means resources available to the resident in the community that help to maintain their functional ability and meet their needs as identified in the individual resident assessment. Supportive services may include any of the following: medical, dental, and other health care services; transportation; recreational and leisure activities; social services; and counseling services.

SEC. 3. Section 1569.7 is added to the Health and Safety Code, to read:

1569.7. Residential care facilities for the elderly that serve residents with Alzheimer's disease and other forms of dementia should include information on sundowning as part of the training for direct care staff, and should include in the plan of operation a brief narrative description explaining activities available for residents to decrease the effects of sundowning, including, but not limited to, increasing outdoor activities in appropriate weather conditions.

CHAPTER 384

An act to amend Sections 22442, 22442.2, and 22443 of, and to add Section 22442.1 to, the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 22442 of the Business and Professions Code is amended to read:

22442. (a) Every person engaged in the business or acting in the capacity of an immigration consultant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by the Department of Consumer Affairs in regulations.

(b) The written contract shall include all provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 10-point bold type a statement that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs.

(4) The written contract shall list the documents to be prepared by the immigration consultant, and shall explain the purpose and process of each document.

(5) The written contract shall state the purpose for which the immigration consultant has been hired and the actions to be taken by the immigration consultant regarding each document, including the agency and office where each document will be filed and the approximate processing times according to current published agency guidelines.

(c) An immigration consultant may not include provisions in the written contract relating to the following:

(1) Any guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise.

(2) Any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Immigration and Naturalization Service.

(d) The provisions of the written contract shall be stated both in English and in the client's native language.

(e) A written contract is void if it is not written pursuant to subdivision (d).

(f) The client shall have the right to rescind the contract within 72 hours of signing the contract. The contents of this subdivision shall be conspicuously set forth in the written contract in both English and the client's native language.

(g) An immigration consultant may not make the statements described in subdivision (c) orally to a client.

(h) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients, free of charge or for a fee, including reasonable costs, consistent with that authorized by the United States Immigration and Naturalization Service for qualified designated entities, complete application forms in an immigration matter.

SEC. 2. Section 22442.1 is added to the Business and Professions Code, to read:

22442.1. (a) A person engaged in the business or acting in the capacity of an immigration consultant shall provide a signed receipt to a client for each payment made by that client. The receipt shall be typed or computer generated on the consultant's letterhead.

(b) A statement of accounting for the services rendered and payments made shall be provided to the client every two months, shall be typed or computer generated on the immigration consultant's letterhead, and shall display the individual charges and total charges for services and the client's payments offsetting those charges. The consultant shall provide the client a written translation of the statement in the client's native language.

SEC. 3. Section 22442.2 of the Business and Professions Code is amended to read:

22442.2. (a) An immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the consultant's clientele, that contains the following information:

(1) The full name, address, and evidence of compliance with any applicable bonding requirement including the bond number, if any.

(2) A statement that the consultant is not an attorney.

(3) The services that the immigration consultant provides and the current and total fee for each service.

(4) The name of each consultant employed at each location.

(b) Prior to providing any services, an immigration consultant shall provide the client with a written disclosure in the native language of the client that shall include the following information:

(1) The immigration consultant's name, address, and telephone number.

(2) The immigration consultant's agent for service of process.

(3) The legal name of the employee who consulted with the client, if different from the immigration consultant.

(4) Evidence of compliance with any applicable bonding requirement, including the bond number, if any.

(c) (1) Except as provided in paragraph (2) or (3), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, within the meaning of Section 22441, shall include in that advertisement a clear and conspicuous statement that the immigration consultant is not an attorney.

(2) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service, shall include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the consultant is not an attorney but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service.

(3) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not an active member of the State Bar of California, but is an attorney licensed in another state or territory of the United States and is admitted to practice before the Board of Immigration Appeals or the United States Immigration and Naturalization Service, shall include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the consultant is not an attorney licensed to practice law in California but is an attorney licensed in another state or territory of the United States and is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service.

(4) If an advertisement subject to this subdivision is in a language other than English, the statement required by this subdivision shall be in the same language as the advertisement.

SEC. 4. Section 22443 of the Business and Professions Code is amended to read:

22443. (a) A person engaged in the business or acting in the capacity of an immigration consultant shall deliver to a client a copy of each document or form completed on behalf of the client. Each document and form delivered must include the name and address of the immigration consultant.

(b) (1) A person engaged in the business or acting in the capacity of an immigration consultant shall retain copies of all documents and forms of a client for not less than three years from the date of the last service to the client.

(2) Upon presentation of a written consent signed by a client, an immigration consultant shall provide a copy of the client file to law enforcement without a warrant or a subpoena.

(c) (1) A person engaged in the business or acting in the capacity of an immigration consultant shall return to a client all original documents, including, but not limited to, original birth certificates, rental agreements, utility bills, employment stubs, Department of Motor Vehicle licenses with dates of entry, and passports, that the client has provided to the consultant in support of the client's application.

(2) Any original document that does not need to be submitted to immigration authorities as an original document shall be returned by the immigration consultant immediately after making a copy or reproduction thereof.

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 385

An act to amend Section 2150 of the Elections Code, relating to voters.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 2150 of the Elections Code is amended to read:

2150. (a) The affidavit of registration shall show:

(1) The facts necessary to establish the affiant as an elector.

(2) The affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of the given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs., or

Mr. No person shall be denied the right to register because of his or her failure to mark a prefix to the given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.

(3) The affiant's place of residence, residence telephone number, if furnished, and e-mail address, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number or e-mail address, and shall be so advised on the voter registration card.

(4) The affiant's mailing address, if different from the place of residence.

(5) The affiant's date of birth to establish that he or she will be at least 18 years of age on or before the date of the next election.

(6) The state or country of the affiant's birth.

(7) The affiant's California driver's license number, California identification card number, or other identification number as specified by the Secretary of State. No person shall be denied the right to register because of his or her failure to furnish one of these numbers, and shall be so advised on the voter registration card.

(8) The affiant's political party affiliation.

(9) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

(10) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as intending to affiliate with another party. If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party.

(b) The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and the date of signing. If the affiant is unable to write he or she shall sign with a mark or cross.

(c) The affidavit of registration shall also contain a space that would enable the affiant to state his or her ethnicity or race, or both. An affiant may not be denied the ability to register because he or she declines to state his or her ethnicity or race.

(d) If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

SEC. 2. The Secretary of State shall design a model affidavit of registration that allows for the inclusion of information concerning the race or ethnicity, or both, of an affiant. In determining which ethnicities or races to include on the model affidavit, the Secretary shall consult the list of ethnicitites and races used by the United States Census Bureau on the bureau's most recent census forms.

SEC. 3. The Secretary of State and each local election official may exhaust supplies of voter registration affidavits in existence on the effective date of this section prior to printing new or revised forms.

CHAPTER 386

An act to add and repeal Article 7 (commencing with Section 33600) of Chapter 4 of Part 20 of the Education Code, relating to commissions.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Article 7 (commencing with Section 33600) is added to Chapter 4 of Part 20 of the Education Code, to read:

Article 7. Brown v. Board of Education of Topeka Advisory Commission

33600. The Brown v. Board of Education of Topeka Advisory Commission is established in the department.

33601. The Brown v. Board of Education of Topeka Advisory Commission shall consist of two members appointed by the Senate Committee on Rules, two members appointed by the Speaker of the Assembly, and five members appointed by the Governor. At least one of the members appointed by the Governor shall be chosen from a national civil rights organization, and one of the members appointed by the Governor shall represent the department. The nine appointed members shall be broadly reflective of the general public of the state.

33603. (a) The commission, during the 2004–05 school year, shall develop community and educational awareness programs to commemorate the 50th anniversary of the Supreme Court decision in Brown v. Board of Education of Topeka (1954) 347 U.S. 483, only after a determination is made by the Department of Finance that private donations in an amount sufficient to fund those programs have been deposited with the state.

33604. The members of the Brown v. Board of Education of Topeka Advisory Commission shall serve without compensation, and no public funds may be used to compensate the members for expenses.

33605. This article 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 387

An act to amend Section 706.030 of the Code of Civil Procedure, and to amend Sections 4200, 4201, 4204, 5235, 5237, 5240, 5247, 5253, and 17309 of, and to add Sections 17311, 17311.5, and 17311.7 to, the Family Code, relating to child support, and making an appropriation therefor.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 706.030 of the Code of Civil Procedure is amended to read:

706.030. (a) A ''withholding order for support'' is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) The local child support agency may issue a withholding order for support on a notice of levy pursuant to Section 17522 of the Family Code to collect a support obligation.

(1) When the local child support agency issues a withholding order for support, a reference in this chapter to a levying officer is deemed to mean the local child support agency who issues the withholding order for support.

(2) Service of a withholding order for support issued by the local child support agency may be made by first-class mail or in any other manner described in Section 706.101. Service of a withholding order for support issued by the local child support agency is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 706.101, or if service is by first-class mail, service is complete as specified in Section 1013.

(3) The local child support agency shall serve upon the employer the withholding order for support, a copy of the order, and a notice informing the support obligor of the effect of the order and of his or her right to hearings and remedies provided in this chapter and in the Family Code. The notice shall be accompanied by the forms necessary to obtain an

administrative review and a judicial hearing and instructions on how to file the forms. Within 10 days from the date of service, the employer shall deliver to the support obligor a copy of the withholding order for support, the forms to obtain an administrative review and judicial hearing, and the notice. If the support obligor is no longer employed by the employer and the employer does not owe the support obligor any earnings, the employer shall inform the local child support agency that the support obligor is no longer employed by the employer.

(4) An employer who fails to comply with paragraph (3) shall be subject to a civil penalty of five hundred dollars ($500) for each occurrence.

(5) The local child support agency shall provide for an administrative review to reconsider or modify the amount to be withheld for arrearages pursuant to the withholding order for support, if the support obligor requests a review at any time after service of the withholding order. The local child support agency shall provide the review in the same manner and timeframes provided for resolution of a complaint pursuant to Section 17800 of the Family Code. The local child support agency shall notify the employer if the review results in any modifications to the withholding order for support. If the local child support agency cannot complete the administrative review within 30 calendar days of receipt of the complaint, the local child support agency shall notify the employer to suspend withholding any disputed amount pending the completion of the review and the determination by the local child support agency.

(6) Nothing in this section prohibits the support obligor from seeking a judicial determination of arrearages pursuant to subdivision (c) of Section 17256 of the Family Code or from filing a motion for equitable division of earnings pursuant to Section 706.052 either prior to or after the administrative review provided by this section. Within five business days after receiving notice of the obligor having filed for judicial relief pursuant to this section, the local child support agency shall notify the employer to suspend withholding any disputed amount pending a determination by the court. The employer shall then adjust the withholding within not more than nine days of receiving the notice from the local child support agency.

(c) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (1), (2), or (3) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the

employee pursuant to that order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

(4) An employer who willfully fails to withhold and forward support pursuant to a valid earnings withholding order for support issued and served upon the employer pursuant to this chapter is liable to the support obligee, as defined in Section 5214 of the Family Code, for the amount of support not withheld, forwarded, or otherwise paid to the support obligee.

(5) Notwithstanding any other provision of law, an employer shall send all earnings withheld pursuant to a withholding order for support to the levying officer or the State Disbursement Unit as described in Section 17309 of the Family Code within the time period specified by federal law.

(6) Once the State Disbursement Unit as described in Section 17309 of the Family Code is operational, all support payments made pursuant to an earnings withholding order shall be made to that unit.

(7) Earnings withheld pursuant to an earnings withholding order for support shall be credited toward satisfaction of a support judgment as specified in Section 695.221.

SEC. 2. Section 4200 of the Family Code is amended to read:

4200. In any proceeding where a court makes or has made an order requiring the payment of child support to a parent receiving welfare moneys for the maintenance of children for whom support may be ordered, the court shall do both of the following:

(a) Direct that the payments of support shall be made to the county officer designated by the court for that purpose. Once the State Disbursement Unit is implemented pursuant to Section 17309, all payments shall be directed to the State Disbursement Unit instead of the county officer designated by the court.

(b) Direct the local child support agency to appear on behalf of the welfare recipient in any proceeding to enforce the order.

SEC. 3. Section 4201 of the Family Code is amended to read:

4201. In any proceeding where a court makes or has made an order requiring the payment of child support to the person having custody of a child for whom support may be ordered, the court may do either or both of the following:

(a) Direct that the payments shall be made to the county officer designated by the court for that purpose. Once the State Disbursement Unit is implemented pursuant to Section 17309, all payments shall be

directed to the State Disbursement Unit instead of the county officer designated by the court.

(b) Direct the local child support agency to appear on behalf of the minor children in any proceeding to enforce the order.

SEC. 4. Section 4204 of the Family Code is amended to read:

4204. Notwithstanding any other provision of law, in any proceeding where the court has made an order requiring the payment of child support to a person having custody of a child and the child support is subsequently assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code or the person having custody has requested the local child support agency to provide child support enforcement services pursuant to Section 17400, the local child support agency may issue a notice directing that the payments shall be made to the local child support agency, another county office, or the State Disbursement Unit pursuant to Section 17309. The notice shall be served on both the support obligor and obligee in compliance with Section 1013 of the Code of Civil Procedure. The local child support agency shall file the notice in the action in which the support order was issued.

SEC. 5. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order. If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee. If the employer withheld the support but failed to forward the payments to the obligee, the employer shall be liable for the payments, including interest, as provided in Section 5241.

(b) Within 10 days of service of a substitution of payee on the employer, the employer shall forward all subsequent support to the governmental entity or other payee that sent the substitution.

(c) The employer shall send the amounts withheld to the obligee within the timeframe specified in federal law and shall report to the obligee the date on which the amount was withheld from the obligor's wages.

(d) The employer may deduct from the earnings of the employee the sum of one dollar ($1) for each payment made pursuant to the order.

(e) Once the State Disbursement Unit as required by Section 17309 is operational, the employer shall send all earnings withheld pursuant to this chapter to the State Disbursement Unit instead of the obligee.

SEC. 6. Section 5237 of the Family Code is amended to read:

5237. (a) Except as provided in subdivisions (b) and (c), the obligee shall notify the employer of the obligor, by first-class mail, postage

prepaid, of any change of address within a reasonable period of time after the change.

(b) Where payments have been ordered to be made to a county officer designated by the court, the obligee who is the parent, guardian, or other person entitled to receive payment through the designated county officer shall notify the designated county officer by first-class mail, postage prepaid, of any address change within a reasonable period of time after the change.

(c) If the obligee is receiving support payments from the State Disbursement Unit as required by Section 17309, the obligee shall notify the State Disbursement Unit instead of the employer of the obligor as provided in subdivision (a).

(d) If the employer, designated county officer, or the State Disbursement Unit is unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer, designated county officer, or State Disbursement Unit, of a change of address, the employer, designated county officer, or State Disbursement Unit shall not make any further payments under the assignment order and shall return all undeliverable payments to the obligor.

SEC. 7. Section 5240 of the Family Code is amended to read:

5240. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an assignment order if past due support has been paid in full, including any interest due, and if any of the following conditions exist:

(a) With regard to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regard to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 5260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The obligor meets the conditions of an alternative arrangement specified in paragraph (2) of subdivision (b) of Section 5260, and a wage assignment has not been previously terminated and subsequently initiated.

(e) There is no longer a current order for support.

(f) The termination of the stay of an assignment order under Section 5261 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 5261.

(g) The employer or agency designated to provide services under Title IV-D of the Social Security Act or the State Disbursement Unit is

unable to deliver payment for a period of six months due to the failure of the obligee to notify that employer or agency or the State Disbursement Unit of a change in the obligee's address.

SEC. 8. Section 5247 of the Family Code is amended to read:

5247. Neither the local child support agency nor an employer shall be subject to any civil liability for any amount withheld and paid to the obligee, the local child support agency, or the State Disbursement Unit pursuant to an earnings assignment order or notice of assignment.

SEC. 9. Section 5253 of the Family Code is amended to read:

5253. Upon receipt of the application, the court shall issue, without notice to the obligor, an assignment order requiring the employer of the obligor to pay to the obligee or the State Disbursement Unit that portion of the earnings of the obligor due or to become due in the future as will be sufficient to pay an amount to cover both of the following:

(a) The amount ordered by the court for support.

(b) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage or past due support amount.

SEC. 10. Section 17309 of the Family Code is amended to read:

17309. Effective October 1, 1998, the state shall operate a State Disbursement Unit as required by federal law (42 U.S.C. Secs. 654 (27), 654a(g), and 654b).

SEC. 11. Section 17311 is added to the Family Code, to read:

17311. (a) The Child Support Payment Trust Fund is hereby created in the State Treasury. The department shall administer the fund.

(b) (1) The state may deposit child support payments received by the State Disbursement Unit, including those amounts that result in overpayment of child support, into the Child Support Payment Trust Fund, for the purpose of processing and providing child support payments. Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the purposes of disbursing child support payments from the State Disbursement Unit.

(2) The state share of the interest and other earnings that accrue on the fund shall be available to the department and used to offset the following General Fund costs in this order:

(A) Any transfers made to the Child Support Payment Trust Fund from the General Fund.

(B) The cost of administering the State Disbursement Unit, subject to appropriation by the Legislature.

(C) Other child support program activities, subject to appropriation by the Legislature.

(c) The department may establish and administer a revolving account in the Child Support Payment Trust Fund in an amount not to exceed six hundred million dollars ($600,000,000) to ensure the timely disbursement of child support. This amount may be adjusted by the

Director of Finance upon notification of the Legislature as required, to meet payment timeframes required under federal law.

(d) It is the intent of the Legislature to provide transfers from the General Fund to provide startup funds for the Child Support Payment Trust Fund so that, together with the balances transferred pursuant to Section 17311.7, the Child Support Payment Trust Fund will have sufficient cash on hand to make all child support payments within the required timeframes.

SEC. 12. Section 17311.5 is added to the Family Code, to read:

17311.5. The department may enter into a trust agreement with a trustee or fiscal intermediary to receive or disburse child support collections. The trust agreement may contain provisions the department deems reasonable and proper for the security of the child support payments. Any trust accounts created by the trust agreements may be held outside the State Treasury.

SEC. 13. Section 17311.7 is added to the Family Code, to read:

17311.7. (a) Upon the transfer of collection and disbursement activities from each county to the State Disbursement Unit, the auditor and controller of each county shall perform closeout activities as directed by the Department of Child Support Services to ensure accounting for all collections, obligations, and payments. All child support collections remaining undisbursed and interest earned on these funds shall be transferred to the Department of Child Support Services for deposit in the Child Support Payment Trust Fund. The local child support agency director and auditor and controller shall perform these activities based on guidelines provided by the department and shall certify the results of these activities in a report submitted to the department within one year of transfer of collection and distribution functions to the state.

(b) The department may contract for the audit of each county report submitted under subdivision (a). Each audit shall be completed within one year after the receipt of the report from the county.

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 388

An act to amend Section 798.56 of the Civil Code, relating to mobilehomes.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner or resident, upon the park premises, that constitutes a substantial annoyance to other homeowners or residents.

(c) (1) Conviction of the homeowner or resident for prostitution, for a violation of subdivision (d) of Section 243, paragraph (2) of subdivision (a), or subdivision (b), of Section 245, Section 288, or Section 451, of the Penal Code, or a felony controlled substance offense, if the act resulting in the conviction was committed anywhere on the premises of the mobilehome park, including, but not limited to, within the homeowner's mobilehome.

(2) However the tenancy may not be terminated for the reason specified in this subdivision if the person convicted of the offense has permanently vacated, and does not subsequently reoccupy, the mobilehome.

(d) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the park that is part of the rental agreement or any amendment thereto.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

(e) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided that the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. For purposes of this subdivision, the five-day period does not include the date the payment is due. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. A copy of this notice shall be sent to the persons or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. If the homeowner cures the default, the notice need not be sent. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy.

(2) Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision. If the homeowner does not pay prior to the expiration of the three-day notice period, the homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.

(4) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(5) If a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required in the case of a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

In that event, the management shall give written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A

copy of this notice shall be sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, as specified in paragraph (b) of Section 798.55, by certified or registered mail, return receipt requested, within 10 days after notice is sent to the homeowner.

(6) When a copy of the 60 days' notice described in paragraph (5) is sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, the default may be cured by any of them on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice, if all of the following conditions exist:

(A) A copy of a three-day notice sent pursuant to subdivision (b) of Section 798.55 to a homeowner for the nonpayment of rent, utility charges, or reasonable incidental service charges was not sent to the legal owner, junior lienholder, or registered owner, of the mobilehome, if other than the homeowner, during the preceding 12-month period.

(B) The legal owner, junior lienholder, or registered owner of the mobilehome, if other than the homeowner, has not previously cured a default of the homeowner during the preceding 12-month period.

(C) The legal owner, junior lienholder or registered owner, if other than the homeowner, is not a financial institution or mobilehome dealer.

If the default is cured by the legal owner, junior lienholder, or registered owner within the 30-day period, the notice to remove the mobilehome from the park described in paragraph (5) shall be rescinded.

(f) Condemnation of the park.

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, that conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this section.

(i) For purposes of this section, ''financial institution'' means a state or national bank, state or federal savings and loan association or credit union, or similar organization, and mobilehome dealer as defined in Section 18002.6 of the Health and Safety Code or any other organization that, as part of its usual course of business, originates, owns, or provides loan servicing for loans secured by a mobilehome.

SEC. 1.5. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner or resident, upon the park premises, that constitutes a substantial annoyance to other homeowners or residents.

(c) (1) Conviction of the homeowner or resident for prostitution, for a violation of subdivision (d) of Section 243, paragraph (2) of subdivision (a), or subdivision (b), of Section 245, Section 288, or Section 451, of the Penal Code, or a felony controlled substance offense, if the act resulting in the conviction was committed anywhere on the premises of the mobilehome park, including, but not limited to, within the homeowner's mobilehome.

(2) However the tenancy may not be terminated for the reason specified in this subdivision if the person convicted of the offense has permanently vacated, and does not subsequently reoccupy, the mobilehome.

(d) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the park that is part of the rental agreement or any amendment thereto.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the

management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

(e) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided that the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. For purposes of this subdivision, the five-day period does not include the date the payment is due. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. A copy of this notice shall be sent to the persons or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. If the homeowner cures the default, the notice need not be sent. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy. A three-day notice given pursuant to this subdivision shall contain the following provisions printed in at least 12-point boldface type at the top of the notice, with the appropriate number written in the blank:

''Warning: This notice is the (insert number) three-day notice for nonpayment of rent, utility charges, or other reasonable incidental services that has been served upon you in the last 12 months. Pursuant to Civil Code Section 798.56 (e) (5), if you have been given a three-day notice to either pay rent, utility charges, or other reasonable incidental services or to vacate your tenancy on three or more occasions within a 12-month period, management is not required to give you a further three-day period to pay rent or vacate the tenancy before your tenancy can be terminated.''

(2) Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision. If the homeowner does not pay prior to the expiration of the three-day notice period, the homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.

(4) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(5) If a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period and each notice includes the provisions specified in paragraph (1), no written three-day notice shall be required in the case of a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

In that event, the management shall give written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, as specified in paragraph (b) of Section 798.55, by certified or registered mail, return receipt requested, within 10 days after notice is sent to the homeowner.

(6) When a copy of the 60 days' notice described in paragraph (5) is sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, the default may be cured by any of them on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice, if all of the following conditions exist:

(A) A copy of a three-day notice sent pursuant to subdivision (b) of Section 798.55 to a homeowner for the nonpayment of rent, utility charges, or reasonable incidental service charges was not sent to the legal owner, junior lienholder, or registered owner, of the mobilehome, if other than the homeowner, during the preceding 12-month period.

(B) The legal owner, junior lienholder, or registered owner of the mobilehome, if other than the homeowner, has not previously cured a default of the homeowner during the preceding 12-month period.

(C) The legal owner, junior lienholder or registered owner, if other than the homeowner, is not a financial institution or mobilehome dealer.

If the default is cured by the legal owner, junior lienholder, or registered owner within the 30-day period, the notice to remove the mobilehome from the park described in paragraph (5) shall be rescinded.

(f) Condemnation of the park.

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, that conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this section.

(i) For purposes of this section, ''financial institution'' means a state or national bank, state or federal savings and loan association or credit union, or similar organization, and mobilehome dealer as defined in Section 18002.6 of the Health and Safety Code or any other organization that, as part of its usual course of business, originates, owns, or provides loan servicing for loans secured by a mobilehome.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 798.56 of the Civil Code proposed by both this bill and AB 805. It shall only become operative if (1) both bills are enacted and become effective

on or before January 1, 2004, (2) each bill amends Section 798.56 of the Civil Code, and (3) this bill is enacted after AB 805, in which case Section 1 of this bill shall not become operative.

CHAPTER 389

An act to amend Sections 6055 and 6077.6 of, and to add Section 6084.2 to, the Harbors and Navigation Code, and to add Section 69.5 to the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), relating to harbor districts.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 6055 of the Harbors and Navigation Code is amended to read:

6055. The commissioners elected at the first election shall, within 10 days from the date of the canvass of the returns of the election, enter upon the duties of office. Before entering upon the duties of his or her office, each commissioner shall take and subscribe the official oath before the secretary or an officer authorized by law to administer oaths and shall file it with the county elections official of the county in which the district is situated.

They shall elect one of their number as president or chairperson and one of their number as secretary. The president or chairperson and secretary shall serve at the pleasure of the board.

SEC. 2. Section 6077.6 of the Harbors and Navigation Code is amended to read:

6077.6. A harbor district may by resolution order that all or any of the funds under its control and not necessary for current operating expenses be invested in accordance with Section 53601 of the Government Code.

SEC. 3. Section 6084.2 is added to the Harbors and Navigation Code, to read:

6084.2. (a) A district may issue limited obligation notes after the adoption, by a four-fifths vote of all the commissioners of the board, of a resolution reciting each of the following:

(1) That the resolution is being adopted pursuant to this subdivision.

(2) The purposes of incurring the indebtedness.

(3) The estimated amount of the indebtedness.

(4) The maximum amount of notes to be issued, and the source of revenue or revenues to be used to secure the limited obligation notes.

(5) The maturity date of the limited obligation notes.

(6) The form of the limited obligation notes.

(7) The manner of execution of the limited obligation notes.

(b) The resolution may also provide for one or more of the following matters:

(1) Insurance for the limited obligation notes.

(2) Procedures in the event of default, terms upon which the limited obligation notes may be declared due before maturity, and the terms upon which that declaration may be waived.

(3) The rights, liabilities, powers, and duties arising upon the district's breach of an agreement with regard to the limited obligation notes.

(4) The terms upon which the holders of the limited obligation notes may enforce agreements authorized by this section.

(5) A procedure for amending or abrogating the terms of the resolution with the consent of the holders of a specified percentage of the limited obligation notes. If the resolution contains this procedure, the resolution shall specifically state the effect of amendment upon the rights of the holders of all of the limited obligation notes.

(6) The manner in which the holders of the limited obligation notes may take action.

(7) Other actions necessary or desirable to secure the limited obligation notes or tending to make the notes more marketable.

(c) The limited obligation notes shall bear interest at a rate not exceeding the rate permitted under Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code.

(d) The limited obligation notes may not mature later than 10 years after the date of the issuance of the notes, and the total amount of the limited obligation notes outstanding at any one time for the district may not exceed the sum of ten million dollars ($10,000,000).

(e) The agreement between the district and the purchasers of the limited obligation notes shall state that the notes are limited obligation notes payable solely from specified revenue of the district. The pledged revenue shall be sufficient to pay the following amounts annually, as they become due and payable:

(1) The interest and principal on the notes.

(2) Payments required for compliance with the resolution authorizing issuance of the notes or agreements with the purchasers of the notes.

(3) Payments to meet any other obligations of the district that are charges, liens, or encumbrances on the pledged revenue.

(f) The limited obligation notes are special obligations of the district, and shall be a charge against, and secured by a lien upon, and payable, as to the principal thereof and interest thereon, from the pledged revenue. If the revenue described in the authorizing resolution is insufficient for the payment of interest and principal on the notes, the district may make payments from any other funds or revenues that may be applied to their payment. The revenue and any interest earned on the revenue constitute a trust fund for the security and payment of the interest on and principal of the notes.

(g) So long as any limited obligation notes or interest thereon are unpaid following their maturity, the pledged revenue and interest thereon may not be used for any other new purpose.

(h) If the interest and principal on the limited obligation notes and all charges to protect them are paid when due, the district may expend the pledged revenue for other purposes.

(i) Limited obligation notes of the same issue shall be equally secured.

(j) The general fund of the district is not liable for the payment of the principal or the interest on the limited obligation notes.

(k) The holders of the limited obligation notes may not compel the exercise of the taxing power by the district, other than the revenue pledged, or the forfeiture of the district's property.

(*l*) Every agreement shall recite in substance that the principal of, and interest on, the limited obligation notes are payable solely from the revenue pledged to the payment of the principal and interest and that the district is not obligated to pay the principal or interest except from the pledged revenue.

SEC. 4. Section 69.5 is added to the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), to read:

69.5. Notwithstanding any other provision of this act, Section 6084.2 of the Harbors and Navigation Code applies to this act.

CHAPTER 390

An act to amend Section 18541 of the Elections Code, relating to elections.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 18541 of the Elections Code is amended to read:

18541. (a) No person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place:

(1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.

(2) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.

(3) Photograph, videotape, or otherwise record a voter entering or exiting a polling place.

(b) Any person who violates this section is punishable by imprisonment in the county jail for not more than 12 months, or in the state prison. Any person who conspires to violate this section is guilty of a felony.

(c) For purposes of this section, 100 feet means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

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 391

An act to amend Section 499b of the Penal Code, relating to vessels.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 499b of the Penal Code is amended to read:

499b. (a) Any person who shall, without the permission of the owner thereof, take any bicycle for the purpose of temporarily using or operating the same, is guilty of a misdemeanor, and shall be punishable by a fine not exceeding four hundred dollars ($400), or by imprisonment

in a county jail not exceeding three months, or by both that fine and imprisonment.

(b) Any person who shall, without the permission of the owner thereof, take any vessel for the purpose of temporarily using or operating the same, is guilty of a misdemeanor, and shall be punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 392

An act to amend Section 12640.04 of the Insurance Code, relating to mortgage guaranty insurance.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 12640.04 of the Insurance Code is amended to read:

12640.04. (a) In addition to the paid-in capital and surplus provided in Section 12640.03, each mortgage guaranty insurer shall establish a contingency reserve after establishment of the unearned premium reserve. There shall be an annual calculation of and contribution to the contingency reserve. The aggregate annual contribution shall be the greater of either 50 percent of the net earned premium or the policyholders surplus required to be established under Section 12640.05 divided by 10. There shall be provisional contributions, made on a quarterly basis, equal to 50 percent of the net earned premium for the preceding quarter.

(b) The contributions to the contingency reserve made during each calendar year shall be maintained for a period of 120 months. That portion of the contingency reserve established and maintained for more

than 120 months shall be released and shall no longer constitute part of the contingency reserve.

(c) With the approval of the commissioner, withdrawals may be made from the contingency reserve when incurred losses exceed 35 percent of the total year-to-date net earned premium. Provisional withdrawals may be made on a quarterly basis from the contingency reserve in an amount not to exceed 75 percent of the withdrawal calculated in accordance with this subdivision.

(d) With the approval of the commissioner, a mortgage guaranty insurer may withdraw from the contingency reserve any amounts which are in excess of the policyholders surplus required to be established under Section 12640.05 as indicated on the most recent annual statement filed pursuant to Section 923. In reviewing a request for withdrawal, the commissioner may consider those records that may be necessary to evaluate the request, including, but not limited to, records relating to loss development and trends. If any portion of the contingency reserve for which withdrawal is requested is maintained by a reinsurer, the commissioner may also consider the financial condition of the reinsurer. If any portion of the contingency reserve for which withdrawal is requested is maintained in a segregated account or segregated trust and withdrawal would result in funds being removed from the segregated account or segregated trust, the commissioner may also consider the financial condition of the reinsurer.

(e) Releases and withdrawals from the contingency reserve shall be accounted for on a first-in-first-out basis.

(f) The calculations to develop the contingency reserve shall be made in the following sequence:

(1) The additions required by subdivision (a).

(2) The releases required by subdivision (b).

(3) The withdrawals permitted by subdivision (c).

(4) The withdrawals permitted by subdivision (d).

(g) The commissioner's review of a request for withdrawal under subdivision (d) shall be conducted pursuant to his or her examination authority under Section 730 and at the expense of the insurer pursuant to Section 736. The commissioner shall make a finding, set forth within the documents approving any withdrawal, that the withdrawal, and any reduction in total assets that may follow the withdrawal of which the commissioner is aware at the time of his or her approval, will not reduce the cash or securities of the insurer in a manner that will materially, adversely impair the ability of the insurer to maintain its credit rating or meet future obligations.

CHAPTER 393

An act to amend Section 1368 of the Civil Code, relating to common interest developments.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367 or 1367.1.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner

or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service that may not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) (1) Subject to the provisions of paragraph (2), neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

(A) An amount not to exceed the association's actual costs to change its records.

(B) An amount authorized by subdivision (b).

(2) The amendments made to this subdivision by the act adding this paragraph do not apply to a community service organization or similar entity that is described in subparagraph (A) or (B):

(A) The community service organization or similar entity satisfies both of the following requirements:

(i) The community service organization or similar entity was established prior to February 20, 2003.

(ii) The community service organization or similar entity exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

(B) The community service organization or similar entity satisfies all of the following requirements:

(i) The community service organization or similar entity is not an organization or entity described in subparagraph (A).

(ii) The community service organization or similar entity was established and received a transfer fee prior to January 1, 2004.

(iii) On and after January 1, 2006, the community service organization or similar entity offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

(I) Paying the fee or charge at the time of transfer.

(II) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the community service organization or similar entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, a ''community service organization or similar entity'' means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A ''community service organization or similar entity'' does not include an entity that has been organized solely to raise money and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

SEC. 1.5. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to

the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including any operating rules, and including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367 or 1367.1.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service that may not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) (1) Subject to the provisions of paragraph (2), neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

(A) An amount not to exceed the association's actual costs to change its records.

(B) An amount authorized by subdivision (b).

(2) The amendments made to this subdivision by the act adding this paragraph do not apply to a community service organization or similar entity that is described in subparagraph (A) or (B):

(A) The community service organization or similar entity satisfies both of the following requirements:

(i) The community service organization or similar entity was established prior to February 20, 2003.

(ii) The community service organization or similar entity exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

(B) The community service organization or similar entity satisfies all of the following requirements:

(i) The community service organization or similar entity is not an organization or entity described in subparagraph (A).

(ii) The community service organization or similar entity was established and received a transfer fee prior to January 1, 2004.

(iii) On and after January 1, 2006, the community service organization or similar entity offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

(I) Paying the fee or charge at the time of transfer.

(II) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the community service organization or similar entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount

owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, a ''community service organization or similar entity'' means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A ''community service organization or similar entity'' does not include an entity that has been organized solely to raise money and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

SEC. 2. The provisions of this act do not expand or diminish the authority of an association or its agent to charge a reasonable fee to provide information and documentation pursuant to existing law.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1368 of the Civil Code proposed by both this bill and AB 512. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 1368 of the Civil Code, and (3) this bill is enacted after AB 512, in which case Section 1 of this bill shall not become operative.

CHAPTER 394

An act to add Section 70394 to the Government Code, relating to libraries.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) County law libraries are a vital adjunct to the state judicial system, providing many individuals with an opportunity to readily access essential legal documents and publications.

(b) The fiscal health of county law libraries, and the ability of county law libraries to provide adequate, up-to-date publications and services, have a considerable impact on the quality of justice dispensed to citizens of California.

(c) For many individuals, the county law libraries represent the most accessible and affordable option for access to legal documents and publications.

(d) Many county law libraries are not able to acquire and maintain current publications and electronic access to pertinent materials, nor are they able to hire necessary staff. The current funding structure does not allow for adequate financial planning and falls substantially short of meeting necessary expenditures.

(e) Current revenues appear to be insufficient to provide the funding necessary to adequately finance the acquisition of equipment, publications, and staff for county law libraries.

(f) The counties of California are neither required nor able to provide county law libraries with additional support to offset or moderate the financial difficulties encountered by county law libraries throughout the state.

SEC. 2. Section 70394 is added to the Government Code, to read:

70394. (a) The Judicial Council shall establish a task force on county law libraries. The task force is charged with identifying the needs related to county law library operations and facilities, and identifying and making recommendations for funding county law library operations, facility improvements, and expansion.

(b) The task force shall consist of three representatives from the judicial branch of government, as selected by the Administrative Director of the Courts, three representatives of the counties, as selected by the California State Association of Counties, and three county law library administrators, as selected by the Council of California County Law Librarians. The Administrative Director of the Courts shall designate one of these representatives as chairperson of the task force.

(c) The Administrative Office of the Courts shall provide staff support for the task force and shall develop guidelines for procedures and practices for the task force.

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

(1) Review the state of existing county law libraries.

(2) Examine existing standards for county law library operations.

(3) Document the funding mechanisms currently available for the maintenance and operation of county law library facilities.

(4) Recommend funding sources and financing mechanisms for support of county law library operations and facility maintenance.

(e) The task force shall be appointed on or before March 1, 2004. The task force shall submit its report and recommendations to the Judicial Council and the Legislature on or before January 1, 2005.

(f) The Judicial Council shall implement this section using existing resources. Any costs for counties and county law librarians to assist in the implementation of this section shall be at county or county law librarians' expense, respectively.

CHAPTER 395

An act to add and repeal Section 104141 of the Health and Safety Code, relating to disease prevention.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

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

(a) Cardiovascular disease is the number one cause of death and disability nationally.

(b) Heart disease alone is the number one killer, and stroke is the number three killer, of Californians.

(c) More people die each year of cardiovascular disease than of the next five leading causes of death combined.

(d) This year the economic burden on the nation due to heart diseases and stroke is estimated to be over three hundred and fifty billion dollars ($350,000,000,000).

(e) A heart disease and stroke prevention and treatment state master plan is needed to reduce the morbidity, mortality, and economic burden of heart disease and stroke in the state. A master plan is a vital step toward enabling the state to draw down needed federal funds for future activities in this area.

SEC. 2. Section 104141 is added to the Health and Safety Code, to read:

104141. (a) The Heart Disease and Stroke Prevention and Treatment Task Force is hereby created in the department.

(b) The task force shall be comprised of 12 members, as follows, who have demonstrated interest in heart disease or stroke:

(1) Three members appointed by the Speaker of the Assembly, as follows:

(A) One member representing a volunteer health organization dedicated to research and prevention of heart disease and stroke.

(B) One practicing physician with expertise in research, prevention, or treatment of stroke victims.

(C) One hospital administrator.

(2) Three members appointed by the Senate Committee on Rules, as follows:

(A) One representative of a population disproportionately affected by heart disease and stroke.

(B) One practicing physician with expertise in research, prevention, or treatment of cardiovascular disease.

(C) One representative of a health care organization.

(3) Six members appointed by the Governor, as follows:

(A) One heart disease survivor.

(B) One stroke survivor.

(C) One registered nurse.

(D) One representative of a local health department.

(E) One member of a university facility with expertise in programs intended to reduce the rate of heart disease and stroke.

(F) One registered dietitian with experience in population based programs.

(c) (1) Members of the task force shall be appointed on or before March 1, 2004.

(2) Members shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of task force duties.

(3) On or before June 1, 2004, the task force shall meet and establish operating procedures.

(4) A majority of the task force shall constitute a quorum for the transaction of business.

(5) The task force shall be headed by a chairperson, selected by the task force from among its members.

(d) The duties of the task force shall include, but not be limited to, all of the following:

(1) Creating a comprehensive Heart Disease and Stroke Prevention and Treatment State Master Plan that contains recommendations to the Legislature, the Governor, and the department. The master plan shall address changes to existing law, regulations, programs, services, and

policies for the purpose of improving heart disease and stroke prevention and treatment in the state.

(2) Synthesizing existing information on the incidence and causes of heart disease and stroke deaths and risk factors to establish a profile of these deaths and risk factors in the state for the purpose of developing the master plan.

(3) Publicizing the profile of heart disease and stroke deaths and persons at risk in the state, and methods of prevention of heart disease and strokes.

(4) Identifying priority strategies that are effective in preventing and controlling, and treating persons at risk of, heart disease and stroke.

(5) Receiving and considering reports, data, and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide in order to assess opportunities for collaboration, as well as to identify gaps in heart disease and stroke prevention and treatment in the state.

(e) On or before November 1, 2005, the task force shall submit its plan to the Legislature, the Governor, and the department. Prior to issuing the plan, the task force may issue recommendations, as it deems necessary. Once the plan is submitted, the task force may revise and update the plan as necessary due to medical advances or other relevant information.

(f) The department shall provide staff support to the task force, and may apply for, accept, and spend any grants and gifts from any source, public or private, to support the requirements of this section.

(g) Implementation of this section shall be contingent upon the receipt of private funding in an amount sufficient to fund the entire cost of the operation of the task force and costs associated with completing the requirements imposed by this section, as determined by the department.

(h) This section shall become inoperative on March 1, 2006, 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.

CHAPTER 396

An act to add and repeal Section 128401 of the Health and Safety Code, relating to health professions.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

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

(1) There is a severe shortage of registered nurses in California. Currently, California ranks 49th out of the 50 states in the number of registered nurses per 100,000 persons. The central valley in the state suffers from the least number of nurses per capita.

(2) The Health Professions Education Foundation is a nonprofit public benefit corporation established to assist the Office of Statewide Health Planning and Development with the provision of scholarships and loan repayment grants to health professional students throughout California who are willing to practice in medically underserved areas. The foundation accomplishes its mission by making recommendations to the Director of Statewide Health Planning and Development with respect to the award of scholarships and loan repayment grants to health professional students from economically disadvantaged backgrounds and demographically underrepresented groups who are committed to practicing in underserved areas.

(3) To assist in addressing California's nursing shortage, including the severe nursing shortage in the central valley, a statewide associate degree nursing scholarship pilot program is necessary.

(b) It is the intent of the Legislature to enact legislation to establish a scholarship program for nursing students.

SEC. 2. Section 128401 is added to the Health and Safety Code, to read:

128401. (a) The Office of Statewide Health Planning and Development shall adopt regulations establishing the statewide Associate Degree Nursing (A.D.N.) Scholarship Pilot Program.

(b) Scholarships under the pilot program shall be available only to students in counties determined to have the most need. Need in a county shall be established based on consideration of all the following factors:

(1) Counties with a registered nurse to population ratio equal or less than 500 registered nurses per 100,000 individuals.

(2) County unemployment rate.

(3) County level of poverty.

(c) A scholarship recipient shall be required to complete, at a minimum, an associate degree in nursing and work in a medically underserved area in California upon obtaining his or her license from the Board of Registered Nursing.

(d) The Health Professions Education Foundation shall consider the following factors when selecting recipients for the A.D.N. Scholarship Pilot Program:

(1) An applicant's economic need, as established by the federal poverty index.

(2) Applicants who demonstrate cultural and linguistic skills and abilities.

(e) The pilot program shall be funded from the Registered Nurse Education Fund established pursuant to Section 128400 and administered by the Health Professions Education Foundation within the office. The Health Professions Education Foundation shall allocate a portion of the moneys in the fund for the pilot program established pursuant to this section, in addition to moneys otherwise allocated pursuant to this article for scholarships and loans for associate degree nurse students.

(f) No additional staff or General Fund operating costs shall be expended for the pilot program.

(g) The Health Professions Education Foundation may accept private or federal funds for purposes of the A.D.N. Scholarship Pilot Program.

(h) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

CHAPTER 397

An act to amend Sections 24173, 24176, and 24178 of the Health and Safety Code, relating to medical research.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 24173 of the Health and Safety Code is amended to read:

24173. As used in this chapter, ''informed consent'' means the authorization given pursuant to Section 24175 to have a medical experiment performed after each of the following conditions have been satisfied:

(a) The subject or subject's conservator or guardian, or other representative, as specified in Section 24175, is provided with a copy of the experimental subject's bill of rights, prior to consenting to participate in any medical experiment, containing all the information required by Section 24172, and the copy is signed and dated by the subject or the subject's conservator or guardian, or other representative, as specified in Section 24175.

(b) A written consent form is signed and dated by the subject or the subject's conservator or guardian, or other representative, as specified in Section 24175.

(c) The subject or subject's conservator or guardian, or other representative, as specified in Section 24175, is informed both verbally and within the written consent form, in nontechnical terms and in a language in which the subject or the subject's conservator or guardian, or other representative, as specified in Section 24175, is fluent, of the following facts of the proposed medical experiment, which might influence the decision to undergo the experiment, including, but not limited to:

(1) An explanation of the procedures to be followed in the medical experiment and any drug or device to be utilized, including the purposes of the procedures, drugs, or devices. If a placebo is to be administered or dispensed to a portion of the subjects involved in a medical experiment, all subjects of the experiment shall be informed of that fact; however, they need not be informed as to whether they will actually be administered or dispensed a placebo.

(2) A description of any attendant discomfort and risks to the subject reasonably to be expected.

(3) An explanation of any benefits to the subject reasonably to be expected, if applicable.

(4) A disclosure of any appropriate alternative procedures, drugs, or devices that might be advantageous to the subject, and their relative risks and benefits.

(5) An estimate of the expected recovery time of the subject after the experiment.

(6) An offer to answer any inquiries concerning the experiment or the procedures involved.

(7) An instruction to the subject that he or she is free to withdraw his or her prior consent to the medical experiment and discontinue participation in the medical experiment at any time, without prejudice to the subject.

(8) The name, institutional affiliation, if any, and address of the person or persons actually performing and primarily responsible for the conduct of the experiment.

(9) The name of the sponsor or funding source, if any, or manufacturer if the experiment involves a drug or device, and the organization, if any, under whose general aegis the experiment is being conducted.

(10) The name, address, and phone number of an impartial third party, not associated with the experiment, to whom the subject may address complaints about the experiment.

(11) The material financial stake or interest, if any, that the investigator or research institution has in the outcome of the medical

experiment. For purposes of this section, ''material'' means ten thousand dollars ($10,000) or more in securities or other assets valued at the date of disclosure, or in relevant cumulative salary or other income, regardless of when it is earned or expected to be earned.

(d) The written consent form is signed and dated by any person other than the subject or the conservator or guardian, or other representative of the subject, as specified in Section 24175, who can attest that the requirements for informed consent to the medical experiment have been satisfied.

(e) Consent is voluntary and freely given by the human subject or the conservator or guardian, or other representative, as specified by Section 24175, without the intervention of any element of force, fraud, deceit, duress, coercion, or undue influence.

SEC. 2. Section 24176 of the Health and Safety Code is amended to read:

24176. (a) Any person who is primarily responsible for conduct of a medical experiment and who negligently allows the experiment to be conducted without a subject's informed consent, as provided in this chapter, shall be liable to the subject in an amount not to exceed ten thousand dollars ($10,000), as determined by the court. The minimum amount of damages awarded shall be five hundred dollars ($500).

(b) Any person who is primarily responsible for the conduct of a medical experiment and who willfully fails to obtain the subject's informed consent, as provided in this chapter, shall be liable to the subject in an amount not to exceed twenty-five thousand dollars ($25,000) as determined by the court. The minimum amount of damages awarded shall be one thousand dollars ($1,000).

(c) Any person who is primarily responsible for the conduct of a medical experiment and who willfully fails to obtain the subject's informed consent, as provided in this chapter, and thereby exposes a subject to a known substantial risk of serious injury, either bodily harm or psychological harm, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not to exceed one year or a fine of fifty thousand dollars ($50,000), or both.

(d) Any representative or employee of a pharmaceutical company, who is directly responsible for contracting with another person for the conduct of a medical experiment, and who has knowledge of risks or hazards with respect to the experiment, and who willfully withholds information of the risks and hazards from the person contracting for the conduct of the medical experiment, and thereby exposes a subject to substantial risk of serious injury, either bodily harm or psychological harm, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not to exceed one year or a fine of fifty thousand dollars ($50,000), or both.

(e) Each and every medical experiment performed in violation of any provision of this chapter is a separate and actionable offense.

(f) Any attempted or purported waiver of the rights guaranteed, or requirements prescribed by this chapter, whether by a subject or by a subject's conservator or guardian, or other representative, as specified in Section 24175, is void.

(g) Nothing in this section shall be construed to limit or expand the right of an injured subject to recover damages under any other applicable law.

SEC. 3. Section 24178 of the Health and Safety Code is amended to read:

24178. (a) Except for this section and the requirements set forth in Sections 24172 and 24176, this chapter shall not apply to any person who is conducting a medical experiment as an investigator within an institution that holds an assurance with the United States Department of Health and Human Services pursuant to Part 46 of Title 45 of the Code of Federal Regulations and who obtains informed consent in the method and manner required by those regulations.

(b) Subdivisions (c) and (e) shall apply only to medical experiments that relate to the cognitive impairment, lack of capacity, or serious or life-threatening diseases and conditions of research participants.

(c) For purposes of obtaining informed consent required for medical experiments in a nonemergency room environment, and pursuant to subdivision (a), if a person is unable to consent and does not express dissent or resistance to participation, surrogate informed consent may be obtained from a surrogate decisionmaker with reasonable knowledge of the subject, who shall include any of the following persons, in the following descending order of priority:

(1) The person's agent pursuant to an advance health care directive.

(2) The conservator or guardian of the person having the authority to make health care decisions for the person.

(3) The spouse of the person.

(4) An individual as defined in Section 297 of the Family Code.

(5) An adult son or daughter of the person.

(6) A custodial parent of the person.

(7) Any adult brother or sister of the person.

(8) Any adult grandchild of the person.

(9) An available adult relative with the closest degree of kinship to the person.

(d) (1) When there are two or more available persons who, pursuant to subdivision (c), may give surrogate informed consent and who are in the same order of priority, if any of those persons expresses dissent as to the participation of the person in the medical experiment, consent shall not be considered as having been given.

(2) When there are two or more available persons who are in different orders of priority pursuant to subdivision (c), refusal to consent by a person who is a higher priority surrogate shall not be superseded by the consent of a person who is a lower priority surrogate.

(e) For purposes of obtaining informed consent required for medical experiments in an emergency room environment, and pursuant to subdivision (a), if a person is unable to consent and does not express dissent or resistance to participation, surrogate informed consent may be obtained from a surrogate decisionmaker who is any of the following persons:

(1) The person's agent pursuant to an advance health care directive.

(2) The conservator or guardian of the person having the authority to make health care decisions for the person.

(3) The spouse of the person.

(4) An individual defined in Section 297 of the Family Code.

(5) An adult son or daughter of the person.

(6) A custodial parent of the person.

(7) Any adult brother or sister of the person.

(f) When there are two or more available persons described in subdivision (e), refusal to consent by one person shall not be superseded by any other of those persons.

(g) Surrogate decisionmakers described in this section shall exercise substituted judgment, and base decisions about participation in accordance with the person's individual health care instructions, if any, and other wishes, to the extent known to the surrogate decisionmaker. Otherwise, the surrogate decisionmaker shall make the decision in accordance with the person's best interests. In determining the person's best interests, the decisionmaker shall consider the person's personal values and his or her best estimation of what the person would have chosen if he or she were capable of making a decision.

(h) Research conducted pursuant to this section shall adhere to federal regulations governing informed consent pursuant to Section 46.116 of Title 45 of the Code of Federal Regulations.

(i) Any person who provides surrogate consent pursuant to subdivisions (c) and (e) may not receive financial compensation for providing the consent.

(j) Subdivisions (c) and (e) do not apply to any of the following persons, except as otherwise provided by law:

(1) Persons who lack the capacity to give informed consent and who are involuntarily committed pursuant to Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(2) Persons who lack the capacity to give informed consent and who have been voluntarily admitted or have been admitted upon the request

of a conservator pursuant to Chapter 1 (commencing with Section 6000) of Part 1 of Division 6 of the Welfare and Institutions Code.

CHAPTER 398

An act to amend Section 11265.3 of the Welfare and Institutions Code, and to amend Section 71 of Chapter 1022 of the Statutes of 2002, relating to CalWORKs.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 11265.3 of the Welfare and Institutions Code is amended to read:

11265.3. (a) In addition to submitting the quarterly report form as required in Section 11265.1, during the quarterly reporting period, a recipient shall report the following changes to the county orally or in writing, within 10 days of the change:

(1) The receipt at any time during a quarterly reporting period of income, as provided by the department, in an amount that is likely to render the recipient ineligible, as provided by the department.

(2) The occurrence at any time during a quarterly reporting period of a drug felony conviction as specified in Section 11251.3.

(3) The occurrence, at any time during a quarterly reporting period, of an individual fleeing prosecution or custody or confinement, or violating a condition of probation or parole as specified in Section 11486.5.

(b) Counties shall inform each recipient of the duty to report under paragraph (1) of subdivision (a), the consequences of failing to report, and the amount of income likely to render the family ineligible for benefits no less frequently than once per quarter.

(c) When a recipient reports income pursuant to paragraph (1) of subdivision (a) the county shall redetermine eligibility and grant amounts as follows:

(1) If the recipient reports a change for the first or second month of a current quarterly reporting period, the county shall verify the report and determine if the recipient is financially ineligible. If the recipient is determined to be financially ineligible based on this income, the county shall discontinue the recipient after timely and adequate notice in accordance with rules applicable to the federal Food Stamp program.

(2) If the recipient reports a change for the third month of a current quarterly reporting period, the county shall not redetermine eligibility for the current quarterly reporting period, but shall redetermine eligibility and grant amount for the following quarterly reporting period as provided in Section 11265.2.

(d) (1) During the quarterly reporting period, a recipient may report to the county, orally or in writing, any changes in income or household circumstances that may increase the recipient's grant.

(2) Counties shall act upon changes in income reported during the quarterly reporting period that result in an increase in benefits, after verification specified by the department is received. Reported changes in income that increase the grant shall be effective for the entire month in which the change is reported. If the reported change in income results in an increase in benefits, the county shall issue the increased benefit amount within 10 days of receiving required verification.

(3) (A) When a decrease in gross monthly income is voluntarily reported and verified, the county shall redetermine the grant for the current month and any remaining months in the quarterly reporting period by averaging the actual gross monthly income reported and verified from the voluntary report for the current month and the gross monthly income that is reasonably anticipated for any future month remaining in the quarterly reporting period.

(B) When the average is determined pursuant to subparagraph (A), and a grant amount is calculated based upon the averaged income, if the grant amount is higher than the grant currently in effect, the county shall revise the grant for the current month and any remaining months in the quarter to the higher amount and shall issue any increased benefit amount as provided in paragraph (2).

(4) Except as provided in subdivision (e), counties shall act only upon changes in household composition voluntarily reported by the recipients during the quarterly reporting period that result in an increase in benefits, after verification specified by the department is received. If the reported change in household composition is for the first or second month of the quarterly reporting period and results in an increase in benefits, the county shall redetermine the grant effective for the month following the month in which the change was reported. If the reported change in household composition is for the third month of a quarterly reporting period, the county shall not redetermine the grant for the current quarterly reporting period, but shall redetermine the grant for the following reporting period as provided in Section 11265.2.

(e) During the quarterly reporting period, a recipient may request that the county discontinue the recipient's entire assistance unit or any individual member of the assistance unit who is no longer in the home or is an optional member of the assistance unit. If the recipient's request

was verbal, the county shall provide a 10-day notice before discontinuing benefits. If the recipient's report was in writing, the county shall discontinue benefits effective the end of the month in which the request is made, and simultaneously issue a notice informing the recipient of the discontinuance.

(f) The department, in consultation with the County Welfare Directors Association (CWDA), shall report to the relevant policy and fiscal committees of the Legislature in April 2005 regarding the effects upon program efficiency and integrity of implementation of the midquarter reporting requirement set forth in subdivision (a). The report shall be based on data collected by CWDA and select counties. The department, in consultation with CWDA, shall determine the data collection needs required to assess the effects of the specified midquarter report.

SEC. 2. No appropriation pursuant to Section 15200 of the Welfare and Institutions Code shall be made for the purpose of funding the changes required by the amendments made to Section 11265.3 of the Welfare and Institutions Code by Section 1 of this act.

SEC. 3. Section 71 of Chapter 1022 of the Statutes of 2002 is amended to read:

Sec. 71. (a) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), until July 1, 2004, the department may implement a CalWORKs and Food Stamp reporting and budgeting system, as described in Chapter 1022 of the Statutes of 2002 and modified by Chapter 1024 of the Statutes of 2002 and by the amendments to Section 11265.3 of the Welfare and Institutions Code made by the act amending this section during the 2003 portion of the 2003–04 Regular Session of the Legislature, through an all county letter or similar instructions from the director, developed in consultation with the County Welfare Directors Association, the Western Center on Law and Poverty, and other interested stakeholders as determined by the department.

(b) The department shall adopt regulations as otherwise necessary to implement those provisions of this act no later than July 1, 2004. Emergency regulations adopted for implementation of this act may be adopted by the director in accordance with the Administrative Procedure Act. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of

Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

SEC. 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 399

An act to amend Section 35400 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 35400 of the Vehicle Code is amended to read:

35400. (a) A vehicle may not exceed a length of 40 feet.

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

(1) A vehicle used in a combination of vehicles when the excess length is caused by auxiliary parts, equipment, or machinery not used as space to carry any part of the load, except that the combination of vehicles shall not exceed the length provided for combination vehicles.

(2) A vehicle, when the excess length is caused by any parts necessary to comply with the fender and mudguard regulations of this code.

(3) (A) An articulated bus or articulated trolley coach that does not exceed a length of 60 feet.

(B) An articulated bus or articulated trolley coach described in subparagraph (A) may be equipped with a folding device attached to the front of the bus or trolley if the device is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus or trolley coach when fully deployed. The handlebars of a bicycle that is transported on a device described in this subparagraph shall not extend more than 42 inches from the front of the bus.

(4) A semitrailer while being towed by a motortruck or truck tractor, if the distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet for semitrailers having two or more axles, or 38 feet for semitrailers having one axle if the semitrailer does not, exclusive of attachments, extend forward of the rear of the cab of the motortruck or truck tractor.

(5) A bus or house car when the excess length is caused by the projection of a front safety bumper or a rear safety bumper, or both. The safety bumper shall not cause the length of the vehicle to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. For the purposes of this chapter, ''safety bumper'' means any device that is fitted on an existing bumper or which replaces the bumper and is constructed, treated, or manufactured to absorb energy upon impact.

(6) A schoolbus, when the excess length is caused by the projection of a crossing control arm. For the purposes of this chapter, ''crossing control arm'' means an extendable and retractable device fitted to the front of a schoolbus that is designed to impede movement of pupils exiting the schoolbus directly in front of the schoolbus so that pupils are visible to the driver while they are moving in front of the schoolbus. An operator of a schoolbus shall not extend a crossing control arm while the schoolbus is in motion. Except when activated, a crossing control arm shall not cause the maximum length of the schoolbus to be extended by more than 10 inches, inclusive of any front safety bumper. Use of a crossing control arm by the operator of a schoolbus does not, in and of itself, fulfill his or her responsibility to ensure the safety of students crossing a highway or private road pursuant to Section 22112.

(7) A bus, when the excess length is caused by a device, located in front of the front axle, for lifting wheelchairs into the bus. That device shall not cause the length of the bus to be extended by more than 18 inches, inclusive of any front safety bumper.

(8) A bus, when the excess length is caused by a device attached to the rear of the bus designed and used exclusively for the transporting of bicycles. This device may be up to 10 feet in length, if the device, along with any other device permitted pursuant to this section, does not cause the total length of the bus, including any device or load, to exceed 50 feet.

(9) A bus operated by a public agency or a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, used in transit system service, other than a schoolbus, when the excess length is caused by a folding device attached to the front of the bus which is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the

front body of the bus when fully deployed. The handlebars of a bicycle that is transported on a device described in this paragraph shall not extend more than 42 inches from the front of the bus. A device described in this paragraph may not be used on a bus that, exclusive of the device, exceeds 40 feet in length or on a bus having a device attached to the rear of the bus pursuant to paragraph (8).

(10) (A) A bus of a length of up to 45 feet when operating on those highways specified in subdivision (a) of Section 35401.5. The Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, may not deny reasonable access to a bus of a length of up to 45 feet between the highways specified in subdivision (a) of Section 35401.5 and points of loading and unloading for motor carriers of passengers as required by the federal Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240).

(B) A bus operated by a public agency and on those highways specified in subparagraph (A) may be equipped with a folding device attached to the front of the bus that is designed and used exclusively for transporting bicycles. The device, including all bicycles transported thereon, may be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and may not extend more than 36 inches from the front body of the bus when fully deployed. The handlebars of a bicycle that is transported on a device described in this subparagraph may not extend more than 42 inches from the front of the bus. The total length of the bus, including the folding device or load, may not exceed 48.5 feet. A Route Review Committee, established under this subparagraph, shall review the routes where a public agency proposes to operate a 45-foot bus equipped with a front mounted bicycle rack. The Route Review Committee shall be comprised of one member from the public agency appointed by the general manager of the public agency; one member who is a traffic engineer and is employed and selected by the public agency that has jurisdiction over the largest proportional share of routes among all affected agencies; and one member appointed by the labor organization that is the exclusive representative of the bus drivers of the public agency. If there is no exclusive representative of the bus drivers, a bus driver member shall be chosen by a majority vote of the bus drivers employed by the agency. The members of the Route Review Committee shall be selected not more than 30 days after receipt of a public agency proposal to equip a 45-foot bus with a front mounted bicycle rack. The review shall include a field review of the proposed routes. The purpose of the Route Review Committee is to ensure the safe operation of a 45-foot bus that is equipped with a front mounted bicycle rack. The Route Review Committee, by a unanimous vote, shall make a determination of which

routes are suitable for the safe operation of a 45-foot bus that is equipped with a front mounted bicycle rack. These determinations shall be consistent with the operating requirements specified in subparagraph (A). It is the intent of the Legislature that the field review required under this subparagraph include consultation with traffic engineers from affected public agencies that have jurisdiction over segments of the route or routes under review, to ensure coordination with all effected state and local public road agencies that may potentially be impacted due to the operation of a 45-foot bus with a front mounted bicycle rack.

(11) (A) A house car of a length of up to 45 feet when operating on the National System of Interstate and Defense Highways or when using those portions of federal aid primary system highways that have been qualified by the United States Secretary of Transportation for that use, or when using routes appropriately identified by the Department of Transportation or local authorities, with respect to highways under their respective jurisdictions.

(B) A house car described in subparagraph (A) may be operated on a highway that provides reasonable access to facilities for purposes limited to fuel, food, and lodging when that access is consistent with the safe operation of the vehicle and when the facility is within one road mile of identified points of ingress and egress to or from highways specified in subparagraph (A) for use by that vehicle.

(C) As used in this paragraph and paragraph (10), ''reasonable access'' means access substantially similar to that authorized for combinations of vehicles pursuant to subdivision (c) of Section 35401.5.

(D) Any access route established by a local authority pursuant to subdivision (d) of Section 35401.5 is open for access by a house car of a length of up to 45 feet. In addition, local authorities may establish a process whereby access to services by house cars of a length of up to 45 feet may be applied for upon a route not previously established as an access route. The denial of a request for access to services shall be only on the basis of safety and an engineering analysis of the proposed access route. In lieu of processing an access application, local authorities, with respect to highways under their jurisdiction, may provide signing, mapping, or a listing of highways, as necessary, to indicate the use of these specific routes by a house car of a length of up to 45 feet.

(c) The Legislature, by increasing the maximum permissible kingpin to rearmost axle distance to 40 feet effective January 1, 1987, as provided in paragraph (4) of subdivision (b), does not intend this action to be considered a precedent for any future increases in truck size and length limitations.

(d) Any transit bus equipped with a folding device installed on or after January 1, 1999, that is permitted under subparagraph (B) of paragraph

(3) of subdivision (b) or under paragraph (9) of subdivision (b) shall be additionally equipped with any of the following:

(1) An indicator light that is visible to the driver and is activated whenever the folding device is in an extended position.

(2) Any other device or mechanism that provides notice to the driver that the folding device is in an extended position.

(3) A mechanism that causes the folding device to retract automatically from an extended position.

(e) (1) A person may not improperly or unsafely mount a bicycle on a device described in subparagraph (B) of paragraph (3) of subdivision (b), or in paragraph (9) or (10) of subdivision (b).

(2) Notwithstanding subdivision (a) of Section 23114 or subdivision (a) of Section 24002 or any other provision of law, when a bicycle is improperly or unsafely loaded by a passenger onto a transit bus, the passenger, and not the driver, is liable for any violation of this code that is attributable to the improper or unlawful loading of the bicycle.

SEC. 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 400

An act to amend Section 51221.3 of the Education Code, relating to curriculum.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 51221.3 of the Education Code is amended to read:

51221.3. (a) Instruction in the area of social sciences, as required pursuant to subdivision (b) of Section 51220, may include instruction on World War II and the American role in that war. The Legislature encourages that this instruction include, but not be limited to, a component drawn from personal testimony, especially in the form of oral or video history, if available, of American soldiers who were involved

in World War II and those men and women who contributed to the war effort on the homefront. The oral histories used as part of the instruction regarding World War II shall exemplify the personal sacrifice and courage of the wide range of ordinary citizens who were called upon to participate. The oral histories shall contain the views and comments of their subjects regarding the reasons for American participation in the war and the actions taken to end the war in the Pacific. These oral histories shall also solicit comments from their subjects regarding the aftermath of the war in Eastern Europe and the former Soviet Union.

(b) The Legislature finds and declares that the current state-adopted academic content standards already include instruction on the Korean War and the Vietnam War in the appropriate grade level consistent with those standards. The Legislature encourages that this instruction include a component drawn from personal testimony, especially in the form of oral or video history, if available, of American soldiers who were involved in those wars.

CHAPTER 401

An act to add Section 4004 to the Elections Code, relating to elections.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 4004 is added to the Elections Code, to read:

4004. (a) ''Small city'' means a city with a population of 100,000 or less, as determined by the annual city total population rankings by the Demographic Research Unit of the Department of Finance.

(b) ''Eligible entity'' means a school district or a special district.

(c) Notwithstanding Sections 1502 and 4000, an election in a small city or an eligible entity may be conducted wholly as an all-mail ballot election, subject to the following conditions:

(1) The legislative body of the small city or the governing body of the eligible entity, by resolution, authorizes the use of mailed ballots for the election.

(2) The election is a special election to fill a vacancy in the legislative body or governing body.

(3) The election is not held on the same date as a statewide primary or general election.

(4) The election is not consolidated with any other election.

(5) The return of voted mail ballots is subject to Section 3017.

SEC. 2. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 402

An act to amend Section 10313 of the Public Contract Code, relating to public agencies.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 10313 of the Public Contract Code is amended to read:

10313. The director may make the services of the department under this article available, upon those terms and conditions as he or she may deem satisfactory, to any tax-supported public agency in the state, including a school district.

SEC. 2. (a) Notwithstanding Section 11011 of the Government Code, the Director of General Services, with the concurrence of the Secretary of Veterans Affairs and the Executive Director of the Capitol Area Development Authority and with the approval of the State Public Works Board, may sell, lease, or exchange the real property owned by the Department of Veterans Affairs and the Department of General Services on Block 222 in the City of Sacramento to the Regents of the University of California for the purpose of constructing academic housing and necessary facilities to carry out the mission of the University of California. Any sale, lease, or exchange of that property shall be deemed to be in the best interest of the state.

(b) Any sale, lease, or exchange made pursuant to this section shall be for fair market value.

(c) Any agreement to sell, lease, or exchange real property entered into pursuant to this section shall provide for necessary and appropriate parking for the Department of Veterans Affairs on Block 222 in the City of Sacramento.

(d) Any housing constructed pursuant to this section shall be counted toward the Capitol Area Plan housing obligation pursuant to the redevelopment plan defined in subdivision (b) of Section 8180.

CHAPTER 403

An act to add Sections 1596.817 and 1596.8595 to the Health and Safety Code, relating to child day care.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 1596.817 is added to the Health and Safety Code, to read:

1596.817. (a) When the department conducts a site visit of a licensed child day care facility, the department shall post on, or immediately adjacent to, the interior side of the main door into the facility and adjacent to the postings required pursuant to Section 1596.8595, a notice, written in at least 14-point type, that includes all of the following:

(1) The date of the site visit.

(2) Whether the facility was cited for violating any state standards or regulations as a result of the site visit and which of the following categories was cited:

(A) A violation that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of children in care.

(B) A violation that, if not corrected, could become a risk to the health, safety, or personal rights of children, a recordkeeping violation that would impact the care of children, or a violation that would impact those services required to meet children's needs.

(3) Whether the facility is required to post the site visit report for 30 consecutive days pursuant to Section 1596.8595.

(4) A statement explaining that copies of the site visit report, including, but not limited to, violations noted in subparagraph (B) of paragraph (2), may be obtained by contacting the department and the telephone number to call in order to obtain a copy of the site visit report.

(5) The name and telephone number of a person in the department who may be contacted for further information about the site visit report.

(b) (1) The notice posted pursuant to subdivision (a) shall remain posted for 30 consecutive days, except that a family day care home shall

comply with the posting requirements contained in this subdivision only during the hours when clients are present.

(2) Failure by a licensed child day care facility or a family day care home to comply with paragraph (1) shall result in an immediate civil penalty of one hundred dollars ($100).

SEC. 2. Section 1596.8595 is added to the Health and Safety Code, to read:

1596.8595. (a) (1) Each licensed child day care facility shall post a copy of any licensing report pertaining to the facility that documents either a facility visit or a complaint investigation that results in a citation for a violation that, if not corrected, will create a direct and immediate risk to the health, safety, or personal rights of children in care. The licensing report provided by the department shall be posted immediately upon receipt, adjacent to the postings required pursuant to Section 1596.817 and on, or immediately adjacent to, the interior side of the main door to the facility and shall remain posted for 30 consecutive days.

(2) A family day care home shall comply with the posting requirements contained in paragraph (1) during the hours when clients are present.

(3) Failure to comply with paragraph (1) shall result in an immediate civil penalty of one hundred dollars ($100).

(b) (1) Notwithstanding subdivision (b) of Section 1596.859, the licensee shall post a licensing report or other appropriate document verifying the licensee's compliance or noncompliance with the department's order to correct a deficiency that is subject to posting pursuant to paragraph (1) of subdivision (a). The licensing report or other document shall be posted immediately upon receipt, adjacent to the postings required pursuant to Section 1596.817, on, or immediately adjacent to, the interior side of the main door into the facility and shall be posted for a period of 30 consecutive days.

(2) A family day care home shall comply with the posting requirements contained in paragraph (1) during the hours when clients are present.

(3) Failure to comply with paragraph (1) shall result in an immediate civil penalty of one hundred dollars ($100).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 404

An act to amend Sections 261, 772, 1500, 1560, 1808, 1900, 3375.5, 4839, 4843, 4946, 8152, 14250, 14354, 16151, 16701, 31507, and 33903 of, to amend and renumber Sections 4879.12, 4879.13, and 4879.135 of, and to repeal Section 8012 of, the Financial Code, relating to financial institutions.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 261 of the Financial Code is amended to read:

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

(1) ''Control'' has the same meaning set forth in subdivision (b) of Section 700.

(2) ''Controlling person'' means a person who, directly or indirectly, controls a financial institution.

(3) ''Financial institution'' means any of the following:

(A) A commercial bank, industrial bank, trust company, savings association, or credit union incorporated under the laws of this state.

(B) A person licensed by the commissioner under Chapter 14 (commencing with Section 1800) to receive money for transmission to foreign countries.

(C) A person authorized by the commissioner pursuant to Section 1803 to act as an agent of a person licensed by the commissioner to receive money for transmission to foreign countries.

(D) A person licensed by the commissioner pursuant to Division 7 (commencing with Section 18000) to transact business as a premium finance agency.

(E) A person licensed by the commissioner pursuant to Division 15 (commencing with Section 31000) to transact business as a business and industrial development corporation.

(F) A person licensed by the commissioner pursuant to Division 16 (commencing with Section 33000) to engage in the business of selling payment instruments in this state issued by the licensee.

(G) A corporation incorporated under the laws of this state for the purpose of engaging in, or that is authorized by the commissioner to

engage in, business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(H) A foreign corporation that is licensed by the commissioner pursuant to Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(b) Notwithstanding any other provision of law, the commissioner may deliver fingerprints taken of an applicant for employment, or a director, officer, or employee of an existing or proposed financial institution, and existing or proposed controlling person of a financial institution, or an existing or proposed affiliate of a financial institution to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of that person relating to convictions, and to any arrest for which the person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(c) No request shall be submitted pursuant to this section without the written consent of the person affected.

(d) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 2. Section 772 of the Financial Code is amended to read:

772. Notwithstanding the provisions of Section 1335, except as provided in Section 1336, and subject to regulations and rules the commissioner may prescribe, a bank may invest in equity or other securities of one or more corporations, limited liability corporations, limited liability companies, limited partnerships, trusts, business trusts, or other similar business organizations.

Any reference to ''corporation'' in regulations adopted by the commissioner to implement this section shall be deemed to include limited liability corporations, limited liability companies, limited partnerships, trusts, business trusts, or other similar business organizations.

SEC. 3. Section 1500 of the Financial Code is amended to read:

1500. No corporation shall engage in the trust business unless:

(a) Its articles comply with the requirements of subdivision (b), (d), or (e) of Section 600; and

(b) It has received from the commissioner a certificate of authority pursuant to Section 401 to engage in the trust business, or, if it is a bank, has received the authorization of the commissioner to engage in the trust business pursuant to Section 1500.1; and

(c) It has deposited with the State Treasurer money or securities in compliance with Article 3 (commencing with Section 1540) of this chapter.

SEC. 4. Section 1560 of the Financial Code is amended to read:

1560. A trust company may invest its contributed capital only in the securities and properties in which a commercial bank is permitted to invest its funds pursuant to Sections 1000 to 1018, inclusive, and in loans on real property which commercial banks are permitted to make pursuant to Article 2 (commencing with Section 1220) of Chapter 10.

SEC. 5. Section 1808 of the Financial Code is amended to read:

1808. (a) The commissioner may at any time and from time to time examine the business and any office, within or outside this state, of any licensee or any agent of a licensee in order to ascertain whether that business is being conducted in a lawful manner and whether all moneys received for transmission are properly accounted for.

(b) The directors, officers, and employees of a licensee or agent of a licensee being examined by the commissioner shall exhibit to the commissioner, on request, any or all of the licensee's accounts, books, correspondence, memoranda, papers, and other records and shall otherwise facilitate the examination so far as it may be in their power to do so.

SEC. 6. Section 1900 of the Financial Code is amended to read:

1900. (a) (1) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

(2) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

(3) The commissioner shall cause every California state bank, every California state trust company, and the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years.

(b) The commissioner may at any time examine any of the following:

(1) Any office of a bank organized under the laws of this state.

(2) Any office of a foreign (other state) bank that maintains an office in this state.

(3) Any office of a foreign (other nation) bank that maintains an office in this state.

(c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall

exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.

SEC. 7. Section 3375.5 of the Financial Code is amended to read:

3375.5. A bank may make a loan, otherwise complying with the provisions of this division, for the benefit of a trust, notwithstanding that the bank or any one or more executive officers or directors of the bank are trustees of the trust.

SEC. 8. Section 4839 of the Financial Code is amended to read:

4839. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for approval of a sale under this division shall be two thousand five hundred dollars ($2,500).

(b) The fee for filing an application for approval of a merger under this division shall be two thousand five hundred dollars ($2,500).

(c) (1) The fee for filing an application for approval of a conversion under this division shall be five thousand dollars ($5,000).

(2) The fee for issuing a certificate of authority or license under subdivision (a) of Section 4928 or subdivision (a) of Section 4948 shall be two thousand five hundred dollars ($2,500).

(d) The fee for issuing a certificate of authority or license under any other provision of this division shall be twenty-five dollars ($25).

(e) The fee for issuing a certificate under Section 4862, 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars ($25).

(f) In case the commissioner makes an examination in connection with a pending application, as described in paragraph (1), (2), (3), (4), (5), or (6) the applicant shall pay a fee for the examination in the sum of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(1) Examination of the selling depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3.

(2) Examination of the partial business unit (as defined in Section 4840) to be sold and any related affairs of the selling depository corporation in connection with a pending application for approval of a sale of a partial business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3.

(3) Examination of the purchasing depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4880) under Article 3.5 (commencing with Section 4876.01) of Chapter 3 or of a partial business

unit (as defined in Section 4880) under Article 4.5 (commencing with Section 4878.01) of Chapter 3.

(4) Examination of the surviving depository corporation in connection with a pending application for approval of a merger under Article 4 (commencing with Section 4908.01) of Chapter 4.

(5) Examination of the disappearing depository corporation in connection with a pending application for approval of a merger under Article 1 (commencing with Section 4880) or Article 2 (commencing with Section 4895.01) of Chapter 4.

(6) Examination of the converting depository corporation in connection with a pending application for approval of a conversion under Article 1 (commencing with Section 4920) or Article 2 (commencing with Section 4940) of Chapter 5.

SEC. 9. Section 4843 of the Financial Code is amended to read:

4843. In case a national banking association or federal savings association that is authorized to transact trust business in this state sells a partial business unit located in this state of the type described in paragraph (1) or subparagraph (A) or (B) of paragraph (2) of subdivision (e) of Section 4840 to a national banking association or federal savings association pursuant to federal law, the sale shall:

(a) Have the same effect as provided in subdivision (e) of Section 4879.14 in the case of a sale of the type defined in Section 4879.01.

(b) Be subject to the provisions of Section 4842.

SEC. 10. Section 4879.12 of the Financial Code is amended and renumbered to read:

4879.11. After an application for approval of a sale has been approved by the commissioner and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale, and at that time the sale shall become effective for all purposes.

SEC. 11. Section 4879.13 of the Financial Code is amended and renumbered to read:

4879.12. When a sale becomes effective, in case the purchaser is a California state depository corporation or California state-licensed foreign (other nation) bank:

(a) Unless the purchaser provided otherwise in the application for approval of the sale or unless the commissioner provided otherwise in the approval of the application:

(1) The purchaser may establish equivalent offices at any branch offices, places of business, extensions of offices, and other facilities of the seller transferred in the sale.

(2) If the seller was authorized to transact trust business and if the partial business unit sold includes any trust business, the purchaser, if it

is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the purchaser certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

SEC. 12. Section 4879.135 of the Financial Code is amended and renumbered to read:

4879.13. In case a seller is a California state commercial bank and sells all of its trust business in a sale:

(a) As of the time when the sale becomes effective, the commissioner shall issue to the seller certificates of authority authorizing it to transact commercial banking business in replacement of the certificates of authority that the seller is required to surrender pursuant to subdivision (b).

(b) Promptly after the sale becomes effective, the seller shall surrender to the commissioner for cancellation its certificates of authority authorizing it to transact commercial banking business and trust business.

SEC. 13. Section 4946 of the Financial Code is amended to read:

4946. After an application for approval of a conversion has been approved by the commissioner but before the conversion becomes effective, the converting depository corporation shall file with the commissioner an application for approval of the articles of the resulting depository corporation. When the commissioner approves the articles, the commissioner shall endorse the approval on the articles. After the articles are filed with the Secretary of State, the resulting depository corporation shall file with the commissioner a copy of the articles certified by the Secretary of State.

SEC. 14. Section 8012 of the Financial Code is repealed.

SEC. 15. Section 8152 of the Financial Code is amended to read:

8152. From time to time the commissioner may, without previous notice, examine or cause an examination to be made into the affairs of each association, and any office of the association within or outside this state, savings and loan holding company and subsidiary of any association or savings and loan holding company subject to this division.

SEC. 16. Section 14250 of the Financial Code is amended to read:

14250. (a) (1) The commissioner may at any time investigate into the affairs and examine the books, accounts, records, files, and any office within or outside of this state used in the business of every credit union, whether it acts or claims to act under or without authority of this division.

(2) The commissioner and the commissioner's duly designated representatives shall have free access to the offices and places of

business, books, accounts, papers, records, files, safes, and vaults of every credit union referred to in paragraph (1).

(b) (1) The commissioner shall examine every credit union organized under the laws of this state to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two years.

(2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from the National Credit Union Administration or a credit union regulatory agency of another state of the United States is deemed to be an examination made by the commissioner.

(3) No provision of this subdivision shall be deemed to require that the commissioner make an examination onsite at the offices of a credit union.

SEC. 17. Section 14354 of the Financial Code is amended to read:

14354. There is established the Credit Union Fund in the State Treasury.

SEC. 18. Section 16151 of the Financial Code is amended to read:

16151. The commissioner may make any examination of a foreign (other state) credit union at any office of the commissioner. The commissioner may make an examination of any office, within or outside of this state, of a foreign (other state) credit union that maintains an office in this state.

SEC. 19. Section 16701 of the Financial Code is amended to read:

16701. The commissioner may make an examination of a foreign (other nation) credit union at any office of the commissioner. The commissioner may make an examination of any office, within or outside of this state, of a foreign (other nation) credit union that maintains an office in this state.

SEC. 20. Section 31507 of the Financial Code is amended to read:

31507. (a) The commissioner shall examine each licensee not less frequently than once each calendar year.

(b) (1) The commissioner may at any time examine any licensee or any parent or subsidiary of a licensee.

(2) The commissioner may at any time examine any office of any licensee within or outside of this state.

(3) The commissioner may at any time examine any affiliate of a licensee (other than a parent or subsidiary of the licensee) but only with respect to matters relating to transactions between the affiliate and the licensee.

(c) The directors, officers, and employees of any licensee or of any affiliate of a licensee being examined by the commissioner and any other person having custody of any of the books, accounts, or records of the licensee or affiliate shall exhibit to the commissioner, on request, any or

all of the books, accounts, and other records of the licensee or affiliate and shall otherwise facilitate the examination so far as it may be in their power to do so. However, in the case of an examination of an affiliate of a licensee other than a parent or subsidiary of the licensee, only books, accounts, and records of the affiliate that relate to transactions between the affiliate and the licensee shall be subject to this subdivision.

(d) The commissioner may, if in his or her opinion it is necessary in the examination of any licensee or of any affiliate of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist him or her, and the licensee shall pay, within 10 days after receipt of a statement from the commissioner, the fees of that person.

SEC. 21. Section 33903 of the Financial Code is amended to read:

33903. (a) The commissioner may at any time examine any licensee and any office of the licensee within or outside of this state.

(b) In case the commissioner has initiated proceedings to issue, or has issued, an order imposing conditions upon the surrender of the license of a licensee under Section 34001, an order suspending or revoking the license of a licensee under Section 34109 or 34110, or an order taking possession of the property and business of a licensee under Section 34113, the commissioner may examine any California agent of the licensee with respect to sales by the agent of payment instruments issued by the licensee and related matters.

(c) Any licensee or California agent of a licensee being examined by the commissioner shall, and each licensee shall use its best efforts to require each of its California agents being examined by the commissioner to, exhibit to the commissioner and permit the commissioner to copy, on request, any or all of the books, accounts, and other records of the licensee or the California agent, as the case may be, that may relate to the examination, and otherwise facilitate the examination so far as it may be in its power to do so.

(d) The commissioner may, if in the commissioner's opinion it is necessary in the examination of any licensee or of any California agent of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist the commissioner, and the licensee shall pay, within 10 days after receipt of a statement from the commissioner, the fees of that person.

CHAPTER 405

An act to amend Section 7152.7 of the Health and Safety Code, and to amend Section 1672 of, and to amend and repeal Sections 12811 and 13005 of, the Vehicle Code, relating to organ and tissue donation.

[Approved by Governor September 16, 2003. Filed with
Secretary of State September 17, 2003.]

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

SECTION 1. This act shall be known and may be cited as the Organ and Tissue Donor Registry Act of 2003.

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

(1) More than 15,000 Californians are now waiting for a lifesaving organ transplant. Based on the current trend in organ donations, one in three of those waiting will die. In 2000, 5,794 Americans died while waiting for a transplant.

(2) On a national level the number of organ donors has increased by 10 percent from the years 2000 to 2001, and the number of organ donors in California also increased by 9 percent during this same time period.

(3) Despite this percentage increase, in all of 2000, there were still only 634 cadaveric donors in California.

(4) A decrease in organ donors results in longer stays on the national organ transplant waiting list and, consequently, more deaths among those patients who are waiting.

(5) The national organ transplant waiting list, which is maintained by the United Network for Organ Sharing, is growing at the rate of 3,450 persons per month. A name is added to this national database every 13 minutes.

(6) However, no operational registry exists in California for those persons who have expressed a wish to be an organ donor.

(b) The use of anatomical gifts, including the donation of organs and tissues for the purpose of transplantation, is of great value to the citizens of this state and may save or prolong the life or improve the health of extremely ill and dying persons.

(c) It is the intent of the Legislature to increase the number of persons who identify themselves as potential organ donors. It is the further intent of the Legislature to establish a statewide organ and tissue donor registry to expedite the match between organ donors and recipients and to encourage charitable contributions to support the registry.

SEC. 3. The Legislature finds and declares the following:

(a) (1) The condition specified in subdivision (e) of Section 12811 of the Vehicle Code, as amended by Section 6 of Chapter 887 of the Statutes of 1998, that would repeal that section, occurred on July 1, 1999.

(2) Therefore, Section 12811 of the Vehicle Code, as amended by Section 6 of Chapter 887 of the Statutes of 1998, was repealed on July 1, 1999.

(b) (1) The condition specified in subdivision (d) of Section 13005 of the Vehicle Code, as amended by Section 8 of Chapter 887 of the Statutes of 1998, that would repeal that section, occurred on July 1, 1999.

(2) Therefore, Section 13005 of the Vehicle Code, as amended by Section 8 of Chapter 887 of the Statutes of 1998, was repealed on July 1, 1999.

SEC. 4. Section 7152.7 of the Health and Safety Code is amended to read:

7152.7. (a) The California organ procurement organizations designated pursuant to Section 273 and following, of Title 42 of the United States Code, are hereby authorized to establish a not-for-profit entity that shall be designated the California Organ and Tissue Donor Registrar, which shall establish and maintain the California Organ and Tissue Donor Registry. The registry shall contain information regarding persons who have identified themselves as organ and tissue donors upon their death. The registrar shall be responsible for developing methods to increase the number of donors who enroll in the registry.

(b) The registrar shall make available to the federally designated organ procurement organizations (OPOs) in California and the state licensed tissue and eye banks information contained in the registry regarding potential donors on a 24-hour-a-day, seven-days-a-week basis. This information shall be used to expedite a match between identified organ and tissue donors and potential recipients.

(c) The registrar may receive voluntary contributions to support the registry and its activities.

(d) The registrar shall submit an annual written report to the Director of Health Services and the Legislature that includes all of the following:

(1) The number of donors on the registry.

(2) The changes in the number of donors on the registry.

(3) The general characteristics of donors as may be determined by information provided on the donor registry forms pursuant to Sections 12811 and 13005 of the Vehicle Code.

SEC. 5. Section 1672 of the Vehicle Code is amended to read:

1672. (a) The department shall make available, in the public area of each office of the department where applications for driver's licenses or identification cards are received, space for a sign or notice briefly describing the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and information about the California Organ and Tissue Donor Registry and about how private donations may be made.

(b) The department shall make available to the public in its offices a pamphlet or brochure providing more detailed information on the

California Organ and Tissue Donor Registry and information about how private donations may be made.

(c) The signs, notices, pamphlets, and brochures specified in subdivisions (a) and (b) shall be provided without cost to the department by responsible private parties associated with the anatomical gift program.

SEC. 6. Section 12811 of the Vehicle Code, as amended by Section 5.5 of Chapter 740 of the Statutes of 2001, is amended to read:

12811. (a) (1) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words ''provisional until age 18.''

(b) (1) Upon issuance of a new driver's license or a renewal of a driver's license or the issuance of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the California Organ and Tissue Donor Registry with instructions for mailing the completed form to the California Organ and Tissue Donor Registrar established pursuant to subdivision (a) of Section 7152.7 of the Health and Safety Code, including a donor dot that may be affixed to the new driver's license or identification card.

(2) The enrollment form shall be simple in design and shall be produced by the department in cooperation with the California Organ and Tissue Donor Registrar and shall require all of the following information to be supplied by an enrollee:

(A) Date of birth, sex, full name, and other information deemed necessary to provide a positive identification of an individual.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include both of the following:

(A) A description of the process for having a name removed from the registry, and the process for donating money for the benefit of the registry.

(B) A statement that the name of any person who enrolls in the registry pursuant to this section shall be made available to federally recognized donor organizations.

(4) The registry enrollment form shall be posted on the Web sites for the department and the California Health and Human Services Agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation.

(6) The registrar shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the registrar for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by the registrar.

(c) A public entity or employee shall not be liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) No contract may be let to any nongovernmental entity for the processing of driver's licenses, unless the department receives two or more qualified bids from independent, responsible bidders.

SEC. 7. Section 12811 of the Vehicle Code, as amended by Section 218 of Chapter 664 of the Statutes of 2002, is repealed.

SEC. 8. Section 13005 of the Vehicle Code, as amended by Section 6.5 of Chapter 740 of the Statutes of 2001, is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit, as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) (1) Upon issuance of a new identification card, or renewal of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the California Organ and Tissue Donor Registry with instructions for mailing the completed form to the California Organ and Tissue Donor Registrar established pursuant to subdivision (a) of Section 7152.7 of the Health and Safety Code.

(2) The enrollment form shall be simple in design and shall be produced by the department, in cooperation with the California Organ and Tissue Donor Registrar, and shall require all of the following information to be supplied by the enrollee:

(A) Date of birth, sex, full name, address, and home telephone number.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include a description of the process for having a name removed from the registry, and the process for donating money for the benefit of the registry.

(4) The registry enrollment form shall be posted on the Web sites for the department and the California Health and Human Services Agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(6) The registrar shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the registrar for the purposes of this subdivision shall be used for these purposes only and shall not further be disseminated by the registrar.

(c) No contract may be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders.

SEC. 9. Section 13005 of the Vehicle Code, as amended by Section 6 of Chapter 740 of the Statutes of 2001, is repealed.

CHAPTER 406

An act to amend Sections 11165.1 and 11166 of, to amend and repeal Sections 11162, 11168, and 11169 of, to amend, repeal, and add Sections 11159.2, 11161, 11164, 11165, 11167, 11167.5, and 11190 of, to add Sections 11029.5, 11161.5, 11161.7, 11162.1, and 11162.6 to, and to add, repeal, and add Section 11164.1 to, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to do the following:

(a) Increase patient access to appropriate pain medication and prevent the diversion of controlled substances for illicit use.

(b) Provide that the forms required by the act for controlled substance prescriptions may be used to prescribe any prescription drug or device.

SEC. 2. Section 11029.5 is added to the Health and Safety Code, to read:

11029.5. ''Security printer'' means a person approved to produce controlled substance prescription forms pursuant to Section 11161.5.

SEC. 3. Section 11159.2 of the Health and Safety Code is amended to read:

11159.2. (a) Notwithstanding any other provision of law, a prescription for a Schedule II controlled substance for use by a patient who has a terminal illness shall not be subject to Section 11164.

(b) (1) The prescription shall be signed and dated by the prescriber and shall contain the name of the person for whom the controlled substance is prescribed, the name and quantity of the controlled substance prescribed, and directions for use. The signature, date, and information required by this paragraph shall be wholly written in ink or indelible pencil in the handwriting of the prescriber.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed, as provided in paragraph (3) of subdivision (b) of Section 11164, and shall contain the name, address, telephone number, category of professional licensure, and federal controlled substance registration number of the prescriber, as provided in paragraph (2) of subdivision (b) of Section 11164.

(3) The prescription shall also indicate that the prescriber has certified that the patient is terminally ill by the words ''11159.2 exemption.''

(c) A pharmacist may fill a prescription pursuant to this section when there is a technical error in the certification required by paragraph (3) of subdivision (b), provided that he or she has personal knowledge of the patient's terminal illness, and subsequently returns the prescription to the prescriber for correction within 72 hours.

(d) For purposes of this section, ''terminally ill'' means a patient who meets all of the following conditions:

(1) In the reasonable medical judgment of the prescribing physician, the patient has been determined to be suffering from an illness that is incurable and irreversible.

(2) In the reasonable medical judgment of the prescribing physician, the patient's illness will, if the illness takes its normal course, bring about the death of the patient within a period of one year.

(3) The patient's treatment by the physician prescribing a Schedule II controlled substance pursuant to this section primarily is for the control of pain, symptom management, or both, rather than for cure of the illness.

(e) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 3.5. Section 11159.2 is added to the Health and Safety Code, to read:

11159.2. (a) Notwithstanding any other provision of law, a prescription for a Schedule II controlled substance for use by a patient who has a terminal illness shall meet the following requirements:

(1) Contain the information specified in subdivision (a) of Section 11164.

(2) Indicate that the prescriber has certified that the patient is terminally ill by the words ''11159.2 exemption.''

(b) A pharmacist may fill a prescription pursuant to this section when there is a technical error in the certification required by paragraph (2) of subdivision (a), provided that he or she has personal knowledge of the patient's terminal illness, and subsequently returns the prescription to the prescriber for correction within 72 hours.

(c) For purposes of this section, ''terminally ill'' means a patient who meets all of the following conditions:

(1) In the reasonable medical judgment of the prescribing physician, the patient has been determined to be suffering from an illness that is incurable and irreversible.

(2) In the reasonable medical judgment of the prescribing physician, the patient's illness will, if the illness takes its normal course, bring about the death of the patient within a period of one year.

(3) The patient's treatment by the physician prescribing a Schedule II controlled substance pursuant to this section primarily is for the control of pain, symptom management, or both, rather than for cure of the illness.

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

SEC. 4. Section 11161 of the Health and Safety Code is amended to read:

11161. (a) Prescription blanks shall be issued by the Department of Justice in serially numbered groups of not more than 100 forms each in triplicate unless a practitioner orally, electronically, or in writing requests a larger amount, and shall be furnished to any practitioner authorized to write a prescription for controlled substances classified in Schedule II. The Department of Justice may charge a fee for the prescription blanks sufficient to reimburse the department for the actual costs associated with the preparation, processing, and filing of any forms issued pursuant to this section. The prescription blanks shall not be

transferable. Any person possessing a triplicate prescription blank otherwise than as provided in this section is guilty of a misdemeanor.

(b) When a practitioner is named in a warrant of arrest or is charged in an accusatory pleading with a felony violation of Section 11153, 11154, 11156, 11157, 11170, 11173, 11350, 11351, 11352, 11353, 11353.5, 11377, 11378, 11378.5, 11379, 11379.5, or 11379.6, the court in which the accusatory pleading is filed or the magistrate who issued the warrant of arrest shall, upon the motion of a law enforcement agency which is supported by reasonable cause, issue an order which requires the practitioner to surrender to the clerk of the court all triplicate prescription blanks in the practitioner's possession at a time set in the order and shall direct the Department of Justice to withhold prescription blanks from the practitioner. The law enforcement agency obtaining the order shall notify the Department of Justice of this order. Except as provided in subdivisions (c) and (f) of this section, the order shall remain in effect until further order of the court. Any practitioner possessing prescription blanks in violation of the order is guilty of a misdemeanor.

(c) The order provided by subdivision (b) shall be vacated if the court or magistrate finds that the underlying violation or violations are not supported by reasonable cause at a hearing held within two court days after the practitioner files and personally serves upon the prosecuting attorney and the law enforcement agency that obtained the order, a notice of motion to vacate the order with any affidavits on which the practitioner relies. At the hearing, the burden of proof, by a preponderance of the evidence, is on the prosecution. Evidence presented at the hearing shall be limited to the warrant of arrest with supporting affidavits, the motion to require the defendant to surrender all triplicate prescription blanks with supporting affidavits, the sworn complaint together with any documents or reports incorporated by reference thereto which, if based on information and belief, state the basis for the information, or any other documents of similar reliability as well as affidavits and counter affidavits submitted by the prosecution and defense. Granting of the motion to vacate the order is no bar to prosecution of the alleged violation or violations.

(d) The defendant may elect to challenge the order issued under subdivision (b) at the preliminary examination. At that hearing, the evidence shall be limited to that set forth in subdivision (c) and any other evidence otherwise admissible at the preliminary examination.

(e) If the practitioner has not moved to vacate the order issued under subdivision (b) by the time of the preliminary examination and he or she is held to answer on the underlying violation or violations, the practitioner shall be precluded from afterwards moving to vacate the order. If the defendant is not held to answer on the underlying charge or

charges at the conclusion of the preliminary examination, the order issued under subdivision (b) shall be vacated.

(f) Notwithstanding subdivision (e), any practitioner who is diverted pursuant to Chapter 2.5 (commencing with Section 1000) of Title 7 of Part 2 of the Penal Code may file a motion to vacate the order issued under subdivision (b).

(g) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 5. Section 11161 is added to the Health and Safety Code, to read:

11161. (a) When a practitioner is named in a warrant of arrest or is charged in an accusatory pleading with a felony violation of Section 11153, 11154, 11156, 11157, 11170, 11173, 11350, 11351, 11352, 11353, 11353.5, 11377, 11378, 11378.5, 11379, 11379.5, or 11379.6, the court in which the accusatory pleading is filed or the magistrate who issued the warrant of arrest shall, upon the motion of a law enforcement agency which is supported by reasonable cause, issue an order which requires the practitioner to surrender to the clerk of the court all triplicate prescription blanks or controlled substance prescription forms in the practitioner's possession at a time set in the order. Except as provided in subdivisions (b) and (e) of this section, the order shall remain in effect until further order of the court. Any practitioner possessing prescription blanks in violation of the order is guilty of a misdemeanor.

(b) The order provided by subdivision (a) shall be vacated if the court or magistrate finds that the underlying violation or violations are not supported by reasonable cause at a hearing held within two court days after the practitioner files and personally serves upon the prosecuting attorney and the law enforcement agency that obtained the order, a notice of motion to vacate the order with any affidavits on which the practitioner relies. At the hearing, the burden of proof, by a preponderance of the evidence, is on the prosecution. Evidence presented at the hearing shall be limited to the warrant of arrest with supporting affidavits, the motion to require the defendant to surrender all triplicate prescription blanks or controlled substance prescription forms with supporting affidavits, the sworn complaint together with any documents or reports incorporated by reference thereto which, if based on information and belief, state the basis for the information, or any other documents of similar reliability as well as affidavits and counter affidavits submitted by the prosecution and defense. Granting of the motion to vacate the order is no bar to prosecution of the alleged violation or violations.

(c) The defendant may elect to challenge the order issued under subdivision (a) at the preliminary examination. At that hearing, the

evidence shall be limited to that set forth in subdivision (b) and any other evidence otherwise admissible at the preliminary examination.

(d) If the practitioner has not moved to vacate the order issued under subdivision (a) by the time of the preliminary examination and he or she is held to answer on the underlying violation or violations, the practitioner shall be precluded from afterwards moving to vacate the order. If the defendant is not held to answer on the underlying charge or charges at the conclusion of the preliminary examination, the order issued under subdivision (a) shall be vacated.

(e) Notwithstanding subdivision (d), any practitioner who is diverted pursuant to Chapter 2.5 (commencing with Section 1000) of Title 7 of Part 2 of the Penal Code may file a motion to vacate the order issued under subdivision (a).

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

SEC. 6. Section 11161.5 is added to the Health and Safety Code, to read:

11161.5. (a) Prescription forms for controlled substance prescriptions shall be obtained from security printers approved by the Board of Pharmacy.

(b) The Board of Pharmacy may approve security printer applications after the applicant has provided the following information:

(1) Name, address, and telephone number of the applicant.

(2) Policies and procedures of the applicant for verifying the identity of the prescriber ordering controlled substance prescription forms.

(3) Policies and procedures of the applicant for verifying delivery of controlled substance prescription forms to prescribers.

(4) (A) The location, names, and titles of the applicant's agent for service of process in this state; all principal corporate officers, if any; and all managing general partners, if any.

(B) A report containing this information shall be made on an annual basis and within 30 days after any change of office, principal corporate officers, or managing general partner.

(5) (A) A signed statement indicating whether the applicant, principal corporate officers, or managing general partners have ever been convicted of, or pled no contest to, a violation of any law of a foreign country, the United States, or any state, or of any local ordinance.

(B) The applicant shall also provide fingerprints, in a manner specified by the Board of Pharmacy, for the purpose of completing state and federal criminal background checks.

(c) Prior to approving a security printer application, the Board of Pharmacy shall submit a copy of the application to the Department of Justice; the Department of Justice may, within 30 calendar days of receipt of the application from the Board of Pharmacy, deny the security printer application.

(d) The Board of Pharmacy or the Department of Justice may deny a security printer application on any of the following grounds:

(1) The applicant has been convicted of a crime. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) The applicant committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, herself, or another, or substantially injure another.

(3) The applicant committed any act that would constitute a violation of this division.

(4) The applicant knowingly made a false statement of fact required to be revealed in the application to produce controlled substance prescription forms.

(5) The Board of Pharmacy or Department of Justice determines that the applicant failed to demonstrate adequate security procedures relating to the production and distribution of controlled substance prescription forms.

(6) The Board of Pharmacy or Department of Justice determines that the applicant has submitted an incomplete application.

(e) The Board of Pharmacy shall maintain a list of approved security printers and the Board of Pharmacy shall make this information available to prescribers and other appropriate government agencies, including the Department of Justice.

(f) Before printing any controlled substance prescription forms, a security printer shall verify with the appropriate licensing board that the prescriber possesses a license and current prescribing privileges which permits the prescribing of controlled substances.

(g) Controlled substance prescription forms shall be provided directly to the prescriber either in person, by certified mail, or by a means that requires a signature signifying receipt of the package and provision of that signature to the security printer.

(h) Security printers shall retain ordering and delivery records in a readily retrievable manner for individual prescribers for three years.

(i) Security printers shall produce ordering and delivery records upon request by an authorized officer of the law as defined in Section 4017 of the Business and Professions Code.

(j) (1) The Board of Pharmacy or the Department of Justice may revoke its approval of a security printer for a violation of this division

or action that would permit a denial pursuant to subdivision (d) of this section.

(2) When the Board of Pharmacy or the Department of Justice revokes its approval, it shall notify the appropriate licensing boards and remove the security printer from the list of approved security printers.

(k) Security printer applicants may appeal a denial or revocation by the Board of Pharmacy to the full board in a public meeting of the Board of Pharmacy.

SEC. 7. Section 11161.7 is added to the Health and Safety Code, to read:

11161.7. (a) When a prescriber's authority to prescribe controlled substances is restricted by civil, criminal, or administrative action, or by an order of the court issued pursuant to Section 11161, the law enforcement agency or licensing board that sought the restrictions shall provide the name, category of licensure, license number, and the nature of the restrictions imposed on the prescriber to security printers, the Department of Justice, and the Board of Pharmacy.

(b) The Board of Pharmacy shall make available the information required by subdivision (a) to pharmacies and security printers to prevent the dispensing of controlled substance prescriptions issued by the prescriber and the ordering of additional controlled substance prescription forms by the restricted prescriber.

SEC. 8. Section 11162 of the Health and Safety Code is amended to read:

11162. (a) The prescription blanks shall be printed on distinctive paper, the serial number of the group being shown on each form, and each form being serially numbered. The prescription blanks shall bear the preprinted name, address, and category of professional licensure of the practitioner to whom they are issued, and the federal registry number for controlled substances.

(b) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 9. Section 11162.1 is added to the Health and Safety Code, to read:

11162.1. (a) The prescription forms for controlled substances shall be printed with the following features:

(1) A latent, repetitive ''void'' pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void'' shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words ''California Security Prescription.''

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermo-chromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7) (A) Six quantity check off boxes shall be printed on the form and the following quantities shall appear:

1-24
25-49
50-74
75-100
101-150
151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall either (A) contain a statement printed on the bottom of the prescription blank that the ''Prescription is void if more than one controlled substance prescription is written per blank'' or (B) contain a space for the prescriber to specify the number of drugs prescribed on the prescription and a statement printed on the bottom of the prescription blank that the ''Prescription is void if the number of drugs prescribed is not noted.''

(9) The preprinted name, category of licensure, license number, and federal controlled substance registration number of the prescribing practitioner.

(10) A check box indicating the prescriber's order not to substitute.

(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

(c) (1) A prescriber designated by a licensed health care facility may order controlled substance prescription forms for use by prescribers when treating patients in that facility without the information required in paragraph (9) of subdivision (a).

(2) Forms ordered pursuant to this subdivision shall have the name, category of licensure, license number, and federal controlled substance registration number of the designated prescriber and the name, address, category of licensure, and license number of the licensed health care facility preprinted on the form.

(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number,

and federal controlled substance registration number of the prescriber on the form.

(4) (A) The designated prescriber shall maintain a record of the prescribers to whom controlled substance prescription forms are issued.

(B) The record shall include the name, category of licensure, license number, federal controlled substance registration number, and the quantity of controlled substance prescription forms issued to each prescriber; the record shall be maintained in the health facility for three years.

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

SEC. 10. Section 11162.6 is added to the Health and Safety Code, to read:

11162.6. (a) Every person who counterfeits a controlled substance prescription form shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Every person who knowingly possesses a counterfeited controlled substance prescription form shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) Every person who attempts to obtain or obtains a controlled substance prescription form under false pretenses shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Every person who fraudulently produces controlled substance prescription forms shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

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

SEC. 11. Section 11164 of the Health and Safety Code is amended to read:

11164. Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance unless it complies with the requirements of this section.

(a) The signature on each prescription for a controlled substance classified in Schedule II shall be wholly written in ink in the handwriting of the prescriber upon the official prescription form issued by the Department of Justice. Each prescription shall be prepared in triplicate, signed by the prescriber, and shall contain, either typewritten or

handwritten by the prescriber or his or her employee, the date, name, and address of the person for whom the controlled substance is prescribed, the name, quantity, and strength of the controlled substance prescribed, directions for use, and the address, category of professional licensure, and the federal controlled substance registration number of the prescriber. The original and duplicate of the prescription shall be delivered to the pharmacist filling the prescription. The duplicate shall be retained by the pharmacist and the original, properly endorsed by the pharmacist with the name and address of the pharmacy, the pharmacy's state license number, the date the prescription was filled and the signature of the pharmacist, shall be transmitted to the Department of Justice at the end of the month in which the prescription was filled. Upon receipt of an incompletely prepared official prescription form of the Department of Justice, the pharmacist may enter on the face of the prescription the address of the patient. A pharmacist may fill a prescription for a controlled substance classified in Schedule II containing an error or errors, if the pharmacist notifies the prescriber of the error or errors and the prescriber approves any correction. The prescriber shall fax or mail a corrected prescription to the pharmacist within seven days of the prescription being dispensed.

(b) Each prescription for a controlled substance classified in Schedule III, IV, or V, except as authorized by subdivision (c), shall be subject to the following requirements:

(1) The prescription shall be signed and dated by the prescriber and shall contain the name of the person for whom the controlled substance is prescribed, the name and quantity of the controlled substance prescribed, and directions for use. With respect to prescriptions for controlled substances classified in Schedules III and IV, the signature and date shall be wholly written in ink in the handwriting of the prescriber.

(2) In addition, the prescription shall contain the name, address, telephone number, category of professional licensure, and federal controlled substance registration number of the prescriber. The information required by this paragraph shall be either preprinted upon the prescription blank, typewritten, rubber stamped, or printed by hand. Notwithstanding any provision in this section, the prescriber's address, telephone number, category of professional licensure, or federal controlled substances registration number need not appear on the prescription if that information is readily retrievable in the pharmacy.

(3) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist

shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(c) Any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be reduced to writing by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. The date of issue of the prescription and all the information required for a written prescription by subdivision (b) shall be included in the written record of the prescription. The pharmacist need not reduce to writing the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient if that information is readily retrievable in the pharmacy. Pursuant to authorization of the prescriber, any employee of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the employee of the prescriber transmitting the prescription.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Notwithstanding any provision of subdivisions (b) and (c), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(f) In addition to the prescriber's record required by Section 11190, any practitioner dispensing a controlled substance classified in Schedule II in accordance with subdivision (b) of Section 11158 shall prepare a written record thereof on the official forms issued by the Department of Justice, pursuant to Section 11161, and shall transmit the original to the Department of Justice in accordance with any rules that the department may adopt for completion and transmittal of the forms.

(g) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 12. Section 11164 is added to the Health and Safety Code, to read:

11164. Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance unless it complies with the requirements of this section.

(a) (1) The signature on each prescription for a controlled substance classified in Schedule II shall be wholly written in ink in the handwriting of the prescriber upon the official prescription form issued by the Department of Justice or on a controlled substance prescription form that meets the requirements of Section 11162.1.

(2) Each prescription shall be signed by the prescriber and shall contain, either typewritten or handwritten by the prescriber or his or her agent, the date, name, and address of the person for whom the controlled substance is prescribed; the name, quantity, strength, and directions for use of the controlled substance prescribed; and the address, category of professional licensure, and federal controlled substance registration number of the prescriber.

(3) If the prescriber uses an official prescription form issued by the Department of Justice, the original and duplicate of the prescription shall be delivered to the pharmacist filling the prescription; the duplicate shall be retained by the pharmacist and the original, properly endorsed by the pharmacist with the name and address of the pharmacy, the pharmacy's state license number, the date the prescription was filled, and the signature of the pharmacist, shall be transmitted to the Department of Justice at the end of the month in which the prescription was filled.

(4) Upon receipt of an incompletely prepared official prescription form of the Department of Justice, the pharmacist may enter on the face of the prescription the address of the patient.

(5) A pharmacist may fill a prescription for a controlled substance classified in Schedule II containing an error or errors, if the pharmacist notifies the prescriber of the error or errors and the prescriber approves any correction; the prescriber shall fax or mail a corrected prescription to the pharmacist within seven days of the prescription being dispensed.

(b) Each prescription for a controlled substance classified in Schedule III, IV, or V, except as authorized by subdivision (c), shall be subject to the following requirements:

(1) The prescription shall be signed and dated by the prescriber and shall contain the name of the person for whom the controlled substance is prescribed, the name and quantity of the controlled substance prescribed, and directions for use. With respect to prescriptions for controlled substances classified in Schedules III and IV, the signature and date shall be written in ink in the handwriting of the prescriber.

(2) (A) In addition, the prescription shall contain the name, address, telephone number, category of professional licensure, and federal controlled substance registration number of the prescriber.

(B) The information required by this paragraph shall be either preprinted upon the prescription blank, typewritten, rubber stamped, or printed by hand.

(C) Notwithstanding any other provision in this section, the prescriber's address, telephone number, category of professional licensure, and federal controlled substances registration number need not appear on the prescription if that information is readily retrievable in the pharmacy.

(3) The prescription shall also contain the address of the person for whom the controlled substance is prescribed; if the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an agent acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(c) (1) Any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (b) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the hard copy record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Notwithstanding subdivisions (b) and (c), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(f) This section shall become operative on July 1, 2004, and shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 13. Section 11164 is added to the Health and Safety Code, to read:

11164. Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the person for whom the controlled substance is prescribed; and

the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(b) (1) Any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

(c) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(e) This section shall become operative on January 1, 2005.

SEC. 14. Section 11164.1 is added to the Health and Safety Code, to read:

11164.1. (a) (1) Notwithstanding any other provision of law, a prescription for a controlled substance issued by a prescriber in another state for delivery to a patient in another state may be dispensed by a California pharmacy, if the prescription conforms with the requirements for controlled substance prescriptions in the state in which the controlled substance was prescribed.

(2) All prescriptions for Schedule II controlled substances dispensed pursuant to this subdivision shall be reported by the dispensing pharmacy to the Department of Justice in the manner prescribed by subdivision (d) of Section 11165.

(b) Pharmacies may dispense prescriptions for Schedule III, Schedule IV, and Schedule V controlled substances from out-of-state prescribers pursuant to Section 4005 of the Business and Professions Code and Section 1717 of Title 16 of the California Code of Regulations.

(c) This section shall become operative on January 1, 2004, and shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 15. Section 11164.1 is added to the Health and Safety Code, to read:

11164.1. (a) (1) Notwithstanding any other provision of law, a prescription for a controlled substance issued by a prescriber in another state for delivery to a patient in another state may be dispensed by a California pharmacy, if the prescription conforms with the requirements for controlled substance prescriptions in the state in which the controlled substance was prescribed.

(2) All prescriptions for Schedule II and Schedule III controlled substances dispensed pursuant to this subdivision shall be reported by the dispensing pharmacy to the Department of Justice in the manner prescribed by subdivision (d) of Section 11165.

(b) Pharmacies may dispense prescriptions for Schedule III, Schedule IV, and Schedule V controlled substances from out-of-state prescribers pursuant to Section 4005 of the Business and Professions Code and Section 1717 of Title 16 of the California Code of Regulations.

(c) This section shall become operative on January 1, 2005.

SEC. 16. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II and Schedule III controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II and Schedule III controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, or the Osteopathic

Medical Board of California Contingent Fund to pay the costs of reporting Schedule III controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice in a frequency and format specified by the Department of Justice:

(1) Full name, address, gender, and date of birth of the patient.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Date of issue of the prescription.

(8) Date of dispensing of the prescription.

(e) This section shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 16.5. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II and Schedule III controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the

Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II and Schedule III controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice in a frequency and format specified by the Department of Justice:

(1) Full name, address, gender, and date of birth of the patient.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Date of issue of the prescription.

(8) Date of dispensing of the prescription.

(e) This section shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 17. Section 11165 is added to the Health and Safety Code, to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II and Schedule III controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II and Schedule III controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II or Schedule III controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice in a frequency and format specified by the Department of Justice:

(1) Full name, address, gender, and date of birth of the patient.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Date of issue of the prescription.

(8) Date of dispensing of the prescription.

(e) This section shall become operative on January 1, 2005.

SEC. 17.5. Section 11165 is added to the Health and Safety Code, to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II and Schedule III controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II and Schedule III controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of

disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II or Schedule III controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice in a frequency and format specified by the Department of Justice:

(1) Full name, address, gender, and date of birth of the patient.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Date of issue of the prescription.

(8) Date of dispensing of the prescription.

(e) This section shall become operative on January 1, 2005.

SEC. 18. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) A licensed health care practitioner eligible to prescribe Schedule II or Schedule III controlled substances or a pharmacist may make a written request for, and the Department of Justice may release to that practitioner or pharmacist, the history of controlled substances dispensed to an individual under his or her care based on data contained in CURES.

(2) Any request for, or release of, a controlled substance history pursuant to this section shall be made in accordance with guidelines developed by the Department of Justice.

(b) In order to prevent the inappropriate, improper, or illegal use of Schedule II or Schedule III controlled substances, the Department of Justice may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

(c) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or

pharmacist from the Department of Justice pursuant to this section shall be considered medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

SEC. 19. Section 11166 of the Health and Safety Code is amended to read:

11166. No person shall fill a prescription for a controlled substance after six months has elapsed from the date written on the prescription by the prescriber. No person shall knowingly fill a mutilated or forged or altered prescription for a controlled substance except for the addition of the address of the person for whom the controlled substance is prescribed as provided by paragraph (3) of subdivision (b) of Section 11164.

SEC. 20. Section 11167 of the Health and Safety Code is amended to read:

11167. Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in the loss of life or intense suffering, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order, subject to all of the following requirements:

(a) The order contains all of the information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in indelible pencil or ink, and the pharmacy reduces any oral or electronic data transmission order to writing prior to actually dispensing the controlled substance.

(c) The prescriber provides a triplicate prescription, completed as provided by subdivision (a) of Section 11164, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber's failure to do so and shall make and retain a written, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

(e) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 21. Section 11167 is added to the Health and Safety Code, to read:

11167. Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in the loss of life or intense suffering, an order for a Schedule II controlled substance

may be dispensed on an oral, written, or electronic data transmission order, subject to all of the following requirements:

(a) The order contains all of the information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy reduces any oral or electronic data transmission order to hard copy form prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a triplicate prescription form or a controlled substance prescription form that meets the requirements of Section 11162.1, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber's failure to do so and shall make and retain a hard copy, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

(e) This section shall become operative on July 1, 2004, and shall remain in effect until January 1, 2005, at which time it is repealed.

SEC. 22. Section 11167 is added to the Health and Safety Code, to read:

11167. Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a controlled substance may be dispensed on an oral order, an electronic data transmission order, or a written order not made on a controlled substance form as specified in Section 11162.1, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in ink, and the pharmacy reduces any oral or electronic data transmission order to hard copy form prior to dispensing the controlled substance.

(c) The prescriber provides a written prescription on a controlled substance prescription form that meets the requirements of Section 11162.1, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber's failure to do so and shall make and retain a hard copy, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

(e) This section shall become operative on January 1, 2005.

SEC. 23. Section 11167.5 of the Health and Safety Code is amended to read:

11167.5. (a) An order for a controlled substance classified in Schedule II in a licensed skilled nursing facility, an intermediate care facility, or a licensed home health agency providing hospice care may be dispensed upon an oral or electronically transmitted prescription. Prior to filling the prescription, the pharmacist shall reduce it to writing in ink or indelible pencil in the handwriting of the pharmacist upon an official prescription form issued by the Department of Justice for that purpose. The prescriptions shall be prepared in triplicate and shall contain the date the prescription was orally or electronically transmitted by the prescriber, the name of the person for whom the prescription was authorized, the name and address of the licensed facility or home health agency providing hospice care in which that person is a patient, the name and quantity of the controlled substance prescribed, the directions for use, and the name, address, category of professional licensure, and federal controlled substance registration number of the prescriber. The duplicate shall be retained by the pharmacist, and the triplicate shall be forwarded to the prescriber by the end of the month in which the prescription was issued. The original shall be properly endorsed by the pharmacist with the pharmacy's state license number, the signature of the pharmacist, the name and address of the pharmacy, and the signature of the person who received the controlled substance for the licensed facility or home health agency providing hospice care and shall be forwarded by the pharmacist to the Department of Justice at the end of the month in which the prescription was filled. A skilled nursing facility, intermediate care facility, or licensed home health agency providing hospice care shall forward to the dispensing pharmacist a copy of any signed telephone order, chart order, or related documentation substantiating each oral or electronically transmitted prescription transaction under this section.

(b) For the purposes of this section, ''hospice care'' means interdisciplinary health care which is designed to alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of a terminal disease and to provide supportive care for the primary care person and the family of the patient under hospice care.

(c) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 24. Section 11167.5 is added to the Health and Safety Code, to read:

11167.5. (a) An order for a controlled substance classified in Schedule II for a patient of a licensed skilled nursing facility, a licensed

intermediate care facility, a licensed home health agency, or a licensed hospice may be dispensed upon an oral or electronically transmitted prescription. If the prescription is transmitted orally, the pharmacist shall, prior to filling the prescription, reduce the prescription to writing in ink in the handwriting of the pharmacist on a form developed by the pharmacy for this purpose. If the prescription is transmitted electronically, the pharmacist shall, prior to filling the prescription, produce, sign, and date a hard copy prescription. The prescriptions shall contain the date the prescription was orally or electronically transmitted by the prescriber, the name of the person for whom the prescription was authorized, the name and address of the licensed skilled nursing facility, licensed intermediate care facility, licensed home health agency, or licensed hospice in which that person is a patient, the name and quantity of the controlled substance prescribed, the directions for use, and the name, address, category of professional licensure, license number, and federal controlled substance registration number of the prescriber. The original shall be properly endorsed by the pharmacist with the pharmacy's state license number, the name and address of the pharmacy, and the signature of the person who received the controlled substances for the licensed skilled nursing facility, licensed intermediate care facility, licensed home health agency, or licensed hospice. A licensed skilled nursing facility, a licensed intermediate care facility, a licensed home health agency, or a licensed hospice shall forward to the dispensing pharmacist a copy of any signed telephone orders, chart orders, or related documentation substantiating each oral or electronically transmitted prescription transaction under this section.

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

SEC. 25. Section 11168 of the Health and Safety Code is amended to read:

11168. (a) The prescription book containing the prescriber's copies of prescriptions issued shall be retained by the prescriber which shall be preserved for three years.

(b) This section shall remain in effect only until January 1, 2008, and as of that date is repealed.

SEC. 26. Section 11169 of the Health and Safety Code is amended to read:

11169. (a) When codeine, or dihydrocodeinone or tincture opii camphorata (paregoric) is not combined with other medicinal ingredients, it shall be prescribed on the official triplicate blanks.

(b) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 27. Section 11190 of the Health and Safety Code is amended to read:

11190. Every practitioner, other than a pharmacist, who issues a prescription, or dispenses or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

(a) The name and address of the patient.

(b) The date.

(c) The character, including the name and strength, and quantity of controlled substances involved.

The prescriber's record shall show the pathology and purpose for which the prescription is issued, or the controlled substance administered, prescribed, or dispensed.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed.

SEC. 28. Section 11190 is added to the Health and Safety Code, to read:

11190. (a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

(1) The name and address of the patient.

(2) The date.

(3) The character, including the name and strength, and quantity of controlled substances involved.

(b) The prescriber's record shall show the pathology and purpose for which the controlled substance is administered or prescribed.

(c) (1) For each prescription for a Schedule II controlled substance that is dispensed by a prescriber pursuant to Section 4170 of the Business and Professions Code, the prescriber shall record and maintain the following information:

(A) Full name, address, gender, and date of birth of the patient.

(B) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(C) Pharmacy prescription number, license number, and federal controlled substance registration number.

(D) NDC (National Drug Code) number of the controlled substance dispensed.

(E) Quantity of the controlled substance dispensed.

(F) ICD-9 (diagnosis code), if available.

(G) Date of dispensing of the prescription.

(2) Each prescriber that dispenses controlled substances shall provide the Department of Justice the information required by this subdivision on a monthly basis in either hard copy or electronic form.

(d) This section shall become operative on July 1, 2004, and shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 29. Section 11190 is added to the Health and Safety Code, to read:

11190. (a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

(1) The name and address of the patient.

(2) The date.

(3) The character, including the name and strength, and quantity of controlled substances involved.

(b) The prescriber's record shall show the pathology and purpose for which the controlled substance was administered or prescribed.

(c) (1) For each prescription for a Schedule II or Schedule III controlled substance that is dispensed by a prescriber pursuant to Section 4170 of the Business and Professions Code, the prescriber shall record and maintain the following information:

(A) Full name, address, gender, and date of birth of the patient.

(B) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(C) Pharmacy prescription number, license number, and federal controlled substance registration number.

(D) NDC (National Drug Code) number of the controlled substance dispensed.

(E) Quantity of the controlled substance dispensed.

(F) ICD-9 (diagnosis code), if available.

(G) Date of dispensing of the prescription.

(2) Each prescriber that dispenses controlled substances shall provide the Department of Justice the information required by this subdivision on a monthly basis in either hard copy or electronic form.

(d) This section shall become operative on January 1, 2005.

SEC. 30. 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. 31. Sections 16.5 and 17.5 of this bill incorporate changes to Section 11165 of the Health and Safety Code proposed by both this bill

and AB 1196. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends or makes other changes to Section 11165 of the Health and Safety Code, and (3) this bill is enacted after AB 1196, in which case Sections 16 and 17 of this bill shall not become operative.

CHAPTER 407

An act to add Section 104324.25 to the Health and Safety Code, relating to environmental health.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. This act shall be known, and may be cited, as the California Health Tracking Act of 2003.

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

(a) Approximately 7 out of every 10 deaths in the United States are attributable to chronic diseases. The national cost of chronic diseases is $325 billion in annual health care and lost productivity costs, and this problem needs to be appropriately addressed.

(b) California follows this trend with an estimated $75 billion to $90 billion spent annually for health care to treat people with these chronic diseases.

(c) The rates of many chronic diseases, including asthma, some birth defects, and cancers, are on the rise.

(d) We can and must do a better job of identifying the causes, and preventing the burden, of these diseases.

(e) There is growing scientific evidence that environmental factors are strongly linked to the incidence of certain chronic diseases, and are even more strongly linked to these diseases than is genetic predisposition.

(f) A gap in critical knowledge exists in understanding the prevalence and incidence of chronic diseases and the environmental factors that may relate to them.

(g) State- and community-level incidence data on chronic diseases are needed to identify trends and patterns, and to improve disease prevention efforts.

(h) The federal Centers for Disease Control and Prevention (CDC) has provided this state with funds for planning, evaluating, training,

tracking, and conducting a pilot demonstration to assist with chronic disease and environmental exposure surveillance and prevention efforts.

(i) In the 2002 fiscal year, Congress provided the CDC with funding of $17.5 million to begin developing a nationwide environmental public health tracking network, and to develop capacity for this network in environmental health sections within state and local health departments.

(j) California received a three-year, $2.2 million grant for the University of California, and a separate three-year $2.4 million grant for the State Department of Health Services, to help establish an environmental health tracking network.

(k) A statewide health tracking network, that integrates data systems and collaborative programs and partnerships involving environmental and public health professionals and agencies will help target resources more efficiently to those areas most in need.

(*l*) In March 2001, the CDC released the first National Report on Human Exposure to Environmental Chemicals. This first edition of the report presents 27 levels of environmental chemicals measured in the United States population, including metals such as lead, mercury, and uranium, cotinine, which is a marker of tobacco smoke exposure, and organophosphate pesticide metabolites, as well as phthalate metabolites.

(m) An increasing amount of research indicates that many of the kinds of chemicals measured by the CDC can have an adverse impact on human health.

(n) In January 2003, the CDC National Center for Environmental Health issued the second National Report on Human Exposure to Environmental Chemicals. The report presents biomonitoring exposure data for 116 chemicals measured in the United States population, including 89 additional environmental chemicals, including polycyclic aromatic hydrocarbons and various pesticides and herbicides, that were not included in the first report.

(o) Senate Bill 702 (Chapter 538 of the Statutes of 2001) makes California the first state in the nation to begin planning a statewide environmental health surveillance system for chronic diseases and environmental exposures, in order to monitor trends in health conditions, such as asthma, learning disabilities, and neurological disorders such as Parkinson's disease and Alzheimer's disease, all of which have suspected links to environmental exposures.

(p) This year the Senate Bill 702 expert working group will make recommendations on how to develop an environmental health surveillance system, the associated costs, and the health and environmental measurements that would be used in the system.

(q) Currently, the state lacks critical knowledge about the possible links between chronic diseases and chemicals that are present in air, water, soil, dust, food, or other environmental media. Without

information obtained by tracking health and its links to environmental factors, California will continue to fight chronic disease with costly treatment, rather than with cost-effective prevention.

SEC. 3. Section 104324.25 is added to the Health and Safety Code, to read:

104324.25. (a) On or before July 1, 2004, the State Department of Health Services, the California Environmental Protection Agency, and the University of California shall jointly develop and sign a memorandum of understanding to assess the feasibility of both of the following:

(1) Integrating existing environmental hazard, exposure, and health outcome data.

(2) Describing how these data correspond to recommendations in the final report of the expert working group established under this chapter regarding the establishment of an environmental health tracking system.

(b) The California Environmental Health Tracking Program in the Division of Environmental and Occupational Disease Control of the department shall obtain all the following information:

(1) A description of the relevant laws, regulations, and policies that authorize or mandate environmental hazard and disease surveillance.

(2) A comprehensive description of California's public health surveillance and environmental hazard, exposure, and health outcome monitoring information systems, including, but not limited to, the purpose, scope, contents, and capabilities of each system.

(3) A description of the current sources of financial support for public health surveillance, environmental hazard, exposure, and health outcome monitoring information systems, and related funds.

(c) The California Environmental Health Tracking Program may collect any relevant information, including information related to other priority data systems identified by the working group established under this chapter, from any state agency, board, department, or office.

(d) (1) The Legislature finds and declares that the activities requested under subdivisions (a) and (b) are within the scope of existing contracts and funding from the federal Centers for Disease Control and Prevention to the State Department of Health Services and the University of California, and are provided to support the planning and development of an environmental health tracking system in California.

(2) Subdivisions (a) and (b) shall be implemented only to the extent that federal funds remain available for the activities specified in those subdivisions. No General Fund moneys shall be used to implement subdivisions (a) and (b).

CHAPTER 408

An act to add and repeal Section 10233.1 of the Insurance Code, relating to long-term care insurance.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 10233.1 is added to the Insurance Code, to read:

10233.1. (a) On or after January 1, 2004, no long-term care insurer may require testing of an applicant on a voluntary or involuntary basis for the presence of a genetic characteristic for underwriting purposes or for the purpose of determining insurability.

(b) For the purposes of this section, a ''genetic characteristic'' means any scientifically or medically identifiable gene or chromosome, or alteration thereof, that is known to be a cause of a disease or disorder, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(c) For the purposes of this section, ''testing for the presence of a genetic characteristic'' means a laboratory test that is generally accepted in the scientific and medical communities for the determination of the presence or absence of a genetic characteristic.

(d) Nothing in this section shall prevent a long-term care insurer from conducting routine clinical physical examinations such as chemical, blood, or urine analyses, tests for unlawful drug use, or tests related to an existing disease, disorder, or pathological condition if these examinations are not used to conduct genetic testing.

(e) 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.

CHAPTER 409

An act to add Article 9 (commencing with Section 1569.880) to Chapter 3.2 of Division 2 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. (a) The Legislature finds and declares that it is in the best interest of the residents of residential care facilities for the elderly to ensure that admission agreements used by these facilities do not violate residents' rights.

(b) Therefore, it is the intent of the Legislature in enacting this act to establish laws to protect the rights of the residents in residential care facilities for the elderly and to provide the residents with the information necessary to make informed choices regarding admission agreements in these facilities.

SEC. 2. Article 9 (commencing with Section 1569.880) is added to Chapter 3.2 of Division 2 of the Health and Safety Code, to read:

Article 9. Admission Agreements

1569.880. (a) For purposes of this section, an ''admission agreement'' includes all documents that a resident or his or her representative must sign at the time of, or as a condition of, admission to a residential care facility for the elderly licensed under this chapter.

(b) The admission agreement shall not include any written attachment containing any provision that is prohibited from being included in the admission agreement.

1569.881. (a) Every residential care facility for the elderly shall make blank complete copies of its admission agreement available to the public immediately, subject to time required for copying or mailing, at cost, upon request.

(b) Every residential care facility for the elderly shall conspicuously post in a location accessible to the public view within the facility either a complete copy of the admission agreement, or a notice of its availability from the facility.

1569.882. (a) The admission agreement shall be printed in black type of not less than 12-point type size, on plain white paper. The print shall appear on one side of the paper only.

(b) The admission agreement shall be written in clear, coherent, and unambiguous language, using words with common and everyday meanings. It shall be appropriately divided, and each section shall be appropriately captioned.

1569.883. (a) The admission agreement shall not include unlawful waivers of facility liability for the health and safety or personal property of residents.

(b) The admission agreement shall not include any provision that the facility knows or should know is deceptive, or unlawful under state or federal law.

1569.884. The admission agreement shall include all of the following:

(a) A comprehensive description of any items and services provided under a single fee, such as a monthly fee for room, board, and other items and services.

(b) A comprehensive description of, and the fee schedule for, all items and services not included in a single fee. In addition, the agreement shall indicate that the resident shall receive a monthly statement itemizing all separate charges incurred by the resident.

(c) A facility may assess a separate charge for an item or service only if that separate charge is authorized by the admission agreement. If additional services are available through the facility to be purchased by the resident that were not available at the time the admission agreement was signed, a list of these services and charges shall be provided to the resident or the resident's representative. A statement acknowledging the acceptance or refusal to purchase the additional services shall be signed and dated by the resident or the resident's representative and attached to the admission agreement.

(d) An explanation of the use of third-party services within the facility that are related to the resident's service plan, including, but not limited to, ancillary, health, and medical services, how they may be arranged, accessed, and monitored, any restrictions on third-party services, and who is financially responsible for the third-party services.

(e) A comprehensive description of billing and payment policies and procedures.

(f) The conditions under which rates may be increased pursuant to Section 1569.655.

(g) The facility's policy concerning family visits and other communication with residents, pursuant to Section 1569.313.

(h) The facility's policy concerning refunds.

(i) Conditions under which the agreement may be terminated.

1569.885. (a) When referring to a resident's obligation to observe facility rules, the admission agreement shall indicate that the rules must be reasonable, and that there is a facility procedure for suggesting changes in the rules. A facility rule shall not violate any right set forth in this article or in other applicable laws and regulations.

(b) The admission agreement shall specify that a copy of the facility grievance procedure for resolution of resident complaints about facility practices shall be made available to the resident or his or her representative.

(c) The admission agreement shall inform a resident of the right to contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances against the facility.

(d) A copy of any applicable resident's rights specified by law or regulation shall be an attachment to all admission agreements.

1569.886. (a) The admission agreement shall not include any ground for involuntary transfer or eviction of the resident unless those grounds are specifically enumerated under state law or regulation.

(b) The admission agreement shall list the justifications for eviction permissible under state law or regulation, exactly as they are worded in the applicable law or regulation.

(c) The admission agreement shall include an explanation of the resident's right to notice prior to an involuntary transfer, discharge, or eviction, the process by which the resident may appeal the decision and a description of the relocation assistance offered by the facility.

1569.887. (a) The admission agreement shall be signed and dated, acknowledging the contents of the document, by the resident or the resident's representative.

(b) The licensee shall retain in the resident's file the original signed and dated initial agreement and all subsequent modifications.

(c) The licensee shall provide a copy of the signed and dated admission agreement to the resident or the resident's representative, if any.

(d) The admission agreement shall be reviewed at the time of the compliance visit and in response to a complaint involving the admission agreement.

1569.888. (a) The requirements of this article relating to admission agreements for residential care facilities for the elderly are intended to be in addition to, and not exclusive of, any other requirements established by state law or regulation.

(b) This article shall not apply to licensees of residential care facilities for the elderly that have obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (5) of subdivision (c) of Section 1771.

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 410

An act to amend Section 1808.25 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 1808.25 of the Vehicle Code is amended to read:

1808.25. (a) The department shall implement a program to provide residence address information to an accredited degree-granting nonprofit independent institution of higher education incorporated in the state, that has concluded a memorandum of understanding pursuant to subdivision (b) of Section 830.7 of the Penal Code if, under penalty of perjury, the institution requests and uses the information solely for the purpose of enforcing parking restrictions.

(b) The memorandum of understanding executed by the sheriff or chief of police within whose jurisdiction the independent institution is located shall expressly permit the institution to enforce parking restrictions pursuant to subdivision (b) of Section 830.7 of the Penal Code. For the purposes of this subdivision, a participating institution shall enter into a contractual agreement with the department that, at a minimum, requires the institution to do all of the following:

(1) Establish and maintain procedures, to the satisfaction of the department, for persons to contest parking violation notices issued by the institution.

(2) Remit a fee, as determined by the department, to cover the department's costs of providing each address to the institution.

(3) Agree that access to confidential residence address information from the department's vehicle registration database will be provided only through an approved commercial requester account.

(4) Establish and maintain a system that ensures that confidential address information obtained from the department is used solely for the purpose specified in subdivision (a).

(c) The director may terminate a contract authorized by subdivision (b) at any time the department determines that the independent institution of higher education fails to maintain adequate safeguards to ensure that the operation of the program does not adversely affect those individuals whose records are maintained in the department's files, or that the information is used for any purpose other than that specified in subdivision (a).

(d) Sections 1808.45, 1808.46, and 1808.47 are applicable to persons who obtain department records pursuant to this section and the department may pursue any appropriate civil or criminal action against any individual at an independent institution who violates the provisions of this section.

(e) For purposes of this article only, any confidential information obtained from the department for administration or enforcement of this article shall be held confidential, except to the extent necessary for the enforcement of parking restrictions, and may not be used for any purpose other than the administration or enforcement of parking restrictions.

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 411

An act to amend Section 2401 of, and to add and repeal Section 2401.1 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 2401 of the Business and Professions Code is amended to read:

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by the Division of Licensing or the Osteopathic Medical Board of California, may charge for professional services rendered to teaching patients by licensees who hold academic appointments on the faculty of the university, if the charges are approved by the physician and surgeon in whose name the charges are made.

(b) Notwithstanding Section 2400, a clinic operated under subdivision (p) of Section 1206 of the Health and Safety Code may employ licensees and charge for professional services rendered by those licensees. However, the clinic shall not interfere with, control, or

otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.

(c) Notwithstanding Section 2400, a narcotic treatment program operated under Section 11876 of the Health and Safety Code and regulated by the State Department of Alcohol and Drug Programs, may employ licensees and charge for professional services rendered by those licensees. However, the narcotic treatment program shall not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.

(d) Notwithstanding Section 2400, a hospital owned and operated by a health care district pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code may employ a licensee pursuant to Section 2401.1, and may charge for professional services rendered by the licensee, if the physician and surgeon in whose name the charges are made approves the charges. However, the hospital shall not interfere with, control, or otherwise direct the physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

SEC. 2. Section 2401.1 is added to the Business and Professions Code, to read:

2401.1. (a) The Legislature finds and declares as follows:

(1) Due to the large number of uninsured and underinsured Californians, a number of California communities are having great difficulty recruiting and retaining physicians and surgeons.

(2) In order to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities, many district hospitals have no viable alternative but to directly employ physicians and surgeons in order to provide economic security adequate for a physician and surgeon to relocate and reside in their communities.

(3) The Legislature intends that a district hospital meeting the conditions set forth in this section be able to employ physicians and surgeons directly, and to charge for their professional services.

(4) The Legislature reaffirms that Section 2400 provides an increasingly important protection for patients and physicians and surgeons from inappropriate intrusions into the practice of medicine, and further intends that a district hospital not interfere with, control, or otherwise direct a physician and surgeon's professional judgment.

(b) A pilot project to provide for the direct employment of a total of 20 physicians and surgeons by qualified district hospitals is hereby established in order to improve the recruitment and retention of physicians and surgeons in rural and other medically underserved areas.

(c) For purposes of this section, a qualified district hospital means a hospital that meets all of the following requirements:

(1) Is a district hospital organized and governed pursuant to the Local Health Care District Law (Division 23 (commencing with Section 32000) of the Health and Safety Code).

(2) Provides a percentage of care to Medicare, Medi-Cal, and uninsured patients that exceeds 50 percent of patient days.

(3) Is located in a county with a total population of less than 750,000.

(4) Has net losses from operations in fiscal year 2000-01, as reported to the Office of Statewide Health Planning and Development.

(d) In addition to the requirements of subdivision (c), and in addition to other applicable laws, a qualified district hospital may directly employ a licensee pursuant to subdivision (b) if all of the following conditions are satisfied:

(1) The total number of physicians and surgeons employed by all qualified district hospitals under this section does not exceed 20.

(2) The medical staff and the elected trustees of the qualified district hospital concur by an affirmative vote of each body that the physician and surgeon's employment is in the best interest of the communities served by the hospital.

(3) The licensee enters into or renews a written employment contract with the qualified district hospital prior to December 31, 2006, for a term not in excess of four years. The contract shall provide for mandatory dispute resolution under the auspices of the board for disputes directly relating to the licensee's clinical practice.

(4) The total number of licensees employed by the qualified district hospital does not exceed two at any time.

(5) The qualified district hospital notifies the board in writing that the hospital plans to enter into a written contract with the licensee, and the board has confirmed that the licensee's employment is within the maximum number permitted by this section. The board shall provide written confirmation to the hospital within five working days of receipt of the written notification to the board.

(e) The board shall report to the Legislature not later than October 1, 2008, on the evaluation of the effectiveness of the pilot project in improving access to health care in rural and medically underserved areas and the project's impact on consumer protection as it relates to intrusions into the practice of medicine.

(f) Nothing in this section shall exempt the district hospital from any reporting requirements or affect the board's authority to take action against a physician and surgeon's license.

(g) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.

CHAPTER 412

An act to add Section 19584 to the Revenue and Taxation Code, relating to voter registration.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

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

(a) The health and vitality of a democracy depends on the ''consent of the governed'' and this consent is expressed, in part, through registering to vote and voting.

(b) The historical decline of participation in elections is a serious public policy issue which, unless reversed, threatens to undermine this consent.

(c) The state should make significant efforts to provide every eligible citizen a simple and convenient opportunity to register to vote.

SEC. 2. Section 19584 is added to the Revenue and Taxation Code, to read:

19584. The Franchise Tax Board shall include a voter registration card with the Personal Income Tax filing forms that are mailed annually to California taxpayers.

CHAPTER 413

An act to add Section 56341.2 to the Education Code, relating to special education.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 56341.2 is added to the Education Code, to read:

56341.2. (a) In the case of a pupil with exceptional needs who has been placed in a group home, as defined in subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations, by the juvenile court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code, the district, special education local plan area, or county office shall

invite to the individualized education program team meetings a representative of the group home.

(b) This section shall not be construed to delay the individualized education program process or to change the individualized education program team requirements of subdivision (b) of Section 56341.

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

CHAPTER 414

An act to amend Section 485 of, and to add Sections 5011 and 5012 to, the Food and Agricultural Code, relating to quarantines.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 485 of the Food and Agricultural Code is amended 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.

(e) If the secretary expends funds or awards grants for the study of protocols for crops to meet standards for transport out of a quarantine area, the following shall apply:

(1) Primary consideration shall be given to crops that are most at risk from the imposition of a quarantine and for which protocols do not currently exist, as long as the application otherwise meets reasonable scientific standards.

(2) The department may consult with individuals or representatives of the agriculture industry, and academic or scientific individuals, or organizations to establish criteria and assist in the recommendation of any expenditure of funds or the award of grants.

SEC. 2. Section 5011 is added to the Food and Agricultural Code, to read:

5011. Unless otherwise provided in this code, for the purposes of pest management, ''crop'' means a plant or animal, or a product derived from a plant or animal, that can be grown and harvested for profit or for the subsistence of humans or animals.

SEC. 3. Section 5012 is added to the Food and Agricultural Code, to read:

5012. Unless otherwise provided in this code, for the purposes of pest management, ''forage'' means food for domestic or other wild animals that is taken by browsing or grazing, or food that wild or domestic animals take for themselves.

CHAPTER 415

An act to amend Section 49431 of, and to add Section 49431.5 to, the Education Code, relating to schools.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. This act shall be known and may be cited as the California Childhood Obesity Prevention Act.

SEC. 2. The Legislature finds and declares as follows:

(a) In the past two decades obesity has doubled in children, and tripled in adolescents. On average, 30 percent of California's children are overweight, and in some school districts, anywhere from 40 to 50 percent of California's pupils are overweight. Only 2 percent of California's adolescents, between the ages of 12 and 17 years, inclusive, have eating habits that meet national dietary recommendations. Only 23 percent of pupils in grades 5, 7, and 9 are physically fit. Almost half of the children and adolescents diagnosed with diabetes have the Type 2 form of the disease, which is strongly linked to obesity and lack of exercise. One in four obese children have early signs of Type 2 diabetes.

(b) Overweight and physical inactivity costs California an estimated 24.6 billion dollars annually, approximately seven hundred fifty dollars ($750) per person—a cost that is expected to rise by another 32 percent by the year 2005. Poor nutrition and physical inactivity account for more preventable deaths (28 percent) than anything other than tobacco—more than AIDS, violence, car crashes, alcohol, and drugs combined. The long-term impact of childhood obesity on California's economy, and on our children's increased risk of death from heart disease, cancer, stroke, and diabetes will be staggering. Approximately 300,000 deaths in the United States per year are currently associated with obesity and overweight; the total direct and indirect costs attributed to overweight and obesity amounted to 117 billion dollars in the year 2000. Obesity is linked to a larger increase of chronic health conditions and accounts for a significantly higher amount of health expenditures than those associated with smoking, heavy drinking, or poverty.

(c) Each additional daily serving of sugar-sweetened soda increases a child's risk for obesity by 60 percent. Twenty years ago, boys consumed more than twice as much milk as soft drinks, and girls consumed 50 percent more milk than soft drinks. By 1996, both boys and girls consumed twice as many soft drinks as milk. Soft drinks now comprise the leading source of added sugar in a child's diet. Teenage boys consume twice the recommended amount of sugar each day, almost one-half of which (44 percent) comes from soft drinks. Teenage girls consume almost three times the recommended amount of sugar, 40 percent of which comes from soft drinks.

(d) A study of 9th and 10th grade girls found that those who drank colas were five times more likely to develop bone fractures, and girls who drank other carbonated beverages were three times more likely to suffer bone fractures than nonconsumers of carbonated beverages. Decreased milk consumption means that children are no longer getting required amounts of calcium in their diets. The average teenage girl now consumes 40 percent less calcium than she needs, putting her at high risk of osteoporosis in her later years.

SEC. 3. Section 49431 of the Education Code is amended to read:

49431. (a) At each elementary school, and in those schools participating in the pilot program created pursuant to Section 49433.7, the sale of all foods on school grounds shall be approved for compliance with the nutrition standards in this section by the person or persons responsible for implementing these provisions as designated by the school district.

(b) (1) At each elementary school, the only food that may be sold to a pupil during breakfast and lunch periods is food that is sold as a full meal. This paragraph does not prohibit the sale of fruit, nonfried vegetables, legumes, beverages, dairy products, or grain products as individual food items if they meet the requirements set forth in this subdivision.

(2) An individual food item sold to a pupil during morning or afternoon breaks at an elementary school shall meet all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat. This subparagraph does not apply to the sale of nuts or seeds.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(c) An elementary school may permit the sale of food items that do not comply with subdivision (a) or (b) as part of a school fundraising event in any of the following circumstances:

(1) The items are sold by pupils of the school and the sale of those items takes place off of school premises.

(2) The items are sold by pupils of the school and the sale of those items takes place at least one-half hour after the end of the schoolday.

(d) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, compliance with this section may not be waived.

(e) (1) This section shall become operative only if moneys are appropriated for each of the following purposes:

(A) Providing nutrition policy development grants pursuant to subdivision (c) of Section 49433.

(B) Support and technical assistance to school districts pursuant to Section 49433.5.

(C) Increasing meal reimbursements pursuant to Section 49430.5.

(2) The department shall file a written statement with the Secretary of the Senate and the Chief Clerk of the Assembly when funds have been appropriated to meet the conditions of paragraph (1). The statement shall state the annual Budget Act or other measure in which each appropriation was made.

SEC. 4. Section 49431.5 is added to the Education Code, to read:

49431.5. (a) Commencing July 1, 2004, regardless of the time of day, beverages, other than water, milk, 100 percent fruit juices, or fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweeteners, may not be sold to a pupil at an elementary school.

(b) An elementary school may permit the sale of beverages that do not comply with subdivision (a) as part of a school fundraising event in any of the following circumstances:

(1) The items are sold by pupils of the school and the sale of those items takes place off the premises of the school.

(2) The items are sold by pupils of the school and the sale of those items takes place one-half hour or more after the end of the schoolday.

(c) Commencing July 1, 2004, from one-half hour before the start of the schoolday to one-half hour after the end of the schoolday, only the following beverages may be sold to a pupil at a middle or junior high school:

(1) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweeteners.

(2) Drinking water.

(3) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(4) An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

(d) A middle or junior high school may permit the sale of beverages that do not comply with subdivision (c) as part of a school event if the sale of those items meets all of the following criteria:

(1) The sale occurs during a school-sponsored event and takes place at the location of that event after the end of the schoolday.

(2) Vending machines, pupil stores, and cafeterias are not used no sooner than one-half hour after the end of the schoolday.

(e) This section does not prohibit an elementary, middle or junior high school from making available through a vending machine any beverage allowed under subdivision (a) or (c) at any time of day, or, in middle and junior high schools, any product that does not comply with subdivision (c) if the product only is available not later than one-half hour before the start of the schoolday and not sooner than one-half hour after the end of the schoolday.

(f) For the purposes of this section, ''added sweetener'' means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.

(g) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, compliance with this section may not be waived.

CHAPTER 416

An act to amend Sections 64201 and 64202 of the Education Code, relating to education.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 64201 of the Education Code is amended to read:

64201. (a) The California Quality Education Commission is hereby established, to become operative on July 1, 2003, for the purpose of developing, evaluating, validating, and refining a Quality Education Model for prekindergarten through grade 12, inclusive, to provide state policymakers with adequate tools to enable them to establish the reasonable costs of schools and the best direct available resources so that the vast majority of pupils may meet academic performance standards established by the state. The work of the commission shall serve to implement the principles and direction described in the final report of the Joint Committee to Develop a Master Plan for Education, and shall identify the educational components, educational resources, and corresponding costs necessary to provide the opportunity for a quality education to every pupil.

(b) (1) The commission shall be composed of 13 members, who shall be representative of the diversity of the state population, and shall include:

(A) Leaders from business and education.

(B) Representatives of elementary schools, middle schools, and high schools.

(C) Representatives of urban districts, suburban districts, and rural districts.

(D) Representatives of the research community with experience in educational policy and best practices.

(2) Except for the first appointments to the California Quality Education Commission, a member shall serve a four-year term. A person may not be appointed to serve more than two consecutive terms. The first terms of the members first appointed to the California Quality Education Commission shall be as follows:

(A) Three shall serve a term expiring August 1, 2005.

(B) Five shall serve a term expiring August 1, 2006.

(C) Five shall serve a term expiring August 1, 2007.

(3) The commission members shall be appointed as follows:

(A) Seven members shall be appointed by the Governor and approved by the Senate. Of the seven members appointed by the Governor and approved by the Senate, one shall be a currently employed public school teacher, one shall be a currently employed public school administrator, and one shall be a current public school board member. The terms of these members first appointed shall be staggered so that the terms of two members shall expire on August 1, 2005, the terms of two members shall expire on August 1, 2006, and the terms of three members shall expire on August 1, 2007.

(B) Two members shall be appointed by the Senate Committee on Rules. The terms of these members first appointed shall be staggered so that the term of one member shall expire on August 1, 2006, and the term of the other shall expire on August 1, 2007.

(C) Two members shall be appointed by the Speaker of the Assembly. The terms of these members first appointed shall be staggered so that the term of one member shall expire on August 1, 2006, and the term of the other shall expire on August 1, 2007.

(D) Two members shall be appointed by the Superintendent of Public Instruction. The terms of these members first appointed shall be staggered so that the term of one member shall expire on August 1, 2005, and the term of the other shall expire on August 1, 2006.

(4) (A) The commission, by majority vote of all its sitting members, shall elect its own chairperson from among its sitting members.

(B) The commission shall appoint an executive director, who shall be exempt from the State Civil Service Act (Part 2 (commencing with Section 18500), Division 3, Title 2, Government Code), and may in its discretion remove him or her by a majority vote of all its members. The executive director shall be the secretary to the commission and the commission's chief executive officer. The executive director shall receive the salary that the commission determines, and, subject to appropriations, other prerequisites that the commission determines.

(C) Pursuant to subdivision (a) of Section 11126 of the Government Code, the commission may hold closed sessions when considering matters relating to the recruitment, appointment, employment, or removal of the executive director. Decisions made during a closed session of the commission related to the recruitment, appointment, employment, or removal of the executive director shall be made known at the next public meeting of the commission.

(5) (A) A vacancy on the commission shall be filled within 30 days by the appointing power that appointed the prior holder of the position.

An appointment to fill a vacancy shall be for the remaining portion of the term of the member whom the appointee succeeds. A vacancy may not impair the right of the remaining sitting members to exercise all of the powers of the commission.

(B) A majority of the sitting members of the commission constitutes a quorum for the transaction of business.

(C) ''Sitting member'' means an individual who has been appointed and is currently serving on the California Quality Education Commission.

(c) The commission shall do all of the following:

(1) Identify key issues to address in developing, evaluating, validating, and refining the Quality Education Model. The commission shall develop complete descriptions of prototype schools, at least one for each of the three levels of elementary and secondary education, to form models that fairly capture the diversity of public schools in California.

(2) Determine an adequate base funding amount for each of the three prototype schools.

(3) Recommend funding adjustments to allow schools that meet certain criteria to receive additional funding beyond the base funding amount. The funding adjustments shall be limited to both of the following:

(A) A district characteristic adjustment that focuses on the extraordinary needs of certain schools due to their geographic locations, including transportation needs and weather challenges.

(B) A pupil characteristic adjustment that is limited to the following three areas:

(i) Special education programs.

(ii) Services for English language learners who have been enrolled in California public schools for less than five years.

(iii) Programs for low-income pupils.

(4) Establish a category of grants to be known as initiatives that shall be limited in duration and serve either of the following purposes:

(A) To pilot and evaluate a proposed new program at one or two schools prior to implementing the program statewide.

(B) To meet a school's immediate but temporary needs for additional funding to mitigate the effects of an unforeseen short-term problem faced by the school.

(5) Focus on practical alternatives that are achievable within the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(6) Solicit comments, criticisms, and suggestions from professional educators, education administrators, and education policy experts relative to the elements of the Quality Education Model. The

commission shall consult expert panels for advice relating to research-based, best practices most associated with high pupil achievement.

(7) Solicit public comments, criticisms, and suggestions relative to the elements of the Quality Education Model. The commission shall provide the public with information sufficient to enable interested members of the public to understand the process being used to evaluate, validate, and refine the Quality Education Model, and the reasonable choices or options under consideration. The commission shall provide the public with information explaining the criteria and models chosen and the basis for those choices.

(8) Rely upon the most accurate available cost data, cost estimation methods, and reasonable and expert assumptions in those instances in which data are lacking. The commission shall identify data gaps, modeling assumptions, and recommendations for near-term and long-term improvement of the model.

(9) Deliver a report, comprised of the prototype models and the commission's findings and recommendations, to the Governor and Legislature no later than 12 months after the commission first convenes. The report shall include recommendations for any statutory changes to conform the existing school finance structure to the Quality Education Model proposed in the report.

(d) The commission shall, upon delivery of the report, continue as a standing commission, its members serving staggered terms, with the following responsibilities:

(1) To test the Quality Education Model's reliability, by evaluating the accuracy of the cost elements and assessing whether moneys are actually used to desired effects.

(2) To refine the means with which to account for missing elements, including intangible factors or quality indicators that affect pupil achievement and for which data are not readily available.

(3) To identify the Quality Education Model's assumptions, assess the validity of those assumptions, and improve their accuracy, especially by finding those resources and methods that successful schools embody.

(4) To develop the capacity to estimate and forecast factors, including the cost of the Quality Education Model's implementation given model refinement, the growth of applicable revenues, the pace of implementation, and the effects of the model on pupil performance.

(5) To make recommendations for improvements in the state's data-gathering systems.

SEC. 2. Section 64202 of the Education Code is amended to read:

64202. Funding for staffing the California Quality Education Commission shall be provided by nonstate funding sources. It is the intent of the Legislature that any state support of the operations of the

commission shall be limited to the in-kind contribution of office space, equipment, and other materiel from existing resources. For the purposes of expenditures for the support of the commission, including the expenses of the members of the commission, the commission shall be deemed to be within the executive branch of state government, but the commission may only be subject to the control or direction of an officer or employee of the executive branch for ensuring that appropriated funds are encumbered and accounted for in accordance with state law.

CHAPTER 417

An act to amend Section 1351.2 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 1351.2 of the Health and Safety Code is amended to read:

1351.2. (a) If a prepaid health plan operating lawfully under the laws of Mexico elects to operate a health care service plan in this state, the prepaid health plan shall apply for licensure as a health care service plan under this chapter by filing an application for licensure in the form prescribed by the department and verified by an authorized representative of the applicant. The prepaid health plan shall be subject to the provisions of this chapter, and the rules adopted by the director thereunder, as determined by the director to be applicable. The application shall be accompanied by the fee prescribed by subdivision (a) of Section 1356 and shall demonstrate compliance with the following requirements:

(1) The prepaid health plan is constituted and operating lawfully under the laws of Mexico and, if required by Mexican law, is authorized as an Insurance Institution Specializing in Health by the Mexican Insurance Commission. If the Mexican Insurance Commission determines that the prepaid health plan is not required to be authorized as an Insurance Institution Specializing in Health under the laws of Mexico, the applicant shall obtain written verification from the Mexican Insurance Commission stating that the applicant is not required to be authorized as an Insurance Institution Specializing in Health in Mexico. Any Mexican prepaid health plan not required to be an Insurance Institution Specializing in Health shall obtain written verification from

the Mexican Ministry of Health that the prepaid health plan and its provider network are operating in full compliance of Mexican law.

(2) The prepaid health plan offers and sells in this state only employer-sponsored group plan contracts exclusively for the benefit of citizens of Mexico legally employed in this state, and for the benefit of their dependents regardless of nationality, that pay for, reimburse the cost of, or arrange for the provision or delivery of health care services that are to be provided or delivered wholly in Mexico, except for the provision or delivery of those health care services set forth in subparagraphs (A) and (B) of paragraph (4).

(3) Solicitation of plan contracts in this state is made only through insurance brokers and agents licensed in this state or a third-party administrator licensed in this state, each of which is authorized to offer and sell plan group contracts.

(4) Group contracts provide, through a contract of insurance between the prepaid health plan and an insurer admitted in this state, for the reimbursement of emergency and urgent care services provided out of area as required by subdivision (h) of Section 1345.

(5) All advertising, solicitation material, disclosure statements, evidences of coverage, and contracts are in compliance with the appropriate provisions of this chapter and the rules or orders of the director. The director shall require that each of these documents contain a legend in 10-point type, in both English and Spanish, declaring that the health care service plan contract provided by the prepaid health plan may be limited as to benefits, rights, and remedies under state and federal law.

(6) All funds received by the prepaid health plan from a subscriber are deposited in an account of a bank organized under the laws of this state or in an account of a national bank located in this state.

(7) The prepaid health plan maintains a tangible net equity as required by this chapter and the rules of the director, as calculated under United States generally accepted accounting principles, in the amount of a least one million dollars ($1,000,000). In lieu of an amount in excess of the minimum tangible net equity of one million dollars ($1,000,000), the prepaid health plan may demonstrate a reasonable acceptable alternative reimbursement arrangement that the director may in his or her discretion accept. The prepaid health plan shall also maintain a fidelity bond and a surety bond as required by Section 1376 and the rules of the director.

(8) The prepaid health plan agrees to make all of its books and records, including the books and records of health care providers in Mexico, available to the director in the form and at the time and place requested by the director. Books and records shall be made available to the director no later than 24 hours from the date of the request.

(9) The prepaid health plan files a consent to service of process with the director and agrees to be subject to the laws of this state and the

United States in any investigation, examination, dispute, or other matter arising from the advertising, solicitation, or offer and sale of a plan contract, or the management or provision of health care services in this state or throughout the United States. The prepaid health plan shall agree to notify the director, immediately and in no case later than one business day, if it is subject to any investigation, examination, or administrative or legal action relating to the prepaid health plan or the operations of the prepaid health plan initiated by the government of Mexico or the government of any state of Mexico against the prepaid health plan or any officer, director, security holder, or contractor owning 10 percent or more of the securities of the prepaid health plan. The prepaid health plan shall agree that in the event of conflict of laws in any action arising out of the license, the laws of California and the United States shall apply.

(10) The prepaid health plan agrees that disputes arising from the group contracts involving group contractholders and providers of health care services in the United States shall be subject to the jurisdiction of the courts of this state and the United States.

(b) The prepaid health plan shall pay the application processing fee and other fees and assessments set forth in Section 1356. The director, by order, may designate provisions of this chapter and rules adopted thereunder that need not be applied to a prepaid health plan licensed under the laws of Mexico when consistent with the intent and purpose of this chapter, and in the public interest.

(c) If the plan ceases to operate legally in Mexico, the director shall immediately deliver written notice to the health care service plan that it is not in compliance with the provisions of this section. If this occurs, a health care service plan shall do all of the following:

(1) Provide the director with written proof that the prepaid health plan has complied with the laws of Mexico not later than 45 days after the date the written notice is received by the health care service plan.

(2) If, by the 45th day, the health care service plan is unable to provide written confirmation it is in full compliance with Mexican law, the director shall notify the health care service plan in writing that it is prohibited from accepting any new enrollees or subscribers. The health care service plan shall be given an additional 180 days to comply with Mexican law or to become a licensed health care service plan.

(3) If, at the end of the 180-day notice period in paragraph (2), the health care service plan has not complied with the laws of Mexico or California, the director shall issue an order that the health care service plan cease and desist operations in California.

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 418

An act to repeal Section 51220.3 of the Education Code, relating to instruction.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 51220.3 of the Education Code is repealed.

CHAPTER 419

An act to amend Sections 1603.1, 1603.2, 1603.3, 1603.4, 1621.5, and 120990 of the Health and Safety Code, relating to human blood.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

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

SECTION 1. Section 1603.1 of the Health and Safety Code is amended to read:

1603.1. (a) Except as provided in this subdivision, no blood or blood components shall be used in vivo for humans in this state, unless the blood or blood components have been tested and found nonreactive for HIV or the blood or blood components are used for research or vaccination programs pursuant to an informed consent.

Additional exceptions to the requirement of this subdivision are as follows:

(1) Blood or blood components released for transfusion in emergency circumstances, as determined by the department.

(2) Blood or blood components used for autologous purposes.

(b) Blood banks and plasma centers shall make laboratory tests of all human whole blood and blood components received to detect the presence of viral hepatitis and HIV in the manner specified in Section

1603.3. If the blood bank or plasma center finds the presence of viral hepatitis, or an antigen thereof, in the blood or blood components tested, it shall report that finding, the date of the human whole blood or blood components donation, the name, address, and social security number of the person who donated the blood or blood components, and the name and address of the blood bank or plasma center that received the human whole blood or blood components from the person and any additional information required by the department, to the local health officer within 72 hours of the confirmation of the presence of viral hepatitis, or an antigen thereof, in the blood or blood components tested.

(c) A physician, hospital, or other health care provider shall report all AIDS cases, HIV infections, and viral hepatitis infections, including transfusion-associated cases or infections, to the local health officer with the information required, and within the timeframes established by the department, pursuant to Title 17 of the California Code of Regulations.

(d) Upon receipt of a report concerning any transfusion-associated hepatitis or transfusion-associated HIV or AIDS cases, the local health officer shall identify which blood bank or plasma center is the source of the infectious blood or blood components and shall report this fact to the blood bank or plasma center that issued the blood or blood components. The blood bank or plasma center shall undertake an investigation to determine the donor source of the infectious blood or blood components.

(e) Local health officials shall contact all persons who have confirmed cases of AIDS, as determined by a person responsible for the care and treatment of the person with AIDS, to suggest appropriate treatment alternatives and for the purposes of epidemiological studies and followup.

(f) The department may adopt regulations governing the procedures in this section as it deems necessary to protect the public health and safety.

(g) ''Plasma center,'' as used in this chapter, means any place where the process of plasmapheresis is conducted, as defined in Section 1025 of Title 17 of the California Code of Regulations and includes a place where leukopheresis or platelet pheresis, or both, is conducted.

(h) ''AIDS,'' as used in this chapter, means acquired immune deficiency syndrome.

(i) ''HIV,'' as used in this chapter, means human immunodeficiency virus.

(j) ''Blood components,'' as used in this chapter, means preparations separated from single units of whole blood or prepared for hemapheresis and intended for use as final products for transfusions.

(k) A local health officer may disclose to a blood bank or plasma center, on a confidential basis, whether blood or blood components previously transfused may have been donated by a person infected with

HIV, in order to implement the blood bank's or plasma center's program to notify a recipient of blood or blood components that might have transmitted HIV. The blood bank or plasma center may not disclose information that would identify a donor to which this subdivision applies and shall destroy information communicated to it as authorized by this subdivision immediately after reviewing its records as necessary to implement this program.

SEC. 2. Section 1603.2 of the Health and Safety Code is amended to read:

1603.2. (a) Each blood bank or plasma center shall require as identification either a photographic driver's license or other photographic identification that is issued by the Department of Motor Vehicles, pursuant to Division 6 (commencing with Section 12500) of the Vehicle Code, from all donors of human whole blood or blood components who receive payment in return for the donation of that blood or blood components.

(b) For the purposes of this section, "payment'' means the transfer by a blood bank or plasma center to any person of money or any other valuable consideration that can be converted to money by the recipient, except that payment shall not include any of the following:

(1) Cancellation or refund of the nonreplacement fees or related blood or blood components transfusion charges.

(2) Blood assurance benefits to a person as a result of a blood or blood components donation to a donor club or blood assurance program.

(3) Time away from employment granted by an employer to an employee in order to donate blood or blood components.

SEC. 3. Section 1603.3 of the Health and Safety Code is amended to read:

1603.3. (a) Prior to a donation of blood or blood components, each donor shall be notified in writing of, and shall have signed a written statement confirming the notification of, all of the following:

(1) That the blood or blood components shall be tested for evidence of antibodies to HIV.

(2) That the donor shall be notified of the test results in accordance with the requirements described in subdivision (c).

(3) That the donor blood or blood component that is found to have the antibodies shall not be used for transfusion.

(4) That blood or blood components shall not be donated for transfusion purposes by a person if the person may have reason to believe that he or she has been exposed to HIV or AIDS.

(5) That the donor is required to complete a health screening questionnaire to assist in the determination as to whether he or she may have been exposed to HIV or AIDS.

(b) A blood bank or plasma center shall incorporate voluntary means of self-deferral for donors. The means of self-deferral may include, but are not limited to, a form with checkoff boxes specifying that the blood or blood components are for research or test purposes only and a telephone callback system for donors to use in order to inform the blood bank or plasma center that blood or blood components donated should not be used for transfusion. The blood bank or plasma center shall inform the donor, in a manner that is understandable to the donor, that the self-deferral process is available and should be used if the donor has reason to believe that he or she is infected with HIV. The blood bank or plasma center shall also inform the donor that it is a felony pursuant to Section 1621.5 to donate blood if the donor knows that he or she has a diagnosis of AIDS or knows that he or she has tested reactive to HIV.

(c) Blood or blood components from any donor initially found to have serologic evidence of antibodies to HIV shall be retested for confirmation. Only if a further test confirms the conclusion of the earlier test shall the donor be notified of a reactive result by the blood bank or plasma center.

The department shall develop permissive guidelines for blood banks and plasma centers on the method to be used to notify a donor of a test result.

(d) Each blood bank or plasma center operating in California shall prominently display at each of its collection sites a notice that provides the addresses and telephone numbers of sites, within the proximate area of the blood bank or plasma center, where anonymous HIV antibody testing provided pursuant to Chapter 3 (commencing with Section 120885) of Part 4 of Division 105 may be administered without charge.

(e) The department may promulgate any additional regulations it deems necessary to enhance the safety of donated blood and blood components. The department may also promulgate regulations it deems necessary to safeguard the consistency and accuracy of HIV test results by requiring any confirmatory testing the department deems appropriate for the particular types of HIV tests that have yielded ''reactive,'' ''positive,'' ''indeterminate,'' or other similarly labeled results.

(f) Notwithstanding any other provision of law, no civil liability or criminal sanction shall be imposed for disclosure of test results to a local health officer when the disclosure is necessary to locate and notify a blood or blood components donor of a reactive result if reasonable efforts by the blood bank or plasma center to locate the donor have failed. Upon completion of the local health officer's efforts to locate and notify a blood or blood components donor of a reactive result, all records obtained from the blood bank or plasma center pursuant to this subdivision, or maintained pursuant to this subdivision, including, but

not limited to, any individual identifying information or test results, shall be expunged by the local health officer.

SEC. 4. Section 1603.4 of the Health and Safety Code is amended to read:

1603.4. (a) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105, or any other provision of law, no public entity or any private blood bank or plasma center shall be liable for an inadvertent, accidental, or otherwise unintentional disclosure of the results of an HIV test.

As used in this section, ''public entity'' includes, but is not limited to, any publicly owned or operated blood bank or plasma center, local health officer, and the department.

(b) Neither the department nor any blood bank or plasma center, including a blood bank or plasma center owned or operated by a public entity, or local health officer shall be held liable for any damage resulting from the notification of test results, as set forth in paragraph (2) of subdivision (a) of, or in subdivision (c) of, Section 1603.3.

SEC. 5. Section 1621.5 of the Health and Safety Code is amended to read:

1621.5. (a) It is a felony punishable by imprisonment in the state prison for two, four, or six years, for any person to donate blood, body organs or other tissue, semen to any medical center or semen bank that receives semen for purposes of artificial insemination, or breast milk to any medical center or breast milk bank that receives breast milk for purposes of distribution, whether he or she is a paid or a volunteer donor, who knows that he or she has acquired immune deficiency syndrome, as diagnosed by a physician and surgeon, or who knows that he or she has tested reactive to HIV. This section shall not apply to any person who is mentally incompetent or who self-defers his or her blood at a blood bank or plasma center pursuant to subdivision (b) of Section 1603.3 or who donates his or her blood for purposes of an autologous donation.

(b) In a criminal investigation for a violation of this section, no person shall disclose the results of a blood test to detect the etiologic agent of AIDS or antibodies to that agent to any officer, employee, or agent of a state or local agency or department unless the test results are disclosed as otherwise required by law pursuant to any one of the following:

(1) A search warrant issued pursuant to Section 1524 of the Penal Code.

(2) A judicial subpoena or subpoena duces tecum issued and served in compliance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure.

(3) An order of a court.

(c) For purposes of this section, ''blood'' means ''human whole blood'' and ''human whole blood derivatives,'' as defined for purposes

of this chapter and includes ''blood components,'' as defined in subdivision (k) of Section 1603.1.

SEC. 6. Section 120990 of the Health and Safety Code is amended to read:

120990. (a) Except in the case of a person treating a patient, no person shall test a person's blood for evidence of antibodies to the probable causative agent of AIDS without the written consent of the subject of the test or the written consent of the subject, as provided in Section 121020, and the person giving the test shall have a written statement signed by the subject or conservator or other person, as provided in Section 121020 confirming that he or she obtained the consent from the subject. In the case of a physician and surgeon treating a patient, the consent required under this subdivision shall be informed consent, by the patient, conservator, or other person provided for in Section 121020.

This requirement does not apply to a test performed at an alternative site, as established pursuant to Sections 120885 to 120895, inclusive. This requirement does not apply when testing is performed as part of the medical examination performed pursuant to Section 7152.5.

(b) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a blood test to detect antibodies to the probable causative agent of AIDS on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act, provided for pursuant to Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7.

(c) The requirements of subdivision (a) do not apply when blood is tested as part of a scientific investigation conducted either by medical researchers operating under institutional review board approval or by the department in accordance with a protocol for unlinked testing. For purposes of this section, unlinked testing means that blood samples are obtained anonymously or that the individual's name and other identifying information is removed in a manner that precludes the test results from ever being linked to a particular individual in the study.

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

CHAPTER 420

An act to amend Section 30262 of the Public Resources Code, relating to oil and gas.

[Approved by Governor September 19, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 30262 of the Public Resources Code is amended to read:

30262. (a) Oil and gas development shall be permitted in accordance with Section 30260, if the following conditions are met:

(1) The development is performed safely and consistent with the geologic conditions of the well site.

(2) New or expanded facilities related to that development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.

(3) Environmentally safe and feasible subsea completions are used if drilling platforms or islands would substantially degrade coastal visual qualities, unless the use of those structures will result in substantially less environmental risks.

(4) Platforms or islands will not be sited where a substantial hazard to vessel traffic might result from the facility or related operations, as determined in consultation with the United States Coast Guard and the Army Corps of Engineers.

(5) The development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from that subsidence.

(6) With respect to new facilities, all oilfield brines are reinjected into oil-producing zones unless the Division of Oil, Gas, and Geothermal Resources of the Department of Conservation determines to do so would adversely affect production of the reservoirs and unless injection into other subsurface zones will reduce environmental risks. Exceptions to reinjections will be granted consistent with the Ocean Waters Discharge Plan of the State Water Resources Control Board and where adequate provision is made for the elimination of petroleum odors and water quality problems.

(7) (A) All oil produced offshore California shall be transported onshore by pipeline only. The pipelines used to transport this oil shall utilize the best achievable technology to ensure maximum protection of

public health and safety and of the integrity and productivity of terrestrial and marine ecosystems.

(B) Once oil produced offshore California is onshore, it shall be transported to processing and refining facilities by pipeline.

(C) The following guidelines shall be used when applying subparagraphs (A) and (B):

(i) ''Best achievable technology,'' means the technology that provides the greatest degree of protection taking into consideration both of the following:

(I) Processes that are being developed, or could feasibly be developed, anywhere in the world, given overall reasonable expenditures on research and development.

(II) Processes that are currently in use anywhere in the world. This clause is not intended to create any conflicting or duplicative regulation of pipelines, including those governing the transportation of oil produced from onshore reserves.

(ii) ''Oil'' refers to crude oil before it is refined into products, including gasoline, bunker fuel, lubricants, and asphalt. Crude oil that is upgraded in quality through residue reduction or other means shall be transported as provided in subparagraphs (A) and (B).

(iii) Subparagraphs (A) and (B) shall apply only to new or expanded oil extraction operations. ''New extraction operations'' means production of offshore oil from leases that did not exist or had never produced oil, as of January 1, 2003, or from platforms, drilling island, subsea completions, or onshore drilling sites, that did not exist as of January 1, 2003. ''Expanded oil extraction'' means an increase in the geographic extent of existing leases or units, including lease boundary adjustments, or an increase in the number of well heads, on or after January 1, 2003.

(iv) For new or expanded oil extraction operations subject to clause (iii), if the crude oil is so highly viscous that pipelining is determined to be an infeasible mode of transportation, or where there is no feasible access to a pipeline, shipment of crude oil may be permitted over land by other modes of transportation, including trains or trucks, which meet all applicable rules and regulations, excluding any waterborne mode of transport.

(8) If a state of emergency is declared by the Governor for an emergency that disrupts the transportation of oil by pipeline, oil may be transported by a waterborne vessel, if authorized by permit, in the same manner as required by emergency permits that are issued pursuant to Section 30624.

(9) In addition to all other measures that will maximize the protection of marine habitat and environmental quality, when an offshore well is abandoned, the best achievable technology shall be used.

(b) Where appropriate, monitoring programs to record land surface and near-shore ocean floor movements shall be initiated in locations of new large-scale fluid extraction on land or near shore before operations begin and shall continue until surface conditions have stabilized. Costs of monitoring and mitigation programs shall be borne by liquid and gas extraction operators.

(c) Nothing in this section shall affect the activities of any state agency that is responsible for regulating the extraction, production, or transport of oil and gas.

SEC. 2. 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 421

An act to amend Sections 297, 298, and 298.5 of, to add Sections 297.5, 299.2, and 299.3 to, to repeal Section 299.5 of, and to repeal and add Section 299 of, the Family Code, to amend Section 14771 of the Government Code, and to amend Section 3 of Chapter 447 of the Statutes of 2002, relating to domestic partnerships.

[Approved by Governor September 19, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. (a) This act is intended to help California move closer to fulfilling the promises of inalienable rights, liberty, and equality contained in Sections 1 and 7 of Article 1 of the California Constitution by providing all caring and committed couples, regardless of their gender or sexual orientation, the opportunity to obtain essential rights, protections, and benefits and to assume corresponding responsibilities, obligations, and duties and to further the state's interests in promoting stable and lasting family relationships, and protecting Californians from the economic and social consequences of abandonment, separation, the death of loved ones, and other life crises.

(b) The Legislature hereby finds and declares that despite longstanding social and economic discrimination, many lesbian, gay, and bisexual Californians have formed lasting, committed, and caring relationships with persons of the same sex. These couples share lives together, participate in their communities together, and many raise children and care for other dependent family members together. Many

of these couples have sought to protect each other and their family members by registering as domestic partners with the State of California and, as a result, have received certain basic legal rights. Expanding the rights and creating responsibilities of registered domestic partners would further California's interests in promoting family relationships and protecting family members during life crises, and would reduce discrimination on the bases of sex and sexual orientation in a manner consistent with the requirements of the California Constitution.

(c) This act is not intended to repeal or adversely affect any other ways in which relationships between adults may be recognized or given effect in California, or the legal consequences of those relationships, including, among other things, civil marriage, enforcement of palimony agreements, enforcement of powers of attorney, appointment of conservators or guardians, and petitions for second parent or limited consent adoption.

SEC. 2. This act shall be known and may be cited as "The California Domestic Partner Rights and Responsibilities Act of 2003."

SEC. 3. Section 297 of the Family Code is amended to read:

297. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

(1) Both persons have a common residence.

(2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

(3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(4) Both persons are at least 18 years of age.

(5) Either of the following:

(A) Both persons are members of the same sex.

(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

(6) Both persons are capable of consenting to the domestic partnership.

(c) ''Have a common residence'' means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

SEC. 4. Section 297.5 is added to the Family Code, to read:

297.5. (a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

(b) Former registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon former spouses.

(c) A surviving registered domestic partner, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.

(d) The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them shall be the same as those of former or surviving spouses.

(e) To the extent that provisions of California law adopt, refer to, or rely upon, provisions of federal law in a way that otherwise would cause registered domestic partners to be treated differently than spouses, registered domestic partners shall be treated by California law as if federal law recognized a domestic partnership in the same manner as California law.

(f) Registered domestic partners shall have the same rights regarding nondiscrimination as those provided to spouses.

(g) Notwithstanding this section, in filing their state income tax returns, domestic partners shall use the same filing status as is used on their federal income tax returns, or that would have been used had they filed federal income tax returns. Earned income may not be treated as community property for state income tax purposes.

(h) No public agency in this state may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses, except that nothing in this section applies to modify eligibility for long-term care plans pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2 of the Government Code.

(i) This act does not preclude any state or local agency from exercising its regulatory authority to implement statutes providing rights to, or imposing responsibilities upon, domestic partners.

(j) This section does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative.

(k) This section does not amend or modify federal laws or the benefits, protections, and responsibilities provided by those laws.

(*l*) Where necessary to implement the rights of domestic partners under this act, gender-specific terms referring to spouses shall be construed to include domestic partners.

SEC. 5. Section 298 of the Family Code is amended to read:

298. (a) The Secretary of State shall prepare forms entitled ''Declaration of Domestic Partnership'' and ''Notice of Termination of Domestic Partnership'' to meet the requirements of this division. These forms shall require the signature and seal of an acknowledgment by a notary public to be binding and valid.

(b) (1) The Secretary of State shall distribute these forms to each county clerk. These forms shall be available to the public at the office of the Secretary of State and each county clerk.

(2) The Secretary of State shall, by regulation, establish fees for the actual costs of processing each of these forms, and the cost for preparing and sending the mailings and notices required pursuant to Section 299.3, and shall charge these fees to persons filing the forms.

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) state that he or she consents to the jurisdiction of the Superior Courts of California for the purpose of a proceeding to obtain a judgment of dissolution or nullity of the domestic partnership or for legal separation of partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners ceases to be a resident of, or to maintain a domicile in, this state, (4) sign the form with a declaration that representations made therein are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant, and (5) have a notary public acknowledge his or her

signature. Both partners' signatures shall be affixed to one Declaration of Domestic Partnership form, which form shall then be transmitted to the Secretary of State according to the instructions provided on the form. Filing an intentionally and materially false Declaration of Domestic Partnership shall be punishable as a misdemeanor.

SEC. 6. Section 298.5 of the Family Code is amended to read:

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) The Secretary of State shall register the Declaration of Domestic Partnership in a registry for those partnerships, and shall return a copy of the registered form and a Certificate of Registered Domestic Partnership to the domestic partners at the mailing address provided by the domestic partners.

(c) No person who has filed a Declaration of Domestic Partnership may file a new Declaration of Domestic Partnership or enter a civil marriage with someone other than their registered domestic partner unless the most recent domestic partnership has been terminated or a final judgment of dissolution or nullity of the most recent domestic partnership has been entered. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

SEC. 7. Section 299 of the Family Code is repealed.

SEC. 8. Section 299 is added to the Family Code, to read:

299. (a) A domestic partnership may be terminated without filing a proceeding for dissolution of domestic partnership by the filing of a Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that all of the following conditions exist at the time of the filing:

(1) The Notice of Termination of Domestic Partnership is signed by both domestic partners.

(2) There are no children of the relationship of the parties born before or after registration of the domestic partnership or adopted by the parties after registration of the domestic partnership, and neither of the domestic partners, to their knowledge, is pregnant.

(3) The domestic partnership is not more than five years in duration.

(4) Neither party has any interest in real property wherever situated, with the exception of the lease of a residence occupied by either party which satisfies the following requirements:

(A) The lease does not include an option to purchase.

(B) The lease terminates within one year from the date of filing of the Notice of Termination of Domestic Partnership.

(5) There are no unpaid obligations in excess of the amount described in paragraph (6) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, incurred by either or both of the parties

after registration of the domestic partnership, excluding the amount of any unpaid obligation with respect to an automobile.

(6) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than the amount described in paragraph (7) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of that amount.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community property, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any rights to support by the other domestic partner.

(9) The parties have read and understand a brochure prepared by the Secretary of State describing the requirements, nature, and effect of terminating a domestic partnership.

(10) Both parties desire that the domestic partnership be terminated.

(b) The domestic partnership shall be terminated effective six months after the date of filing of the Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that neither party has, before that date, filed with the Secretary of State a notice of revocation of the termination of domestic partnership, in the form and content as shall be prescribed by the Secretary of State, and sent to the other party a copy of the notice of revocation by first-class mail, postage prepaid, at the other party's last known address. The effect of termination of a domestic partnership pursuant to this section shall be the same as, and shall be treated for all purposes as, the entry of a judgment of dissolution of a domestic partnership.

(c) The termination of a domestic partnership pursuant to subdivision (b) does not prejudice nor bar the rights of either of the parties to institute an action in the superior court to set aside the termination for fraud, duress, mistake, or any other ground recognized at law or in equity. A court may set aside the termination of domestic partnership and declare the termination of the domestic partnership null and void upon proof that the parties did not meet the requirements of subdivision (a) at the time of the filing of the Notice of Termination of Domestic Partnership with the Secretary of State.

(d) The superior courts shall have jurisdiction over all proceedings relating to the dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of partners in a domestic partnership. The dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership

shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage, respectively, except as provided in subdivision (a), and except that, in accordance with the consent acknowledged by domestic partners in the Declaration of Domestic Partnership form, proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.

SEC. 9. Section 299.2 is added to the Family Code, to read:

299.2. A legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership.

SEC. 10. Section 299.3 is added to the Family Code, to read:

299.3. (a) On or before June 30, 2004, and again on or before December 1, 2004, and again on or before January 31, 2005, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered more than one month prior to each of those dates:

‘‘Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

Effective January 1, 2005, California’s law related to the rights and responsibilities of registered domestic partners will change (or, if you are receiving this letter after that date, the law has changed, as of January 1, 2005). With this new legislation, for purposes of California law, domestic partners will have a great many new rights and responsibilities, including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated is also changing. After January 1, 2005, under certain circumstances, it will be necessary to participate in a dissolution proceeding in court to end a domestic partnership.

Domestic partners who do not wish to be subject to these new rights and responsibilities MUST terminate their domestic partnership before January 1, 2005. Under the law in effect until January 1, 2005, your domestic partnership is automatically terminated if you or your partner

marry or die while you are registered as domestic partners. It is also terminated if you send to your partner or your partner sends to you, by certified mail, a notice terminating the domestic partnership, or if you and your partner no longer share a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership.

If you do not terminate your domestic partnership before January 1, 2005, as provided above, you will be subject to these new rights and responsibilities and, under certain circumstances, you will only be able to terminate your domestic partnership, other than as a result of domestic partner's death, by the filing of a court action.

If you have any questions about any of these changes, please consult an attorney. If you cannot find an attorney in your locale, please contact your county bar association for a referral.

Sincerely,

The Secretary of State''

(b) From January 1, 2004, to December 31, 2004, inclusive, the Secretary of State shall provide the following notice with all requests for the Declaration of Domestic Partnership form. The Secretary of State also shall attach the Notice to the Declaration of Domestic Partnership form that is provided to the general public on the Secretary of State's Web site:

''NOTICE TO POTENTIAL DOMESTIC PARTNER REGISTRANTS

As of January 1, 2005, California's law of domestic partnership will change.

Beginning at that time, for purposes of California law, domestic partners will have a great many new rights and responsibilities, including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated will also change. Unlike current law, which allows partners to end their partnership simply by filing a ''Termination of Domestic Partnership'' form with the Secretary of State, after January 1, 2005, it will be necessary under certain circumstances to participate in a dissolution proceeding in court to end a domestic partnership.

If you have questions about these changes, please consult an attorney. If you cannot find an attorney in your area, please contact your county

bar association for a referral.''

SEC. 11. Section 299.5 of the Family Code is repealed.

SEC. 12. Section 14771 of the Government Code is amended to read:

14771. (a) The director, through the forms management center, shall do all of the following:

(1) Establish a State Forms Management Program for all state agencies, and provide assistance in establishing internal forms management capabilities.

(2) Study, develop, coordinate and initiate forms of interagency and common administrative usage, and establish basic state design and specification criteria to effect the standardization of public-use forms.

(3) Provide assistance to state agencies for economical forms design and forms art work composition and establish and supervise control procedures to prevent the undue creation and reproduction of public-use forms.

(4) Provide assistance, training, and instruction in forms management techniques to state agencies, forms management representatives, and departmental forms coordinators, and provide direct administrative and forms management assistance to new state organizations as they are created.

(5) Maintain a central cross index of public-use forms to facilitate the standardization of these forms, to eliminate redundant forms, and to provide a central source of information on the usage and availability of forms.

(6) Utilize appropriate procurement techniques to take advantage of competitive bidding, consolidated orders, and contract procurement of forms, and work directly with the Office of State Publishing toward more efficient, economical and timely procurement, receipt, storage, and distribution of state forms.

(7) Coordinate the forms management program with the existing state archives and records management program to ensure timely disposition of outdated forms and related records.

(8) Conduct periodic evaluations of the effectiveness of the overall forms management program and the forms management practices of the individual state agencies, and maintain records which indicate net dollar savings which have been realized through centralized forms management.

(9) Develop and promulgate rules and standards to implement the overall purposes of this section.

(10) Create and maintain by July 1, 1986, a complete and comprehensive inventory of public-use forms in current use by the state.

(11) Establish and maintain, by July 1, 1986, an index of all public-use forms in current use by the state.

(12) Assign, by January 1, 1987, a control number to all public-use forms in current use by the state.

(13) Establish a goal to reduce the existing burden of state collections of public information by 30 percent by July 1, 1987, and to reduce that burden by an additional 15 percent by July 1, 1988.

(14) Provide notice to state agencies, forms management representatives, and departmental forms coordinators, that in the usual course of reviewing and revising all public-use forms that refer to or use the terms spouse, husband, wife, father, mother, marriage, or marital status, that appropriate references to domestic partner, parent, or domestic partnership are to be included.

(15) Delegate implementing authority to state agencies where the delegation will result in the most timely and economical method of accomplishing the responsibilities set forth in this section.

The director, through the forms management center, may require any agency to revise any public-use form which the director determines is inefficient.

(b) Due to the need for tax forms to be available to the public on a timely basis, all tax forms, including returns, schedules, notices, and instructions prepared by the Franchise Tax Board for public use in connection with its administration of the Personal Income Tax Law, Senior Citizens Property Tax Assistance and Postponement Law, Bank and Corporation Tax Law, and the Political Reform Act of 1974 and the State Board of Equalization's administration of county assessment standards, state-assessed property, timber tax, sales and use tax, hazardous substances tax, alcoholic beverage tax, cigarette tax, motor vehicle fuel license tax, use fuel tax, energy resources surcharge, emergency telephone users surcharge, insurance tax, and universal telephone service tax shall be exempt from subdivision (a), and, instead, each board shall do all of the following:

(1) Establish a goal to standardize, consolidate, simplify, efficiently manage, and, where possible, reduce the number of tax forms.

(2) Create and maintain, by July 1, 1986, a complete and comprehensive inventory of tax forms in current use by the board.

(3) Establish and maintain, by July 1, 1986, an index of all tax forms in current use by the board.

(4) Report to the Legislature, by January 1, 1987, on its progress to improve the effectiveness and efficiency of all tax forms.

(c) The director, through the forms management center, shall develop and maintain, by December 31, 1995, an ongoing master inventory of all nontax reporting forms required of businesses by state agencies, including a schedule for notifying each state agency of the impending

expiration of certain report review requirements pursuant to subdivision (b) of Section 14775.

SEC. 13. Section 3 of Chapter 447 of the Statutes of 2002 is amended to read:

Sec. 3. On or before March 1, 2003, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered prior to January 1, 2003:

''Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

As of July 1, 2003, California's law of intestate succession will change. The intestate succession law specifies what happens to a person's property when that person dies without a will, trust, or other estate plan.

Under existing law, if a domestic partner dies without a will, trust, or other estate plan, a surviving domestic partner cannot inherit any of the deceased partner's separate property. Instead, surviving relatives, including, for example, children, brothers, sisters, nieces, nephews, or parents may inherit the deceased partner's separate property.

Under the law to take effect July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, the surviving domestic partner will inherit the deceased partner's separate property in the same manner as a surviving spouse. This change will mean that the surviving domestic partner would inherit a third, a half, or all of the deceased partner's separate property, depending on whether the deceased domestic partner has surviving children or other relatives. This change does not affect any community or quasi-community property that the deceased partner may have had.

This change in the intestate succession law will not affect you if you have a will, trust, or other estate plan.

If you do not have a will, trust, or other estate plan and you do not wish to have your domestic partner inherit your separate property in the manner provided by the revised law, you may prepare a will, trust, or other estate plan, or terminate your domestic partnership.

Under existing law, your domestic partnership is automatically terminated if you or your partner married or died while you were registered as domestic partners. It is also terminated by you sending your partner or your partner sending to you by certified mail a notice terminating the domestic partnership, or by you and your partner no longer sharing a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership with the Secretary of State in order to establish the actual date of termination of the domestic partnership. You can obtain a Notice of Termination of Domestic Partnership from the Secretary of State's office.

If your domestic partnership has terminated because you sent your partner or your partner sent to you a notice of termination of your domestic partnership, you must immediately file a Notice of Termination of Domestic Partnership. If you do not file that notice, your former domestic partner may inherit under the new law. However, if your domestic partnership has terminated because you or your partner married or you and your partner no longer share a common residence, neither you nor your former partner may inherit from the other under this new law.

If you have any questions about this change, please consult an estate planning attorney. If you cannot find an estate planning attorney in your locale, please contact your county bar association for a referral.

Sincerely,

The Secretary of State''

SEC. 14. The provisions of Sections 3, 4, 5, 6, 7, 8, 9, and 11 of this act shall become operative on January 1, 2005.

SEC. 15. This act shall be construed liberally in order to secure to eligible couples who register as domestic partners the full range of legal rights, protections and benefits, as well as all of the responsibilities, obligations, and duties to each other, to their children, to third parties and to the state, as the laws of California extend to and impose upon spouses.

SEC. 16. The provisions of this act are severable. If any provision of this act is held to be invalid, or if any application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications that may be given effect without the invalid provision or application.

SEC. 17. 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 422

An act to amend Sections 1102.18 and 1940.7.5 of the Civil Code, and to add Section 115929 to the Health and Safety Code, relating to public safety.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 1102.18 of the Civil Code is amended to read:

1102.18. (a) For purposes of this section, the following definitions shall apply:

(1) ''Illegal controlled substance'' means a drug, substance, or immediate precursor listed in any schedule contained in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, or an emission or waste material resulting from the unlawful manufacture or attempt to manufacture an illegal controlled substance. An ''illegal controlled substance'' does not include, for purposes of this section, marijuana.

(2) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of an illegal controlled substance in a structure or into the environment.

(b) (1) Any owner of residential real property who knows, as provided in paragraph (2), that any release of an illegal controlled substance has come to be located on or beneath that real property shall, prior to the sale of the real property by that owner, give written notice of that condition to the buyer pursuant to Section 1102.6 by checking ''yes'' in question IC1 of the Real Estate Transfer Disclosure Statement contained in that section and attaching a copy of any notice received from law enforcement or any other entity, such as the Department of Toxic Substances Control, the county health department, the local environmental health officer, or a designee, advising the owner of the release on the property.

(2) For purposes of this subdivision, a seller's knowledge of the condition is established by the receipt of a notice specified in paragraph (1) or by actual knowledge of the condition from a source independent of the notice.

(3) If the seller delivers the disclosure information required by paragraph (1), delivery shall be deemed legally adequate for purposes of informing the prospective buyer of that condition, and the seller is not required to provide any additional disclosure of that information.

(4) Failure of the owner to provide written notice to the buyer when required by this subdivision shall subject the owner to actual damages and any other remedies provided by law. In addition, if the owner has actual knowledge of the presence of any release of an illegal controlled substance and knowingly and willfully fails to provide written notice to the buyer, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation, in addition to any other damages provided by law.

(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. Section 1940.7.5 of the Civil Code is amended to read:

1940.7.5. (a) For purposes of this section, the following definitions shall apply:

(1) ''Illegal controlled substance'' means a drug, substance, or immediate precursor listed in any schedule contained in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, or an emission or waste material resulting from the unlawful manufacture or attempt to manufacture an illegal controlled substance. An ''illegal controlled substance'' does not include, for purposes of this section, marijuana.

(2) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of an illegal controlled substance in a structure or into the environment.

(b) (1) The owner of a residential dwelling unit who knows, as provided in paragraph (2), that any release of an illegal controlled substance has come to be located on or beneath that dwelling unit shall give written notice to the prospective tenant prior to the execution of a rental agreement by providing to a prospective tenant a copy of any notice received from law enforcement or any other entity, such as the Department of Toxic Substances Control, the county health department, the local environmental health officer, or a designee, advising the owner of that release on the property.

(2) For purposes of this subdivision, the owner's knowledge of the condition is established by the receipt of a notice specified in paragraph (1) or by actual knowledge of the condition from a source independent of the notice.

(3) If the owner delivers the disclosure information required by paragraph (1), the delivery shall be deemed legally adequate for

purposes of informing the prospective tenant of that condition, and the owner is not required to provide any additional disclosure of that information.

(4) Failure of the owner to provide written notice to a prospective tenant when required by this subdivision shall subject the owner to actual damages and any other remedies provided by law. In addition, if the owner has actual knowledge of the presence of any release of an illegal controlled substance and knowingly and willfully fails to provide written notice to the renter, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation, in addition to any other damages provided by law.

(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. 3. Section 115929 is added to the Health and Safety Code, to read:

115929. (a) The Legislature encourages a private entity, in consultation with the Epidemiology and Prevention for Injury Control Branch of the department, to produce an informative brochure or booklet, for consumer use, explaining the child drowning hazards of, possible safety measures for, and appropriate drowning hazard prevention measures for, home swimming pools and spas, and to donate the document to the department.

(b) The Legislature encourages the private entity to use existing documents from the United States Consumer Product Safety Commission on pool safety.

(c) If a private entity produces the document described in subdivisions (a) and (b) and donates it to the department, the department shall review and approve the brochure or booklet.

(d) Upon approval of the document by the department, the document shall become the property of the state and a part of the public domain. The department shall place the document on its Web site in a format that is readily available for downloading and for publication. The department shall review the document in a timely and prudent fashion and shall complete the review within 18 months of receipt of the document from a private entity.

CHAPTER 423

An act to amend Sections 35294.7 and 44276.1 of, and to add Section 35294.95 to, the Education Code, relating to school safety.

[Approved by Governor September 20, 2003. Filed with
Secretary of State September 22, 2003.]

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

SECTION 1. Section 35294.7 of the Education Code is amended to read:

35294.7. If the Superintendent of Public Instruction determines that there has been a willful failure to make any report required by this article, the superintendent shall do both of the following:

(a) Notify the school district or the county office of education in which the willful failure has occurred.

(b) Make an assessment of not more than two thousand dollars ($2,000) against that school district or county office of education. This may be accomplished by deducting an amount equal to the amount of the assessment from the school district's or county office of education's future apportionment.

SEC. 1.5. Section 35294.7 of the Education Code is amended and renumbered to read:

32287. If the Superintendent of Public Instruction determines that there has been a willful failure to make any report required by this article, the superintendent shall do both of the following:

(a) Notify the school district or the county office of education in which the willful failure has occurred.

(b) Make an assessment of not more than two thousand dollars ($2,000) against that school district or county office of education. This may be accomplished by deducting an amount equal to the amount of the assessment from the school district's or county office of education's future apportionment.

SEC. 2. Section 35294.95 is added to the Education Code, to read:

35294.95. A complaint of noncompliance with this article may be filed with the department under the Uniform Complaint Procedures as set forth in Chapter 5.1 (commencing with Sections 4600) of Title 5 of the California Code of Regulations.

SEC. 3. Section 44276.1 of the Education Code is amended to read:

44276.1. (a) The Legislature finds and declares all of the following:

(1) The educational mission of schools may be thwarted when school campuses are not safe, secure, and peaceful.

(2) Effective school management can improve school safety and decrease violence and criminal behavior.

(3) In many school districts and neighborhoods, violence and criminal behavior are increasingly frequent.

(4) Teachers and other educators who are well prepared in principles of school safety may be able to mitigate, to some degree, the detrimental behavior of pupils and others on school campuses.

(b) Therefore, it is the intent of the Legislature that a comprehensive school safety plan be established pursuant to Section 35294.1 in order to achieve safe, secure, and peaceful school campuses. It is the further intent of the Legislature that the Commission on Teacher Credentialing adopt standards that address the principles of school safety in the preparation of future classroom teachers, school administrators, school counselors, and other pupil personnel service providers as a condition for licensing these prospective practitioners.

(c) Standards adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 44259, and pursuant to Sections 44266, 44270, 44277, and 44372, shall include the effective preparation of prospective classroom teachers, school administrators, school counselors, and other pupil personnel service providers in principles of school safety. In developing these standards, the commission shall consider, but is not limited to considering, the following principles of school safety:

(1) School management skills that emphasize crisis intervention and conflict resolution.

(2) Developing and maintaining a positive and safe school climate, including methods to prevent the possession of weapons on school campuses.

(3) Developing school safety plans.

(4) Developing ways to identify and defuse situations that may lead to conflict or violence.

(d) In developing standards relating to school safety, the commission shall consider the findings and recommendations of an advisory panel of experts on school violence.

(e) The commission shall allow an institution of postsecondary education to meet the standards developed by the commission relating to school safety by incorporating the principles of school safety in the program required by paragraph (3) of subdivision (b) of Section 44259.

(f) Implementation of subdivision (b) of this section as it applies to paragraph (3) of subdivision (b) of Section 44259 shall occur in conjunction with the review of requirements for earning and renewing multiple and single subject teaching credentials, as required by Section 44259.3.

(g) Instruction in principles of school safety shall be required of all candidates for credentials specified in Sections 44259, 44266, and 44270.

(h) A credential that was issued prior to January 1, 1994, shall remain in force as long as it is valid under the laws and regulations that were in

effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential, unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no less restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(i) Notwithstanding this section, persons who were performing teaching, administrative, counseling, or other pupil personnel services as of January 1, 1994, pursuant to the language of this chapter that was in effect prior to that date, may continue to perform those services without complying with any requirements added by the amendments adding this section.

(j) The commission shall grant credentials based on the requirements for those credentials as of December 31, 1993, to candidates who, prior to the effective date of the commission's adoption of standards pursuant to this section, were in the process of meeting those credential requirements.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 35294.7 of the Education Code proposed by both this bill and SB 719. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 35294.7 of the Education Code, and (3) this bill is enacted after SB 719, in which case Section 1 of this bill shall not become operative.

CHAPTER 424

An act to amend Sections 6276.24 and 54956.87 of the Government Code, to amend Sections 14087.31, 14087.35, 14087.36, and 14087.38 of the Welfare and Institutions Code, and to repeal Section 7 of Chapter 642 of the Statutes of 1994, relating to public records and meetings.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 6276.24 of the Government Code is amended to read:

6276.24. Harmful matter, distribution, confidentiality of certain recipients, Section 313.1, Penal Code.

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25506, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25511 and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste management facilities on Indian lands, confidentiality of privileged or trade secret information, Section 25198.4, Health and Safety Code.

Hazardous waste recycling, duties of department, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, protection of trade secrets, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health Care Provider Central Files, confidentiality of, Section 800, Business and Professions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health commissions, special county, protection of trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient's rights of confidentiality, Sections 128735, 128755, and 128765, Health and Safety Code.

Health facility and clinic, consolidated data and reports, confidentiality of, Section 128730, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Sections 127775 and 127780, Health and Safety Code.

Health planning and development pilot projects, confidentiality of data collected, Section 128165, Health and Safety Code.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

Higher Education Employee-Employer Relations, findings of fact and recommended terms of settlement, Section 3593, Government Code.

Higher Education Employee-Employer Relations, access by Public Employment Relations Board to employer's or employee organization's records, Section 3563, Government Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, subdivision (t), Section 6254, Government Code.

Hospital final accreditation report, subdivision (s), Section 6254, Government Code.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

SEC. 2. Section 54956.87 of the Government Code is amended to read:

54956.87. (a) Notwithstanding any other provision of this chapter, the records of a health plan that is 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) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is 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) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, ''health plan trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

SEC. 3. Section 14087.31 of the Welfare and Institutions Code is amended to read:

14087.31. (a) It is necessary that a special commission be established in the Counties of Tulare and San Joaquin in order to meet the problems of delivery of publicly assisted medical care in the county

and to demonstrate ways of promoting quality care and cost efficiency. Because there is no general law under which such a commission could be formed, the adoption of a special act and the formation of a special commission is required.

(b) (1) The Board of Supervisors of the County of Tulare and the County of San Joaquin may, for each respective county, by ordinance, establish a commission to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the county commission.

(2) Health plans operated by the commission may also include, but are not limited to, individuals covered under Title XVIII of the Social Security Act (Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code), individuals and groups entitled to coverage under other publicly supported programs, individuals and groups employed by public agencies or private businesses, and uninsured or indigent persons.

(c) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. Members of the commission shall be appointed by the county board of supervisors to represent the interests of the public, county, beneficiaries, physicians, hospitals, other health care providers, or other health care organizations. The commission so established shall be considered an entity separate from the county, shall file a statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of a commission, statutory, contractual or otherwise, shall be obligations solely of the commission and shall not be the obligations of the county or of the state.

(d) Upon creation, the commission may borrow from the county, and the county may lend the commission, funds or issue revenue anticipation notes to obtain those funds necessary to commence operations. Prior to commencement of operations, the commission shall be 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).

(e) In the event a commission may no longer function for the purposes for which it is established, at the time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may, by ordinance, terminate the commission.

(f) Prior to the termination of the commission, the board of supervisors shall notify the department of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of the notification to determine the liabilities and assets of the commission. The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(g) Any assets of the commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to Section 14087.

(h) (1) It is the intent of the Legislature that if a commission is formed pursuant to this section, the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider with similar cost structure and patient population including, but not limited to, considerations of indigent care burden, capital requirements, graduate medical education, and disproportionate share status, in negotiating with the commission for contracts to provide health care services.

(2) Contracts between the department and the commission shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(3) Nothing in this subdivision shall be construed to interfere with or limit the commission from giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured persons.

(i) Upon termination of the commission by the board, the county shall manage any remaining assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

(j) The commission, its members, and employees, are protected by the immunities applicable to public entities and public employees governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the commission.

(k) Notwithstanding any other provision of law, a member of the commission shall not be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(1) The member was appointed to represent the interest of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(2) The contract authorizes the member or the organization the member represents to provide services to Medi-Cal beneficiaries under the commission's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the commission or another member of the commission to enter into the contract in which the member is interested.

(5) The member discloses the interest to the commission and abstains from voting on the contract.

(6) The commission notes the member's disclosure and abstention in its official records and authorized the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(*l*) All claims for money or damages against the commission shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the commission.

(m) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the commission.

(n) For the purposes of this section, ''commission'' means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(o) The transfer of responsibility for health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(p) Notwithstanding any other provision of law, the commission may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by commission staff with providers of health care services concerning all matters related to rates of payment.

(q) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code and Article 2 (commencing with Section 54340) of Chapter 6 of Division 2 of Title 5 of the Government Code, or any other provision of law, any ''peer review body,'' as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the commission authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities of health practitioners, pursuant to the powers granted the commission. The peer review body and its members shall receive to the fullest extent all immunities, privileges, and protections available to these peer review bodies, their individual members, and persons or entities assisting in the peer review process, including, but not limited to, those afforded by Section 1370 of the Health and Safety Code.

(r) Notwithstanding any other provision of law, both the county and the commission shall be eligible to receive funding under subdivision (p) of Section 14163, and the commission shall be considered for all purposes to satisfy the requirements of subdivision (p) of Section 14163.

(s) The commission shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(t) Notwithstanding any other provision of law, those records of the commission and of the county that reveal the rates of payment for health care services or the commission's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(u) Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), Article 3 (commencing with Section 11200) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Chapter 9 (commencing with Section 54960) of Part 1 of Division 2 of Title 5 of the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of the commission and the county that reveal the proceedings of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted

to the commission authorized by this section, shall not be required to be disclosed. The records and proceedings of the peer review body and its members shall receive to the fullest extent, all immunities, privileges, and protections available to these records and proceedings, including, but not limited to, those afforded by Section 1157 of the Evidence Code.

(v) (1) Provisions of the Evidence Code, the Government Code, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the commission. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the commission. If the commission is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. All laws pertaining to the confidentiality of peer review activities shall be construed together as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other provision of law, Section 1461 of the Health and Safety Code shall apply to hearings on the reports of hospital medical audit or quality assurance committees as they relate to network providers or applicants.

(w) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the commission is required to prepare, produce, or submit pursuant to this section.

(x) (1) The commission may use a computerized management information system in connection with the administration of its health delivery system, including the administration of the state-mandated two-plan Medi-Cal managed care model.

(2) Information maintained in the management information system that pertains to persons who are Medi-Cal applicants or recipients shall be confidential pursuant to Section 14100.2, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program, including, but not limited to,

those set forth in subdivision (c) of Section 14100.2. This safeguarded information includes, but is not limited to, the names and addresses of recipients, the medical services provided, the social and economic conditions or circumstances of the recipients, an evaluation by the commission of personal information, and medical data, including the diagnosis and past history of disease or disability.

(3) Information maintained in the management information system that pertains to peer review-related activities shall be confidential and subject to the full protections of the law with respect to the confidentiality of activities related to peer review generally.

(y) (1) The records of the commission, whether paper records, records maintained in the management information system, or records in any other form, that relate to rates of payment, including records relating to rates of payment determination, allocation or distribution methodologies, formulas or calculations, and records of the health authority that relate to contract negotiations with providers of health care for alternative rates, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) The transmission of the records of the commission, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information, once transmitted to the county board of supervisors, shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in camera review, and shall not be shared with the parties to the proceeding.

(3) The submission, to the Department of Managed Health Care, of information described in this section for the purpose of obtaining licensure under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, or to the State Department of Health Services, shall not constitute a waiver of exemption from disclosure.

(z) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the commission may meet in closed session for the purpose of discussion of, or taking action on matters involving, commission trade secrets.

(B) The requirement that the commission make a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this subdivision, ''commission trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the commission to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the commission of a substantial economic benefit or opportunity.

(2) Those records of the commission that reveal the commission's trade secrets are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the commission, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade secret. The commission may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to paragraph (1) that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the commission from meeting in closed session as otherwise provided by law.

SEC. 4. Section 14087.35 of the Welfare and Institutions Code is amended to read:

14087.35. (a) Because of the unique circumstances that exist in the County of Alameda, it is necessary that the Board of Supervisors of the County of Alameda be given authority to create a health authority separate and apart from the County of Alameda as a means of establishing the local initiative component of the state-mandated two-plan managed care model for the delivery of medical care and services to the Medi-Cal populations. It is further necessary to enable the board of supervisors to expand publicly assisted medical and health care delivery by the newly created health authority to other populations should the board of supervisors elect to do so. Thus, the adoption of a special act is required.

(b) The Board of Supervisors of the County of Alameda may, by ordinance, establish a health authority separate and apart from the County of Alameda, whose governing board shall reflect the diversity of local stakeholders such as provider groups, beneficiary groups, and officials of government, and that is appointed by the board of

supervisors. Notwithstanding any other provision of this chapter, the governing board may include, but need not be limited to, the following: a member of the board of supervisors, individuals that represent and further the interests of the perspectives of Medi-Cal beneficiaries, and individuals that represent and further the interests of the perspectives of Medi-Cal provider physicians and other health practitioners, hospitals, and nonprofit community health centers. Other perspectives may be represented at the discretion of the board of supervisors. The enabling ordinance shall more specifically set forth the membership of the health authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the health authority's activities.

(c) The governing board of the health authority and the appropriate state departments, to the extent permitted by federal law, may negotiate and enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program and for other targeted populations. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the state and health authority. Prior to the commencement of operations, the health authority shall be licensed as a health care service plan pursuant to the Knox-Keene Health Care Services Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons subject to the provisions of any ordinances or resolutions passed by the board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. In addition, the services and programs of the health authority may include, but are not limited to, individuals covered under Title XVIII of the Social Security Act, contained in Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals and groups employed by public agencies and private businesses.

(e) As a legal entity separate and apart from the County of Alameda, the health authority shall file the statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property as may be necessary for the performance of its functions, to sue or be sued, and to employ personnel and contract for services required to meet its obligations.

(f) (1) The health authority shall be deemed to be a legal entity separate and apart from the County of Alameda, and shall not be considered to be an agency, division, department, or instrumentality of the County of Alameda.

(2) The health authority shall not be governed by, nor be subject to, the Charter of the County of Alameda and shall not be subject to county policies or operational rules, including, but not limited to, those relating to personnel and procurement.

(g) The health authority shall be considered a public entity, and employees of the health authority shall be considered public employees, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. Members of the governing board of the health authority shall not be vicariously liable for injuries caused by the act or omission of the health authority or advisory body to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(h) Upon the enactment of the ordinance, all rights, powers, duties, privileges, and immunities vested in the County of Alameda with respect to the subject matter of this section shall be vested in the health authority. Any obligation of the health authority, statutory, contractual, or otherwise, shall be the obligation solely of the health authority and shall not be the obligation of the County of Alameda or the state.

(i) The health authority shall not be a ''person'' subject to suit under the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(j) The health authority created pursuant to this section may borrow from the county and the county may lend the health authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(k) The health authority or the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the target populations by the health authority.

(*l*) Provisions for the termination of the health authority's activities with respect to the delivery of services to Medi-Cal populations shall be contained in the appropriate contracts executed by and between the health authority and the appropriate state departments.

(m) If the board of supervisors expands publicly assisted medical and health care delivery by the health authority to other populations, and the board of supervisors subsequently determines that the health authority may no longer function for the purpose of the expanded delivery, at the time as the health authority's existing obligations with respect thereto have been satisfied, the board of supervisors may, by ordinance, terminate the expanded delivery activities of the health authority.

(n) All assets of the health authority that are related to Medi-Cal services shall be disposed of pursuant to the Medi-Cal related contract entered into between the state and the health authority.

(o) All liabilities or obligations of the health authority with respect to its activities pursuant to the state-mandated two-plan managed care model for the delivery of medical care and services to the Medi-Cal population shall be the liabilities or obligations of the health authority, and shall not become the liabilities or obligations of the county upon the termination of the health authority or at any other time. Any liabilities or obligations of the health authority with respect to the liquidation or disposition of the health authority's assets upon termination of the health authority shall not become the liabilities or obligations of the county, except that the county shall manage any remaining Medi-Cal related assets of the health authority until superseded by a plan approved by the department.

(p) The Legislature finds and declares that Section 14105 provides that the Director of Health Services prescribe the policies for the administration of Medi-Cal managed care contracts. The state-mandated two-plan managed care model distributed by the director sets forth that policy, expressly providing that local stakeholders, including government officials, providers, and community-based organizations, are afforded maximum flexibility and control in designing a delivery system that reflects the needs and priorities of the community that it serves. The mandated model requires that the governing board of the local initiative reflect an effort to include representation of the perspectives of provider and beneficiary groups. To effectuate this policy, all of the following shall apply:

(1) Notwithstanding any provision of law to the contrary, a member of the governing board of the health authority shall be deemed not to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(A) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(B) The contract authorizes the member or the organization the member represents to provide services to beneficiaries or administrative services under the health authority's programs.

(C) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(D) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(E) The member discloses the interest to the health authority and abstains from voting on the contract.

(F) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(2) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, no member of the governing board, no officer, and no member of the alliance staff shall be considered to be engaged in activities inconsistent and incompatible with his or her duties as a governing board member, officer, or staff person solely as a result of employment or affiliation with the county, private hospital, clinic, pharmacy, other provider group, employee organization, or citizen's group.

(q) (1) The health authority may use a computerized management information system in connection with the administration of its health delivery system, including the administration of the state-mandated two-plan Medi-Cal managed care model.

(2) Information maintained in the management information system that pertains to persons who are Medi-Cal applicants or recipients shall be confidential pursuant to Section 14100.2, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program, including, but not limited to, those set forth in subdivision (c) of Section 14100.2. This safeguarded information includes, but is not limited to, names and addresses, medical services provided, social and economic conditions or circumstances, health authority evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.

(3) Information maintained in the management information system that pertains to peer review-related activities shall be confidential and subject to the full protections of the law with respect to the confidentiality of activities related to peer review generally.

(r) The records of the health authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to rates of payment, including records relating to rates of payment determination, allocation or distribution methodologies, formulas or calculations, and records of the health authority that relate to contract negotiations with providers of health care for alternative rates, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver

of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(s) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the governing board of the health authority may meet in closed session for the purpose of discussion of, or taking action on matters involving, health authority trade secrets.

(B) The requirement that the authority make a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this subdivision, ''health authority trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the health authority to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the health authority of a substantial economic benefit or opportunity.

(2) Those records of the health authority that reveal the health authority's trade secrets are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the health authority, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade secret. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to paragraph (1) that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(t) Open sessions of the health authority shall constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to open sessions of the health authority.

(u) The health authority shall be considered a public agency for purposes of eligibility with respect to grants and other funding and loan

guarantee programs. Contributions to the health authority shall be tax deductible to the extent permitted by state and federal law.

(v) Contracts by and between the health authority and the state, and contracts by and between the health authority and providers of health care, goods, or services may be let on a nonbid basis, and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(w) (1) Provisions of the Evidence Code, the Government Code, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the health authority. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the health authority. If the health authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other provision of law, Section 1461 of the Health and Safety Code shall apply to hearings on the reports of hospital medical audit or quality assurance committees as they relate to network providers or applicants.

(x) The health authority shall carry general liability insurance to the extent sufficient to cover its activities.

(y) The establishment of a health authority under Article 2.8 (commencing with Section 14087.5) shall be valid as if established pursuant to this section and this section shall apply to that health authority.

SEC. 5. Section 14087.36 of the Welfare and Institutions Code is amended to read:

14087.36. (a) The following definitions shall apply for purposes of this section:

(1) ''County'' means the City and County of San Francisco.

(2) ''Board'' means the Board of Supervisors of the City and County of San Francisco.

(3) ''Department'' means the State Department of Health Services.

(4) ''Governing body'' means the governing body of the health authority.

(5) ''Health authority'' means the separate public agency established by the board of supervisors to operate a health care system in the county and to engage in the other activities authorized by this section.

(b) The Legislature finds and declares that it is necessary that a health authority be established in the county to arrange for the provision of health care services in order to meet the problems of the delivery of publicly assisted medical care in the county, to enter into a contract with the department under Article 2.97 (commencing with Section 14093), or to contract with a health care service plan on terms and conditions acceptable to the department, and to demonstrate ways of promoting quality care and cost efficiency.

(c) The county may, by resolution or ordinance, establish a health authority to act as and be the local initiative component of the Medi-Cal state plan pursuant to regulations adopted by the department. If the board elects to establish a health authority, all rights, powers, duties, privileges, and immunities vested in a county under Article 2.8 (commencing with Section 14087.5) and Article 2.97 (commencing with Section 14093) shall be vested in the health authority. The health authority shall have all power necessary and appropriate to operate programs involving health care services, including, but not limited to, the power to acquire, possess, and dispose of real or personal property, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to take all actions and engage in all public and private business activities, subject to any applicable licensure, as permitted a health care service plan pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) (1) (A) The health authority shall be considered a public entity separate and distinct from the county and shall file the statement required by Section 53051 of the Government Code. The health authority shall have primary responsibility to provide the defense and indemnification required under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for employees of the health authority who are employees of the county. The health authority shall provide insurance under terms and conditions required by the county in order to satisfy its obligations under this section.

(B) For purposes of this paragraph, ''employee'' shall have the same meaning as set forth in Section 810.2 of the Government Code.

(2) The health authority shall not be considered to be an agency, division, department, or instrumentality of the county and shall not be subject to the personnel, procurement, or other operational rules of the county.

(3) Notwithstanding any other provision of law, any obligations of the health authority, statutory, contractual, or otherwise, shall be the

obligations solely of the health authority and shall not be the obligations of the county, unless expressly provided for in a contract between the authority and the county, nor of the state.

(4) Except as agreed to by contract with the county, no liability of the health authority shall become an obligation of the county upon either termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(e) (1) To the full extent permitted by federal law, the department and the health authority may enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the department and the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, individuals employed by public agencies and private businesses, and uninsured or indigent individuals.

(2) Notwithstanding paragraph (1), or subdivision (f), the health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975 under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, including tangible net equity requirements applicable to a licensed health care service plan. This limitation shall not preclude the health authority from enrolling persons pursuant to the county's obligations under Section 17000, or from enrolling county employees.

(f) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons, subject to the provisions of any ordinances or resolutions passed by the county board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals employed by public agencies and private businesses.

(g) Upon creation, the health authority may borrow from the county and the county may lend the authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations or perform the activities of the health authority. Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163.

(h) The county may terminate the health authority, but only by an ordinance approved by a two-thirds affirmative vote of the full board.

(i) Prior to the termination of the health authority, the county shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of notification to determine the liabilities and assets of the health authority. The department shall report its findings to the county and to the Department of Managed Health Care within 10 days of completion of the audit. The county shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department and the Department of Managed Health Care within 30 days upon receipt of these findings.

(j) Any assets of the health authority derived from the contract entered into between the state and the authority pursuant to Article 2.97 (commencing with Section 14093), after payment of the liabilities of the health authority, shall be disposed of pursuant to the contract.

(k) (1) The governing body shall consist of 18 voting members, 14 of whom shall be appointed by resolution or ordinance of the board as follows:

(A) One member shall be a member of the board or any other person designated by the board.

(B) One member shall be a person who is employed in the senior management of a hospital not operated by the county or the University of California and who is nominated by the San Francisco Section of the Westbay Hospital Conference or any successor organization, or if there is no successor organization, a person who shall be nominated by the Hospital Council of Northern and Central California.

(C) Two members, one of whom shall be a person employed in the senior management of San Francisco General Hospital and one of whom shall be a person employed in the senior management of St. Luke's Hospital (San Francisco). If San Francisco General Hospital or St. Luke's Hospital, at the end of the term of the person appointed from its senior management, is not designated as a disproportionate share hospital, and if the governing body, after providing an opportunity for comment by the Westbay Hospital Conference, or any successor organization, determines that the hospital no longer serves an equivalent

patient population, the governing body may, by a two-thirds vote of the full governing body, select an alternative hospital to nominate a person employed in its senior management to serve on the governing body. Alternatively, the governing body may approve a reduction in the number of positions on the governing body as set forth in subdivision (p).

(D) Two members shall be employees in the senior management of either private nonprofit community clinics or a community clinic consortium, nominated by the San Francisco Community Clinic Consortium, or any successor organization.

(E) Two members shall be physicians, nominated by the San Francisco Medical Society, or any successor organization.

(F) One member shall be nominated by the San Francisco Labor Council, or any successor organization.

(G) Two members shall be persons nominated by the beneficiary committee of the health authority, at least one of whom shall, at the time of appointment and during the person's term, be a Medi-Cal beneficiary.

(H) Two members shall be persons knowledgeable in matters relating to either traditional safety net providers, health care organizations, the Medi-Cal program, or the activities of the health authority, nominated by the program committee of the health authority.

(I) One member shall be a person nominated by the San Francisco Pharmacy Leadership Group, or any successor organization.

(2) One member, selected to fulfill the appointments specified in subparagraph (A), (G), or (H) shall, in addition to representing his or her specified organization or employer, represent the discipline of nursing, and shall possess or be qualified to possess a registered nursing license.

(3) The initial members appointed by the board under the subdivision shall be, to the extent those individuals meet the qualifications set forth in this subdivision and are willing to serve, those persons who are members of the steering committee created by the county to develop the local initiative component of the Medi-Cal state plan in San Francisco. Following the initial staggering of terms, each of those members shall be appointed to a term of three years, except the member appointed pursuant to subparagraph (A) of paragraph (1), who shall serve at the pleasure of the board. At the first meeting of the governing body, the members appointed pursuant to this subdivision shall draw lots to determine seven members whose initial terms shall be for two years. Each member shall remain in office at the conclusion of that member's term until a successor member has been nominated and appointed.

(*l*) In addition to the requirements of subdivision (k), one member of the governing body shall be appointed by the Mayor of the City of San Francisco to serve at the pleasure of the mayor, one member shall be the county's director of public health or designee, who shall serve at the

pleasure of that director, one member shall be the Chancellor of the University of California at San Francisco or his or her designee, who shall serve at the pleasure of the chancellor, and one member shall be the county director of mental health or his or her designee, who shall serve at the pleasure of that director.

(m) There shall be one nonvoting member of the governing body who shall be appointed by, and serve at the pleasure of, the health commission of the county.

(n) Each person appointed to the governing body shall, throughout the member's term, either be a resident of the county or be employed within the geographic boundaries of the county.

(o) (1) The composition of the governing body and nomination process for appointment of its members shall be subject to alteration upon a two-thirds vote of the full membership of the governing body. This action shall be concurred in by a resolution or ordinance of the county.

(2) Notwithstanding paragraph (1), no alteration described in that paragraph shall cause the removal of a member prior to the expiration of that member's term.

(p) A majority of the members of the governing body shall constitute a quorum for the transaction of business, and all official acts of the governing body shall require the affirmative vote of a majority of the members present and voting. However, no official shall be approved with less than the affirmative vote of six members of the governing body, unless the number of members prohibited from voting because of conflicts of interest precludes adequate participation in the vote. The governing body may, by a two-thirds vote adopt, amend, or repeal rules and procedures for the governing body. Those rules and procedures may require that certain decisions be made by a vote that is greater than a majority vote.

(q) For purposes of Section 87103 of the Government Code, members appointed pursuant to subparagraphs (B) to (E), inclusive, of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the hospitals, private nonprofit community clinics, and physicians that contract with the health authority, or the health care service plan with which the health authority contracts, to provide health care services to the enrollees of the health authority or the health care service plan. Members appointed pursuant to subparagraphs (F) and (G) of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the health care workers and enrollees served by the health authority or its contracted health care service plan, and traditional safety net and ancillary providers and other organizations concerned with the activities of the health authority.

(r) A member of the governing body may be removed from office by the board by resolution or ordinance, only upon the recommendation of the health authority, and for any of the following reasons:

(1) Failure to retain the qualifications for appointment specified in subdivisions (k) and (n).

(2) Death or a disability that substantially interferes with the member's ability to carry out the duties of office.

(3) Conviction of any felony or a crime involving corruption.

(4) Failure of the member to discharge legal obligations as a member of a public agency.

(5) Substantial failure to perform the duties of office, including, but not limited to, unreasonable absence from meetings. The failure to attend three meetings in a row of the governing body, or a majority of the meetings in the most recent calendar year, may be deemed to be unreasonable absence.

(s) Any vacancy on the governing body, however created, shall be filled for the unexpired term by the board by resolution or ordinance. Each vacancy shall be filled by an individual having the qualifications of his or her predecessor, nominated as set forth in subdivision (k).

(t) The chair of the authority shall be selected by, and serve at the pleasure of, the governing body.

(u) The health authority shall establish all of the following:

(1) A beneficiary committee to advise the health authority on issues of concern to the recipients of services.

(2) A program committee to advise the health authority on matters relating to traditional safety net providers, ancillary providers, and other organizations concerned with the activities of the health authority.

(3) Any other committees determined to be advisable by the health authority.

(v) (1) Notwithstanding any provision of state or local law, including, but not limited to, the county charter, a member of the health authority shall not be deemed to be interested in a contract entered into by the authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, or within the meaning of conflict-of-interest restrictions in the county charter, if all of the following apply:

(A) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(B) The member discloses the interest to the health authority and abstains from voting on the contract.

(C) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith

by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(D) The member has an interest in or was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(E) The contract authorizes the member or the organization the member has an interest in or represents to provide services to beneficiaries under the authority's program or administrative services to the authority.

(2) In addition, no person serving as a member of the governing body shall, by virtue of that membership, be deemed to be engaged in activities that are inconsistent, incompatible, or in conflict with their duties as an officer or employee of the county or the University of California, or as an officer or an employee of any private hospital, clinic, or other health care organization. The membership shall not be deemed to be in violation of Section 1126 of the Government Code.

(w) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, or the health authority's peer review proceedings shall not be required to be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(x) Notwithstanding any other provision of law, the health authority may meet in closed session to consider and take action on peer review proceedings and on matters pertaining to contracts and contract negotiations by the health authority's staff with providers of health care services concerning all matters relating to rates of payment. However, a decision as to whether to enter into, amend the services provisions of, or terminate, other than for reasons based upon peer review, a contract with a provider of health care services, shall be made in open session.

(y) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the governing board of the health authority may meet in closed session for the purpose of discussion of, or taking action on matters involving, health authority trade secrets.

(B) The requirement that the authority make a public report of actions taken in closed session and the vote or abstention of every member

present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this subdivision, ''health authority trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the health authority to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the health authority of a substantial economic benefit or opportunity.

(2) Those records of the health authority that reveal the health authority's trade secrets are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the health authority, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade secret. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to this subdivision that are provided to persons who have made the timely or standing request.

(z) The health authority shall be deemed to be a public agency for purposes of all grant programs and other funding and loan guarantee programs.

(aa) Contracts under this article between the State Department of Health Services and the health authority shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ab) (1) The county controller or his or her designee, at intervals the county controller deems appropriate, shall conduct a review of the fiscal condition of the health authority, shall report the findings to the health authority and the board, and shall provide a copy of the findings to any public agency upon request.

(2) Upon the written request of the county controller, the health authority shall provide full access to the county controller all health authority records and documents as necessary to allow the county controller or designee to perform the activities authorized by this subdivision.

(ac) A Medi-Cal recipient receiving services through the health authority shall be deemed to be a subscriber or enrollee for purposes of Section 1379 of the Health and Safety Code.

SEC. 6. Section 14087.38 of the Welfare and Institutions Code is amended to read:

14087.38. (a) (1) In counties selected by the director with the concurrence of the county, a special county health authority may be established in order to meet the problems of delivery of publicly assisted medical care in each county, and to demonstrate ways of promoting quality care and cost efficiency. Nothing in this section shall be construed to preclude the department from expanding Medi-Cal managed care in ways other than those provided for in this section, including, but not limited to, the establishment of a public benefit corporation as set forth in Section 5110 of the Corporations Code.

(2) For purposes of this section, ''health authority'' means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(b) The board of supervisors of a county described in subdivision (a) may, by ordinance, establish a health authority to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, those entitled to coverage under other publicly supported programs, those employed by public agencies or private businesses, and uninsured or indigent individuals.

(c) The enabling ordinance shall specify the membership of the governing board of the health authority, the qualifications for individual members, the manner of appointment, selection, or removal of board members, and how long they shall serve, and any other matters the board of supervisors deems necessary or convenient for the conduct of the health authority's activities. Members of the governing board shall be appointed by the board of supervisors to represent the interests of the county, the general public, beneficiaries, physicians, hospitals, clinics, and other nonphysician health care providers. The health authority so established shall be considered an entity separate from the county, shall file a statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property, as necessary for the performance of its functions, to employ

personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of a health authority, statutory, contractual, or otherwise, shall be obligations solely of the health authority and shall not be the obligations of the county or of the state.

(d) Upon creation, the health authority may borrow from the county, and the county may lend the health authority funds or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(e) Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163, and the health authority shall be considered to have satisfied the requirements of that subdivision.

(f) The health authority shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(g) It is the intent of the Legislature that if a health authority is formed pursuant to this section, the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the health authority for contracts to provide health care services. Nothing in this subdivision shall be construed to interfere with or limit the health authority in giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured individuals.

(h) Notwithstanding any other provision of law, a member of the governing board of the health authority shall not be deemed to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(1) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations, or beneficiaries.

(2) The contract authorizes the member or the organization the member represents to provide services to beneficiaries under the health authority's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(5) The member discloses the interest to the health authority and abstains from voting on the contract.

(6) The governing board notes the member's disclosure and abstention in its official records and authorizes the contract in good faith

by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(i) All claims for money or damages against the health authority shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the health authority.

(j) The health authority, members of its governing board, and its employees, are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the health authority.

(k) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the health authority.

(*l*) The transfer of responsibility for health care services to the health authority shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(m) Notwithstanding any other provision of law, the governing board of the health authority may meet in closed session to consider and take action on matters pertaining to contracts, and to contract negotiations by health authority staff with providers of health care services concerning all matters related to rates of payment.

(n) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the governing board of the health authority may meet in closed session for the purpose of discussion of, or taking action on matters involving, health authority trade secrets.

(B) The requirement that the authority make a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this section, ''health authority trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the health authority to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the health authority of a substantial economic benefit or opportunity.

(2) Those records of the health authority that reveal the health authority's trade secrets are exempt from disclosure pursuant to the

California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the health authority, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade secret. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in closed session held pursuant to this subdivision that are provided to persons who have made the timely or standing request.

(o) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of law, any peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners, pursuant to the powers granted to the health authority. The peer review body and its members shall receive, to the fullest extent, all immunities, privileges, and protections available to those peer review bodies, their individual members, and persons or entities assisting in the peer review process, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(p) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the health authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, shall not be required to be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(q) Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9

(commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, shall not be required to be disclosed. The records and proceedings of the peer review body and its individual members shall receive, to the fullest extent, all immunities, privileges, and protections available to those records and proceedings, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(r) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the California Public Records Act, including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the health authority is required to prepare, produce, or submit pursuant to this section.

(s) (1) Any health authority formed pursuant to this section shall obtain licensure as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code).

(2) Notwithstanding subdivisions (b) and (t), a health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975, including tangible net equity requirements applicable to a licensed health care service plan.

(t) Commencing on the date that the health authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(1) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments, shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other information generally required by the department in its contracts with health care service plans.

(2) In addition to the reports required by the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Managed Health Care, and the members of the health authority, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(3) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Managed Health Care, and the members of the governing board of the health authority in writing of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(4) The Department of Managed Health Care shall not waive or vary, nor shall the department request the Department of Managed Health Care to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Managed Health Care.

(5) In the event that the health authority votes to file a petition of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the authority's Medi-Cal beneficiaries to either of the following:

(A) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the

increased enrollment without detriment to the provision of health care services to their existing enrollees.

(B) To the extent that other managed care contractors are unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the director shall immediately terminate the contract between the health authority and the state, and immediately convert the health authority Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and

administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(9) Nothing in this subdivision shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder.

(u) In the event a health authority may no longer function for the purposes for which it is established, at the time the health authority's then-existing obligations have been satisfied or the health authority's assets have been exhausted, the board of supervisors may, by ordinance, terminate the health authority.

(v) (1) Prior to the termination of the health authority, the board of supervisors shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of the notification to determine the liabilities and assets of the health authority.

(2) The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department within 30 days upon receipt of these findings.

(w) Any assets of the health authority shall be disposed of pursuant to provisions contained in the contract entered into between the state and the health authority pursuant to this section.

(x) Upon termination of a health authority by the board, the county shall manage any remaining assets of the health authority until superseded by a department-approved plan. Any liabilities of the health authority shall not become obligations of the county upon either the termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(y) This section shall apply to any county health authority or any county special commission operating under this article or Article 2.81 (commencing with Section 14087.96), except to the extent that this

section conflicts with Sections 14087.31, 14087.35, and 14087.36 or Article 2.81 (commencing with Section 14087.96).

SEC. 7. Section 7 of Chapter 642 of the Statutes of 1994 is repealed.

CHAPTER 425

An act to amend Sections 9084, 13300, and 14105 of, to add Section 14105.3 to, and to add Chapter 5 (commencing with Section 2300) to Division 2 of, the Elections Code, relating to elections.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Chapter 5 (commencing with Section 2300) is added to Division 2 of the Elections Code, to read:

CHAPTER 5. VOTER BILL OF RIGHTS

2300. (a) All voters, pursuant to the California Constitution and this code, shall be citizens of the United States. There shall be a Voter Bill of Rights for voters, available to the public, which shall read:

(1) (A) You have the right to cast a ballot if you are a valid registered voter.

(B) A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.

(2) You have the right to cast a provisional ballot if your name is not listed on the voting rolls.

(3) You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.

(4) You have the right to cast a secret ballot free from intimidation.

(5) (A) You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.

(B) If at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Absentee voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on election day.

(6) You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.

(7) You have the right to return a completed absentee ballot to any precinct in the county.

(8) You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.

(9) (A) You have the right to ask questions about election procedures and observe the elections process.

(B) You have the right to ask questions of the precinct board and election officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.

(10) You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.

(b) Beneath the Voter Bill of Rights there shall be listed a toll-free telephone number to call if a person has been denied a voting right or to report election fraud or misconduct.

(c) The Secretary of State may develop regulations to implement and clarify the Voter Bill of Rights set forth in subdivision (a).

(d) The Voter Bill of Rights set forth in subdivisions (a) and (b) shall be made available to the public before each election and on election day, at a minimum, as follows:

(1) The Voter Bill of Rights shall be printed in the statewide voter pamphlet, pursuant to Section 9084, in a minimum of 12-point type. Subparagraph (B) of paragraph (1) of subdivision (a), subparagraph (B) of paragraph (5) of subdivision (a), and subparagraph (B) of paragraph (9) of subdivision (a) may be printed in a smaller point type than the rest of the Voter Bill of Rights.

(2) Posters or other printed materials containing the Voter Bill of Rights shall be included in precinct supplies pursuant to Section 14105.

SEC. 2. Section 9084 of the Elections Code is amended to read:

9084. The ballot pamphlet shall contain all of the following:

(a) A complete copy of each state measure.

(b) A copy of the specific constitutional or statutory provision, if any, that each state measure would repeal or revise.

(c) A copy of the arguments and rebuttals for and against each state measure.

(d) A copy of the analysis of each state measure.

(e) Tables of contents, indexes, art work, graphics, and other materials that the Secretary of State determines will make the ballot pamphlet easier to understand or more useful for the average voter.

(f) A notice, conspicuously printed on the cover of the ballot pamphlet, indicating that additional copies of the ballot pamphlet will be mailed by the county elections official upon request.

(g) A written explanation of the judicial retention procedure as required by Section 9083.

(h) The Voter Bill of Rights pursuant to Section 2300.

SEC. 3. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

SEC. 4. Section 14105 of the Elections Code is amended to read:

14105. The elections official shall furnish to the precinct officers all of the following:

(a) Printed copies of the indexes.

(b) Necessary printed blanks for the roster, tally sheets, lists of voters, declarations, and returns.

(c) Envelopes in which to enclose returns.

(d) Not less than six nor more than 12 instruction cards to each precinct for the guidance of voters in obtaining and marking their ballots. On each card shall be printed necessary instructions and the provisions of Sections 14225, 14279, 14280, 14287, 14291, 14295, 15271, 15272, 15273, 15276, 15277, 15278, 18370, 18380, 18403, 18563, and 18569.

(e) A digest of the election laws with any further instructions the county elections official may desire to make.

(f) An American flag of sufficient size to adequately assist the voter in identifying the polling place. The flag is to be erected at or near the polling place on election day.

(g) A ballot container, properly marked on the outside indicating its contents.

(h) When it is necessary to supply additional ballot containers, these additional containers shall also be marked on the outside, indicating their contents.

(i) Sufficient ink pads and stamps for each booth. The stamps shall be one solid piece and shall be made so that a cross (+) may be made with either end. If ballots are to be counted by vote tabulating equipment, an adequate supply of other approved voting devices shall be furnished. All voting stamps or voting devices shall be maintained in good usable condition.

(j) When a candidate or candidates have qualified to have his or her or their names counted pursuant to Article 3 (commencing with Section 15340) of Chapter 4 of Division 15, a sufficient number of ink pens or pencils in the voting booths for the purpose of writing in on the ballot the name of the candidate or candidates.

(k) A sufficient number of cards to each polling place containing the telephone number of the office to which a voter may call to obtain information about his or her precinct location. The card shall state that the voter may call collect during polling hours.

(*l*) An identifying badge or insignia for each member of the precinct board. The member shall print his or her name and the precinct number thereon and shall wear the badge or insignia at all times in the performance of duties, so as to be readily identified as a member of the precinct board by all persons entering the polling place.

(m) Facsimile copies of the ballot containing ballot measures and ballot instructions printed in Spanish or other languages as provided in Section 14201.

(n) Sufficient copies of the notices to be posted on the indexes used at the polls. The notice shall read as follows: ''This index shall not be marked in any manner except by a member of the precinct board acting pursuant to Section 14297 of the Elections Code. Any person who removes, tears, marks, or otherwise defaces this index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of any voter, or the fact that a voter has or has not voted, is guilty of a misdemeanor.''

(o) A roster of voters for each precinct in the form prescribed in Section 14107.

(p) In addition, the elections official may, with the approval of the board of supervisors, furnish the original books of affidavits of registration or other material necessary to verify signatures to the precinct officers.

(q) Printed copies of the Voter Bill of Rights, as supplied by the Secretary of State. The Voter Bill of Rights shall be conspicuously posted both inside and outside every polling place.

This section shall become operative on January 1, 1990.

SEC. 4.5. Section 14105 of the Elections Code is amended to read:

14105. The elections official shall furnish to the precinct officers all of the following:

(a) Printed copies of the indexes.

(b) Necessary printed blanks for the roster, tally sheets, lists of voters, declarations, and returns.

(c) Envelopes in which to enclose returns.

(d) Not less than six nor more than 12 instruction cards to each precinct for the guidance of voters in obtaining and marking their ballots. On each card shall be printed necessary instructions and the provisions of Sections 14225, 14279, 14280, 14287, 14291, 14295, 15271, 15272, 15273, 15276, 15277, 15278, 18370, 18380, 18403, 18563, and 18569.

(e) A digest of the election laws with any further instructions the county elections official may desire to make.

(f) An American flag of sufficient size to adequately assist the voter in identifying the polling place. The flag is to be erected at or near the polling place on election day.

(g) A ballot container, properly marked on the outside indicating its contents.

(h) When it is necessary to supply additional ballot containers, these additional containers shall also be marked on the outside, indicating their contents.

(i) Sufficient ink pads and stamps for each booth. The stamps shall be one solid piece and shall be made so that a cross (+) may be made with either end. If ballots are to be counted by vote tabulating equipment, an adequate supply of other approved voting devices shall be furnished. All voting stamps or voting devices shall be maintained in good usable condition.

(j) When a candidate or candidates have qualified to have his or her or their names counted pursuant to Article 3 (commencing with Section 15340) of Chapter 4 of Division 15, a sufficient number of ink pens or pencils in the voting booths for the purpose of writing in on the ballot the name of the candidate or candidates.

(k) A sufficient number of cards to each polling place containing the telephone number of the office to which a voter may call to obtain information about his or her precinct location. The card shall state that the voter may call collect during polling hours.

(*l*) An identifying badge or insignia for each member of the precinct board. The member shall print his or her name and the precinct number thereon and shall wear the badge or insignia at all times in the performance of duties, so as to be readily identified as a member of the precinct board by all persons entering the polling place.

(m) Facsimile copies of the ballot containing ballot measures and ballot instructions printed in Spanish or other languages as provided in Section 14201.

(n) Sufficient copies of the notices to be posted on the indexes used at the polls. The notice shall read as follows: ''This index shall not be marked in any manner except by a member of the precinct board acting pursuant to Section 14297 of the Elections Code. Any person who removes, tears, marks, or otherwise defaces this index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of any voter, or the fact that a voter has or has not voted, is guilty of a misdemeanor.''

(o) A roster of voters for each precinct in the form prescribed in Section 14107.

(p) In addition, the elections official may, with the approval of the board of supervisors, furnish the original books of affidavits of registration or other material necessary to verify signatures to the precinct officers.

(q) Printed copies of the Voter Bill of Rights, as supplied by the Secretary of State. The Voter Bill of Rights shall be conspicuously posted both inside and outside every polling place.

This section shall become operative on January 1, 1990.

SEC. 5. Section 14105.3 is added to the Elections Code, to read:

14105.3. (a) The federal Help America Vote Act of 2002 (P.L. 107-252) requires voting information to be publicly posted at each polling place on the day of each election for federal office. Voting information is defined as including general information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated.

(b) The Secretary of State shall print posters and other appropriate materials setting forth the voter rights listed in Section 2300. The posters shall be printed in as many languages as the Secretary of State determines are necessary, but, at a minimum, in sufficient languages to comply with Section 14201 and with the federal Voting Rights Act of 1965, as amended by Public Law 94-73. The Secretary of State shall distribute the posters and materials to all county elections officials sufficiently in advance of statewide elections.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 14105 of the Elections Code proposed by both this bill and AB 1679. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 14105 of the Elections Code, and (3) this bill is enacted after AB 1679, in which case Section 4 of this bill shall not become operative.

CHAPTER 426

An act to amend Sections 4059, 4060, and 4061 of the Business and Professions Code, and to amend Sections 11250 and 11251 of the Health and Safety Code, relating to optometrists.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 4059 of the Business and Professions Code is amended to read:

4059. (a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

(b) This section does not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist, podiatrist, optometrist, or veterinarian, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, a description of the device, and the quantity supplied.

(c) A pharmacist, or a person exempted pursuant to Section 4054, may distribute dangerous drugs and dangerous devices directly to dialysis patients pursuant to regulations adopted by the board. The board shall adopt any regulations as are necessary to ensure the safe distribution of these drugs and devices to dialysis patients without

interruption thereof. A person who violates a regulation adopted pursuant to this subdivision shall be liable upon order of the board to surrender his or her personal license. These penalties shall be in addition to penalties that may be imposed pursuant to Section 4301. If the board finds any dialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or all of the drugs or devices distributed to individual patients.

(d) Home dialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a dialysis center licensed by the State Department of Health Services. The physician prescribing the dialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed the program.

(e) A pharmacist may furnish a dangerous drug authorized for use pursuant to Section 2620.3 to a physical therapist. A record containing the date, name and address of the buyer, and name and quantity of the drug shall be maintained. This subdivision shall not be construed to authorize the furnishing of a controlled substance.

(f) A pharmacist may furnish electroneuromyographic needle electrodes or hypodermic needles used for the purpose of placing wire electrodes for kinesiological electromyographic testing to physical therapists who are certified by the Physical Therapy Examining Committee of California to perform tissue penetration in accordance with Section 2620.5.

(g) Nothing in this section shall be construed as permitting a licensed physical therapist to dispense or furnish a dangerous device without a prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

(h) A veterinary food-animal drug retailer shall dispense, furnish, transfer, or sell veterinary food-animal drugs only to another veterinary food-animal drug retailer, a pharmacy, a veterinarian, or to a veterinarian's client pursuant to a prescription from the veterinarian for food-producing animals.

SEC. 2. Section 4060 of the Business and Professions Code is amended to read:

4060. No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, optometrist, veterinarian, certified

nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices.

SEC. 3. Section 4061 of the Business and Professions Code is amended to read:

4061. (a) No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician, dentist, podiatrist, optometrist, or veterinarian. However, a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or a physician assistant who functions pursuant to a protocol described in Section 3502.1, may sign for the request and receipt of complimentary samples of a dangerous drug or dangerous device that has been identified in the standardized procedure, protocol, or practice agreement. Standardized procedures, protocols, and practice agreements shall include specific approval by a physician. A review process, consistent with the requirements of Section 2725 or 3502.1, of the complimentary samples requested and received by a nurse practitioner, certified nurse-midwife, or physician assistant shall be defined within the standardized procedure, protocol, or practice agreement.

(b) Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the certified nurse-midwife, nurse practitioner, or physician assistant, if applicable, receiving the samples pursuant to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

(c) Nothing in this section is intended to expand the scope of practice of a certified nurse-midwife, nurse practitioner, or physician assistant.

SEC. 4. Section 11250 of the Health and Safety Code is amended to read:

11250. (a) No prescription is required in case of the sale of controlled substances at retail in pharmacies by pharmacists to any of the following:

(1) Physicians.

(2) Dentists.

(3) Podiatrists.

(4) Veterinarians.

(5) Pharmacists acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurses acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistants acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107.

(6) Optometrist.

(b) In any sale mentioned in this article, there shall be executed any written order that may otherwise be required by federal law relating to the production, importation, exportation, manufacture, compounding, distributing, dispensing, or control of controlled substances.

SEC. 5. Section 11251 of the Health and Safety Code is amended to read:

11251. No prescription is required in case of sales at wholesale by pharmacies, jobbers, wholesalers, and manufacturers to any of the following:

(a) Pharmacies as defined in the Business and Professions Code.

(b) Physicians.

(c) Dentists.

(d) Podiatrists.

(e) Veterinarians.

(f) Other jobbers, wholesalers or manufacturers.

(g) Pharmacists acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurses acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistants acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107.

(h) Optometrists.

CHAPTER 427

An act to add Section 9951 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 9951 is added to the Vehicle Code, to read:

9951. (a) A manufacturer of a new motor vehicle sold or leased in this state, which is equipped with one or more recording devices commonly referred to as ''event data recorders (EDR)'' or ''sensing and diagnostic modules (SDM),'' shall disclose that fact in the owner's manual for the vehicle.

(b) As used in this section, ''recording device'' means a device that is installed by the manufacturer of the vehicle and does one or more of the following, for the purpose of retrieving data after an accident:

(1) Records how fast and in which direction the motor vehicle is traveling.

(2) Records a history of where the motor vehicle travels.

(3) Records steering performance.

(4) Records brake performance, including, but not limited to, whether brakes were applied before an accident.

(5) Records the driver's seatbelt status.

(6) Has the ability to transmit information concerning an accident in which the motor vehicle has been involved to a central communications system when an accident occurs.

(c) Data described in subdivision (b) that is recorded on a recording device may not be downloaded or otherwise retrieved by a person other than the registered owner of the motor vehicle, except under one of the following circumstances:

(1) The registered owner of the motor vehicle consents to the retrieval of the information.

(2) In response to an order of a court having jurisdiction to issue the order.

(3) For the purpose of improving motor vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, and the identity of the registered owner or driver is not disclosed in connection with that retrieved data. The disclosure of the vehicle identification number (VIN) for the purpose of improving vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, does not constitute the disclosure of the identity of the registered owner or driver.

(4) The data is retrieved by a licensed new motor vehicle dealer, or by an automotive technician as defined in Section 9880.1 of the Business and Professions Code, for the the purpose of diagnosing, servicing, or repairing the motor vehicle.

(d) A person authorized to download or otherwise retrieve data from a recording device pursuant to paragraph (3) of subdivision (c), may not release that data, except to share the data among the motor vehicle safety and medical research communities, to advance motor vehicle safety, and only if the identity of the registered owner or driver is not disclosed.

(e) (1) If a motor vehicle is equipped with a recording device that is capable of recording or transmitting information as described in paragraph (2) or (6) of subdivision (b) and that capability is part of a subscription service, the fact that the information may be recorded or transmitted shall be disclosed in the subscription service agreement.

(2) Subdivision (c) does not apply to subscription services meeting the requirements of paragraph (1).

(f) This section applies to all motor vehicles manufactured on or after July 1, 2004.

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 428

An act to amend Section 19827.5 of the Government Code, relating to state employees, to take effect immediately, tax levy.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 19827.5 of the Government Code is amended to read:

19827.5. (a) There is allocated from the salary or wage paid to a member of the clergy, in an amount up to 50 percent of the gross salary, either of the following:

(1) The rental value of a home furnished to him or her.

(2) The rental allowance paid to him or her to rent or provide a home.

(b) As used in this section, a ''member of the clergy'' means a priest, minister, religious practitioner, or similar functionary of a religious denomination or religious organization.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 429

An act to add and repeal Article 1.5 (commencing with Section 51705) of Chapter 5 of Part 28 of, and to repeal Section 46300.8 of, the Education Code, relating to schools.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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 of the Education Code is repealed.

SEC. 3. Article 1.5 (commencing with Section 51705) is added to Chapter 5 of Part 28 of the Education Code, to read:

Article 1.5. The Online Classroom Pilot Program

51705. For purposes of this article, the following terms have the following meanings:

(a) ''Asynchronous interactive instructional program'' means a program in which a pupil 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.

(b) ''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 subdivision.

51705.3. (a) The Online Classroom Pilot Program is hereby established for the purpose of monitoring and evaluating pupil participation in online asynchronous interactive instructional programs conducted over the Internet. The teacher of an online course shall be online and accessible to the pupil on a daily basis to respond to pupil

queries, assign tasks, and dispense information. The online course shall be approved by the governing board of the school district.

(b) At each participating schoolsite, the ratio of full-time equivalent certificated teachers teaching through online instruction to pupils engaging in that instruction shall be substantially equivalent to the ratio of teachers to pupils in traditional in-classroom study of the same subject matter.

(c) 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 school district or did so within the immediately preceding two-year period. The subject matter content shall be the same for the online course as for the traditional in-classroom course.

(d) A teacher teaching in an online classroom program shall hold the appropriate subject matter credential.

(e) To operate an online course pursuant to this section a schoolsite shall apply to the State Department of Education which shall approve schoolsites on a first-come-first-served basis. No more than 40 schoolsites may operate an online course pursuant to this section. A school district may not have more than five schoolsites that operate an online course pursuant to this section. Each participating schoolsite may provide online courses to a total number of pupils not greater than 15 percent of the total enrollment of that schoolsite.

(f) 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 school district of the schoolsite offering the online course and shall not enter into direct contracts with the pupils of the offering school district.

(g) Statewide testing results for online pupils shall be reported to the school district in which the pupil is enrolled for regular in-classroom courses.

(h) Only high schools are eligible to offer online instruction. A school district may apply for a waiver from the State Board of Education to allow a school that is not a high school to offer online course to its pupils, and the state board may grant the waiver.

(i) 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.

(j) The school district of a schoolsite that offers an online course, or contracts pursuant to subdivision (f) to provide an online course, shall develop and implement policies addressing all of the following factors:

(1) Test integrity.

(2) Evaluation of the online courses including a comparison with traditional in-classroom courses.

(3) A procedure for attaining informed consent from both the parent and pupil regarding course enrollment.

(4) The teacher selection process.

(5) Criteria regarding pupil priority for online courses.

(6) Equity and access in terms of hardware or computer laboratories.

(7) Teacher training for online teaching.

(8) Teacher evaluation procedures.

(9) Criteria for asynchronous learning including the type and frequency of the contact between pupil and teacher.

(10) Pupil computer skills necessary to take an online course.

(11) The provision of onsite support for online pupils.

(k) A school district of a schoolsite that offers online classroom programs pursuant to this section 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.

(*l*) A school district of a schoolsite that offers online classroom programs pursuant to this section 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.

(m) If a pupil is participating part time in online instruction pursuant to this section, a day of attendance for apportionment purposes is 180 minutes of attendance in traditional in-classroom settings unless the pupil is participating in online instruction pursuant to subdivision (e) of Section 46300.

(n) As a condition of receipt of funds pursuant to this section, a school district shall, on an annual basis, submit the online classroom program information specified in subdivision (*l*) to the State Department of Education. The State Department of Education shall clearly describe in the application form the information required to be submitted pursuant to this subdivision. It is the intent of the Legislature that the costs of maintaining and submitting the required information be entirely borne by the participating school district from funds received pursuant to this section.

(o) 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.

(p) 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 teacher credential requirement and shall report those findings to the department.

(q) 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.

(r) The Superintendent of Public Instruction shall convene a working group to assess the pilot project established pursuant to this section and the fiscal costs of offering instruction through online classroom programs.

(s) Commencing July 1, 2005, the Controller shall review the online programs operated pursuant to this section. These reviews shall include an examination of relevant program and fiscal records from all years of participation in the pilot program, including the 2003–04 fiscal year. It is the intent of the Legislature that the Controller give these reviews the highest priority.

(t) Notwithstanding any other provision of law, no provision of this section may be waived except as otherwise provided in this section.

(u) 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 430

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (k), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to construct at least any one of the following:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for

very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for 10 years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.

(d) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards

that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), ''density bonus'' means a density increase of at least 25 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 10, 20, or 50 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, in which at least 20 percent of the total dwelling units are reserved for persons and

families of moderate income, as defined in Section 50093 of the Health and Safety Code, a ''density bonus'' of at least 10 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) ''Child care facility,'' as used in this section, means a child day care facility other than a family day care home, including, but not limited

to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) ''Housing development,'' as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, ''housing development'' also includes either (1) a project to substantially rehabilitate and convert an existing commercial building to residential use, or (2) the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(*l*) If an applicant agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very

low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, county, or city and county may, at its discretion, grant more than one density bonus.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) A local agency may charge a fee to reimburse it for costs it incurs as a result of amendments to this section enacted during the 2001–02 Regular Session of the Legislature.

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

(1) ''Development standard'' means any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) ''Maximum allowable residential density'' means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

CHAPTER 431

An act to amend, repeal, and add Section 1203.097 of the Penal Code, relating to domestic violence.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) A minimum payment by the defendant of four hundred dollars ($400) to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

Two-thirds of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to one-third of funds collected during the preceding month. In no event may the funds transferred to the Controller be less than one hundred thirty-three dollars ($133) for each defendant. However, if the court orders the defendant to pay less than two hundred dollars ($200) because of his or her inability to pay, the state shall receive two-thirds of the payment. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

(B) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with

periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination 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. 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. When 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 this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as 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, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the

court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount

sufficient to cover its costs in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke any approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

(d) 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 1203.097 is added to the Penal Code, to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) A minimum payment by the defendant of two hundred dollars ($200) to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

One-third of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic

violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to two-thirds of funds collected during the preceding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

(B) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination 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. 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. When 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 this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as 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, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.
(B) Education.
(C) Vocational achievements.
(D) Criminal history.
(E) Medical history.
(F) Substance abuse history.
(G) Consultation with the probation officer.
(H) Verbal consultation with the victim, only if the victim desires to participate.
(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the

program or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its costs in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke any approval issued under this subdivision or deny an application to renew an approval or to modify the

terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

(d) This section shall become operative on January 1, 2007.

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 432

An act to amend Section 42001 of, and to add Section 27150.3 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 27150.3 is added to the Vehicle Code, to read:

27150.3. (a) A person may not modify the exhaust system of a motor vehicle with a whistle-tip.

(b) A person may not operate a motor vehicle if that vehicle's exhaust system is modified in violation of subdivision (a).

(c) A person may not engage in the business of installing a whistle-tip onto a motor vehicle's exhaust system.

(d) For purposes of subdivisions (a) and (c), a ''whistle-tip'' is a device that is applied to, or is a modification of, a motor vehicle's exhaust pipe for the sole purpose of creating a high-pitched or shrieking noise when the motor vehicle is operated.

SEC. 2. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in Section 42000.5, 42001.1, 42001.2, 42001.3, 42001.5, 42001.7, 42001.8, 42001.9, 42001.11, 42001.12, 42001.14, 42001.15, 42001.16, or subdivision (a) of Section 42001.17, or Section 42001.18, or subdivision (b), (c), or (d) of this section, or Article 2 (commencing with Section 42030), every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished as follows:

(1) By a fine not exceeding one hundred dollars ($100).

(2) For a second infraction occurring within one year of a prior infraction which resulted in a conviction, a fine not exceeding two hundred dollars ($200).

(3) For a third or any subsequent infraction occurring within one year of two or more prior infractions which resulted in convictions, a fine not exceeding two hundred fifty dollars ($250).

(b) Every person convicted of a misdemeanor violation of Section 2800, 2801, or 2803, insofar as they affect failure to stop and submit to inspection of equipment or for an unsafe condition endangering any person, shall be punished as follows:

(1) By a fine not exceeding fifty dollars ($50) or imprisonment in the county jail not exceeding five days.

(2) For a second conviction within a period of one year, a fine not exceeding one hundred dollars ($100) or imprisonment in the county jail not exceeding 10 days, or both that fine and imprisonment.

(3) For a third or any subsequent conviction within a period of one year, a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding six months, or both that fine and imprisonment.

(c) A pedestrian convicted of an infraction for a violation of this code or any local ordinance adopted pursuant to this code shall be punished by a fine not exceeding fifty dollars ($50).

(d) A person convicted of a violation of subdivision (a) or (b) of Section 27150.3 shall be punished by a fine of two hundred fifty dollars ($250), and a person convicted of a violation of subdivision (c) of Section 27150.3 shall be punished by a fine of one thousand dollars ($1,000).

(e) Notwithstanding any other provision of law, any local public entity that employs peace officers, as designated under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, the California State University, and the University of California may, by ordinance or resolution, establish a schedule of fines applicable to infractions committed by bicyclists within its jurisdiction. Any fine, including all penalty assessments and court costs, established pursuant to this subdivision shall not exceed the maximum fine, including penalty

assessment and court costs, otherwise authorized by this code for that violation. If a bicycle fine schedule is adopted, it shall be used by the courts having jurisdiction over the area within which the ordinance or resolution is applicable instead of the fines, including penalty assessments and court costs, otherwise applicable under this code.

SEC. 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 433

An act to amend Section 19849.7 of the Government Code, relating to state employment.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 19849.7 of the Government Code is amended to read:

19849.7. (a) Each state agency shall at the time of each payment of salary or wages, whether by direct deposit by electronic fund transfer pursuant to Sections 12480 and 12481 or otherwise, furnish each employee, at his or her discretion, an itemized statement in writing or electronically showing all deductions made from his or her salary or wages as required by Section 226 of the Labor Code.

(b) The provision of an electronic statement of itemized deductions pursuant to this section shall be contingent upon the funding and implementation of the Controller's ''21st Century Project,'' and provided only to the extent that the project enables the Controller to provide this information electronically.

CHAPTER 434

An act to amend Sections 11000.1 and 11018.12 of the Business and Professions Code, to amend Section 1675 of the Civil Code, and to amend Sections 66427 and 66452.4 of the Government Code, relating to subdivided lands.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 11000.1 of the Business and Professions Code is amended to read:

11000.1. (a) ''Subdivided lands'' and ''subdivision,'' as defined by Sections 11000 and 11004.5, also include improved or unimproved land or lands, a lot or lots, or a parcel or parcels, of any size, in which, for the purpose of sale or lease or financing, whether immediate or future, five or more undivided interests are created or are proposed to be created.

(b) This section does not apply to the creation or proposed creation of undivided interests in land if any one of the following conditions exists:

(1) The undivided interests are held or to be held by persons related one to the other by blood or marriage.

(2) The undivided interests are to be purchased and owned solely by persons who present evidence satisfactory to the Real Estate Commissioner that they are knowledgeable and experienced investors who comprehend the nature and extent of the risks involved in the ownership of these interests. The Real Estate Commissioner shall grant an exemption from this part if the undivided interests are to be purchased by no more than 10 persons, each of whom furnishes a signed statement to the commissioner that he or she (1) is fully informed concerning the real property to be acquired and his or her interest therein including the risks involved in ownership of undivided interests, and (2) is purchasing the interest or interests for his or her own account and with no present intention to resell or otherwise dispose of the interest for value, and (3) expressly waives protections afforded to a purchaser by this part.

(3) The undivided interests are created as the result of a foreclosure sale.

(4) The undivided interests are created by a valid order or decree of a court.

(5) The offering and sale of the undivided interests have been expressly qualified by the issuance of a permit from the Commissioner of Corporations pursuant to the Corporate Securities Law of 1968

(Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(6) The real property is offered for sale as a time-share project as defined in Section 11003.5.

SEC. 2. Section 11018.12 of the Business and Professions Code is amended to read:

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for the issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A condominium plan pursuant to subdivision (e) of Section 1351 of the Civil Code has not been recorded.

(3) A declaration of covenants, conditions, and restrictions pursuant to Section 1353 of the Civil Code has not been recorded.

(4) A declaration of annexation has not been recorded.

(5) A recorded subordination of existing liens to the declaration of covenants, conditions, and restrictions or declaration of annexation, or escrow instructions to effect recordation prior to the first sale, are lacking.

(6) Filed articles of incorporation are lacking.

(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(b) The commissioner may issue a conditional public report for a subdivision not referred to or specified in Section 11000.1 or 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been

satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A declaration of covenants, conditions, and restrictions has not been recorded.

(3) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(4) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(c) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days and that notice shall specifically state the reasons why the report is not being issued.

(d) Notwithstanding the provisions of Section 11018.2, a person may sell or lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a public report and provided that the requirements of subdivision (e) are met.

(e) (1) Evidence shall be supplied that all purchase money will be deposited in compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section 11013.4, and in the case of a subdivision referred to in subdivision (a) of this section, evidence shall be given of compliance with paragraphs (1) and (2) of subdivision (a) of Section 11018.5.

(2) A description of the nature of the transaction shall be supplied.

(3) Provision shall be made for the return of the entire sum of money paid or advanced by the purchaser if a subdivision public report has not been issued during the term of the conditional public report, or as extended, or the purchaser is dissatisfied with the public report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease, or offer for sale or lease, lots or parcels in a subdivision for which a conditional public report has been issued except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

(i) The term of a conditional public report for attached residential condominium units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units or more as specified on the approved tentative tract map, shall not exceed 30 months and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

SEC. 3. Section 1675 of the Civil Code is amended to read:

1675. (a) As used in this section, ''residential property'' means real property primarily consisting of a dwelling that meets both of the following requirements:

(1) The dwelling contains not more than four residential units.

(2) At the time the contract to purchase and sell the property is made, the buyer intends to occupy the dwelling or one of its units as his or her residence.

(b) A provision in a contract to purchase and sell residential property that provides that all or any part of a payment made by the buyer shall constitute liquidated damages to the seller upon the buyer's failure to complete the purchase of the property is valid to the extent that payment in the form of cash or check, including a postdated check, is actually made if the provision satisfies the requirements of Sections 1677 and 1678 and either subdivision (c) or (d) of this section.

(c) If the amount actually paid pursuant to the liquidated damages provision does not exceed 3 percent of the purchase price, the provision is valid to the extent that payment is actually made unless the buyer establishes that the amount is unreasonable as liquidated damages.

(d) If the amount actually paid pursuant to the liquidated damages provision exceeds 3 percent of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable as liquidated damages.

(e) For the purposes of subdivisions (c) and (d), the reasonableness of an amount actually paid as liquidated damages shall be determined by taking into account both of the following:

(1) The circumstances existing at the time the contract was made.

(2) The price and other terms and circumstances of any subsequent sale or contract to sell and purchase the same property if the sale or contract is made within six months of the buyer's default.

(f) (1) Notwithstanding either subdivision (c) or (d), for the initial sale of newly constructed attached condominium units, as defined pursuant to Section 783 of the Civil Code, that involves the sale of an attached residential condominium unit located within a structure of 10 or more residential condominium units and the amount actually paid to the seller pursuant to the liquidated damages provision exceeds 3 percent of the purchase price of the residential unit in the transaction both of the following shall occur in the event of a buyer's default:

(A) The seller shall perform an accounting of its costs and revenues related to and fairly allocable to the construction and sale of the residential unit within 60 calendar days after the final close of escrow of the sale of the unit within the structure.

(B) The accounting shall include any and all costs and revenues related to the construction and sale of the residential property and any delay caused by buyer's default. The seller shall make reasonable efforts to mitigate any damages arising from the default. The seller shall refund to the buyer any amounts previously retained as liquidated damages in excess of the greater of either 3 percent of the originally agreed-upon purchase price of the residential property or the amount of the seller's losses resulting from the buyer's default, as calculated by the accounting.

(2) The refund shall be sent to the buyer's last known address within 90 days after the final close of escrow of the sale or lease of all the residential condominium units within the structure.

(3) If the amount retained by the seller after the accounting does not exceed 3 percent of the purchase price, the amount is valid unless the buyer establishes that the amount is unreasonable as liquidated damages pursuant to subdivision (e).

(4) Subdivision (d) shall not apply to any dispute regarding the reasonableness of any amount retained as liquidated damages pursuant to this subdivision.

(5) Notwithstanding the time periods regarding the performance of the accounting set forth in paragraph (1), if a ''new qualified buyer'' has entered into a contract to purchase the residential property in question, the seller shall perform the accounting within 60 calendar days after a new qualified buyer has entered into a contract to purchase.

(6) As used in this subdivision, the term ''structure'' shall mean either of the following:

(A) Improvements constructed on a common foundation.

(B) Improvements constructed by the same owner that must be constructed concurrently due to the design characteristics of the improvements or physical characteristics of the property on which the improvements are located.

(7) As used in this subdivision, the term ''new qualified buyer'' shall mean a buyer that:

(A) Has been issued a loan commitment, which satisfies the purchase agreement loan contingency requirement, by an institutional lender to obtain a loan for an amount equal to the purchase price less any downpayment possessed by the buyer.

(B) Has contracted to pay a purchase price that is greater than or equal to the purchase price to be paid by the original buyer.

SEC. 4. Section 66427 of the Government Code is amended to read:

66427. (a) A map of a condominium project, a community apartment project, or of the conversion of five or more existing dwelling units to a stock cooperative project need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a parcel, tentative, or final map of the project on account of the design or the location of buildings on the property shown on the map that are not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium.

(b) A map need not include a condominium plan or plans, as defined in subdivision (e) of Section 1351 of the Civil Code, and the governing body may not refuse approval of a parcel, tentative, or final map of the project on account of the absence of a condominium plan.

(c) Fees and lot design requirements shall be computed and imposed with respect to those maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project.

(d) Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in a project by or pursuant to local ordinances.

(e) If the governing body has approved a parcel map or final map for the establishment of condominiums on property pursuant to the requirements of this division, the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums shall not constitute a further subdivision as defined in Section 66424, provided each of the following conditions has been satisfied:

(1) The total number of condominiums established is not increased above the number authorized by the local agency in approving the parcel map or final map.

(2) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association as defined in subdivision (a) of Section 1351 of the Civil Code, and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums.

(3) The three-dimensional portion or portions of property are described on a condominium plan or plans, as defined in subdivision (e) of Section 1351 of the Civil Code.

SEC. 5. Section 66452.4 of the Government Code is amended to read:

66452.4. (a) If no action is taken upon a tentative map by an advisory agency that is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map or by the legislative body within the time limits specified in this chapter or any authorized extension thereof, the tentative map as filed, shall be deemed to be approved, insofar as it complies with other applicable requirements of this division and any local ordinances, and it shall be the duty of the clerk of the legislative body to certify or state his or her approval.

(b) Once a tentative map is deemed approved pursuant to subdivision (a), a subdivider shall be entitled, upon request of the local agency or the legislative body, to receive a written certification of approval.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 435

An act to amend Section 16 of, to add Sections 4.5 and 9.5 to, and to repeal and add Section 2 of, Chapter 464 of the Statutes of 2002, relating to the Hunters Point Shipyard.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. This act shall be known, and may by cited, as the Hunters Point Shipyard Public Trust Exchange Act.

SEC. 2. The following definitions apply for purposes of this act:

(a) ''Agency'' means the San Francisco Redevelopment Agency, or any successor redevelopment agency with jurisdiction over the shipyard.

(b) ''City'' means the City and County of San Francisco.

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

(d) ''Conversion act'' means the Hunters Point Shipyard Conversion Act of 2002 (Ch. 464, Stats. 2002).

(e) ''Hillside open space'' means that area of land so designated as depicted in the diagram in Section 10 of this act.

(f) ''Hunters Point Shipyard'' or ''shipyard'' means all that real property situated in the City and County of San Francisco, State of California and more particularly described in Subdivision (h) of Section 2 of the conversion act.

(g) ''Hunters Point trust lands'' means all lands, including tide and submerged lands, within the redevelopment area that are presently, or upon conveyance out of federal ownership will be, subject to the public trust.

(h) ''Public trust'' or ''trust'' means the public trust for commerce, navigation, and fisheries.

(i) ''Redevelopment area'' means the project area described in the redevelopment plan, consisting of the Hunters Point Shipyard and the Hunters Point submerged lands.

(j) ''Redevelopment plan'' means the Hunters Point Shipyard Redevelopment Plan adopted by the agency under Chapter 4.5 (commencing with Section 33492) of Part 1 of Division 24 of the Health and Safety Code.

(k) ''Trustee'' means the agency and any successor in interest to the agency's authority as trust administrator over some or all of the Hunters Point trust lands.

SEC. 3. The Legislature finds and declares all of the following:

(a) The purpose of this act is to facilitate the productive reuse of the lands comprising the former Hunters Point Shipyard in a manner that will further the purposes of the public trust for commerce, navigation, and fisheries. To effectuate this purpose, this act approves and authorizes the commission to carry out an exchange of lands under which certain nontrust lands within the shipyard with substantial value for the public trust would be placed into the public trust, and certain other lands within the shipyard presently subject to the public trust, but no longer useful for trust purposes would be freed from trust restrictions.

(b) The shipyard includes lands that were historically tide and submerged lands (referred to in this act as "tidelands," unless specified otherwise) subject to the public trust, as well as historic uplands that were not subject to the trust. Beginning in 1861, certain of the site's tidelands were conveyed into private ownership by the state pursuant to various state statutes. Portions of those lands were subsequently filled and reclaimed. The trust status of the reclaimed tidelands is uncertain. Due to differences in the various statutes authorizing the conveyance of the tidelands into private ownership, as well as other historical circumstances, some of the reclaimed tidelands, including lands located well inland from the current shoreline, have remained subject to the public trust, while other reclaimed tidelands, including most of the lands adjacent to the shoreline, may have been freed from the trust. In addition, a portion of the lands that are subject to the trust consist of mapped streets that were never built, forming a grid pattern that is not consistent with any existing or planned street system for the lands, and these lands are no longer useful for trust purposes.

(c) In 1939, the United States began acquiring lands for purposes of constructing and operating what came to be known as the Hunters Point Shipyard. The shipyard was used primarily as a Navy industrial operation for the modification, maintenance, and repair of ships. The shipyard was closed in 1974, but continued to be used for ship docking and repair activities. Portions were also leased to several small businesses, artisans, and others.

(d) Pursuant to the authority provided by Section 2824(a) of the National Defense Authorization Act for fiscal year 1991, as amended by Section 2834 of the National Defense Authorization Act for fiscal year 1994, the Navy has the authority under federal law to convey the property to the city or to a local reuse authority approved by the city. The agency is the approved local reuse authority for the shipyard. The Navy is presently in negotiations with the city and the agency for the transfer of the property, or portions thereof, to the agency.

(e) In 1997, in anticipation of the transfer, the agency and the city adopted the redevelopment plan. To promote the economic development and revitalization of the shipyard, the redevelopment plan provides for a diversity of uses, including public parks, walkways, and habitat areas, and cultural, educational, maritime, industrial, residential, and mixed uses.

(f) All former and existing tidelands within the shipyard over which the public trust has not been terminated are subject to the public trust upon their transfer from federal ownership. In anticipation of the transfer of the shipyard to the agency, the Legislature enacted the conversion act, which grants in trust to the agency the state's sovereign interest in certain

lands within and adjacent to the shipyard and establishes the agency as the trust administrator for those lands.

(g) The existing configuration of trust and nontrust lands within the shipyard is such that the purposes of the public trust cannot be fully realized. A substantial portion of the reclaimed trust lands are interior lands that have been cut off from access to navigable waters, or are laid out in a grid pattern that is not useful to the trust. Most of these lands are no longer needed or required for the promotion of the public trust. Other lands within the shipyard directly adjacent to the waterfront or otherwise of high value to the public trust are currently not subject to the public trust. Absent a trust exchange, substantial portions of the lands within the shipyard that are located along the waterfront or are otherwise of high value to the public trust would be free of the public trust, would not be required to be put to uses consistent with the public trust, and could be cut off from public access. In addition, certain interior lands not useful for trust purposes would be restricted to trust-consistent uses and could not be used for residential or other nontrust uses essential for the financial feasibility of the redevelopment plan and the realization of the public purposes set forth in the plan.

(h) A trust exchange resulting in the configuration of trust lands substantially similar to that depicted on the diagram in Section 10 of this act maximizes the overall benefits to the trust, without interfering with trust uses or purposes. Following the exchange, all lands within the shipyard adjacent to the waterfront, as well as certain interior lands that have high trust values, will be subject to the public trust. The lands that will be removed from the trust pursuant to the exchange have been cut off from navigable waters and are no longer needed or required for the promotion of the public trust. The lands to be freed of the public trust constitute a relatively small portion of the lands granted to the city. This act requires that the commission ensure that the lands added to the trust pursuant to the exchange are of equal or greater value than the lands taken out of the trust.

(i) Several historic buildings in the shipyard have been identified by the State Historic Preservation Officer as contributors to the Hunters Point Commercial Drydock Historic District. These contributor buildings convey a sense of the shipyard's early maritime history, enhance the open space experience along the waterfront, and should be preserved and restored. Uses of the contributor buildings that support their preservation and restoration, but which are not otherwise consistent with the trust, may be authorized under certain conditions set forth in this act.

(j) The area designated hillside open space provides substantial value to the trust as an open space and recreational resource affording exceptional views of San Francisco Bay and the shipyard waterfront. To

protect the trust value of the hillside open space area, it is important that all of the following occur:

(1) Public access between the area and the waterfront is maintained.

(2) Public views of the bay are protected against interference from downslope development.

(3) Vehicular and pedestrian access is provided directly from the lower portions of the shipyard to the top of the hillside open space and from the other parts of the City and County of San Francisco to the top of the hillside open space.

(4) Adequate public parking for regional use of the hillside open space is provided at the top, and adjacent to the lower portion of the hillside open space.

(k) This legislation advances the purposes of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code) and the public trust, and is in the best interests of the people of this state.

SEC. 4. The Legislature hereby approves an exchange of public trust lands within the shipyard, whereby certain Hunters Point trust lands that meet the criteria set forth in this act and therefore are not now useful for public trust purposes will be freed from the public trust and may be conveyed into private ownership, and certain other lands that are not now public trust lands and that are useful for public trust purposes will be made subject to the public trust, provided all of the following conditions are met:

(a) The exchange results in a configuration of trust lands substantially similar to that shown on the diagram in Section 10 of this act.

(b) The lands to be subject to the public trust are configured so as to be accessible from the streets as finally configured in the redevelopment area.

(c) The exchange otherwise complies with the requirements of this act.

(d) The exchange is consistent with and furthers the purposes of the public trust and the conversion act.

SEC. 5. All lands exchanged into the trust under this act shall be held by the trustee subject to the public trust and the requirements of the conversion act, and all lands exchanged out of the trust under this section shall be free of the public trust and the requirements of the conversion act.

SEC. 6. The precise boundaries of the lands to be taken out of the trust and the lands to be put into the trust pursuant to the exchange shall be determined by the trustee, subject to the approval of the commission. The commission is authorized to settle by agreement with the trustee and the city any disputes as to the location of the mean high tide line in its last natural state, the boundaries of tidelands conveyed into private

ownership pursuant to various statutes, and any other boundary lines which the commission deems necessary to effectuate the exchange.

SEC. 7. (a) The commission is authorized to approve an exchange of public trust lands within the shipyard that meets the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include provisions for ensuring that lands are not exchanged into the trust until all remedial action necessary to protect human health and the environment with respect to the hazardous substances on the land has been completed as determined by the United States Environmental Protection Agency, the California Department of Toxics Substances Control, and the Regional Water Quality Control Board, pursuant to the Federal Facilities Agreement for the shipyard dated January 22, 1992, as amended, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of Title 42 of the United States Code, or the United States has obtained a warranty deferral, approved by the Governor in accordance with Section 9620(h)(3)(C) of Title 42 of the United States Code, involving land for which the commission has determined to execute a certificate of acceptance of title. The commission may also establish procedures for completing the exchange in phases. The procedures, if established, shall ensure that, after each phase, the cumulative value of lands exchanged into the trust is equal to or greater than the cumulative value of lands exchanged out of the trust, and that the lands exchanged into the trust at each phase are configured in a way that furthers the purposes of the overall exchange, including, but not limited to, having access to streets as finally configured in the redevelopment area.

(b) The commission may not approve the exchange of any trust lands unless it finds all of the following:

(1) The configuration of trust lands within the shipyard upon completion of the exchange will not differ significantly from the configuration shown on the diagram in Section 10 of this act, and includes all lands within the shipyard that are presently below mean high tide and consists of lands suitable to be impressed with the public trust.

(2) The final layout of streets in the redevelopment area will provide access to the public trust lands and be consistent with the beneficial use of the public trust lands.

(3) With respect to the trust exchange as finally configured and phased, the value of the lands to be exchanged into the trust is equal to or greater than the value of the lands to be exchanged out of the trust. The commission may take into consideration the degree of uncertainty, if any, as to whether the lands remain subject to the trust or have been freed from the trust.

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

(5) The trustee has approved the exchange.

(c) The commission shall impose additional conditions on the exchange authorized by this act if the commission determines that these conditions are necessary for the protection of the public trust. At a minimum, the commission shall establish conditions to ensure all of the following:

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

(2) The trust values of the hillside open space are preserved. To this end, the commission shall ensure all of the following:

(A) The final trust configuration maintains reasonable public pedestrian and vehicular access between the hillside open space and the waterfront, and in addition, between the top of the hillside open space and other areas of the City and County of San Francisco.

(B) Public views of the San Francisco Bay from the hillside open space are maintained and protected against material interference from downslope development, through height limitations or other appropriate restrictions.

(C) Direct vehicular and pedestrian access from the lower portions of the shipyard to the top of the hillside open space area is provided.

(D) No liability to owners of adjacent upslope property, for subjacent support or otherwise, is created by virtue of the trustee's taking title to the hillside open space.

(E) No moneys from the trust fund described in Section 10 of the conversion act may be used to provide direct benefit to the residential development or to other uses of the nontrust portion of the hilltop area adjacent to the hillside open space, or to offset or mitigate impacts caused by those uses.

(F) Street parking on the parkway adjacent to the top of the hillside open space may not be restricted for residential parking and shall remain accessible to the public for regional use. In addition, adequate parking areas accessible to the public to support regional use of the hillside open space shall be dedicated in an area adjacent to the lower portion of the hillside open space.

(d) For purposes of effectuating the exchange authorized by this section, the commission is authorized to do all of the following:

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

(2) Convey to the trustee by patent all of the right, title, and interest of the state in lands that are to be free of the public trust upon completion of an exchange of lands as authorized by this act and as approved by the commission.

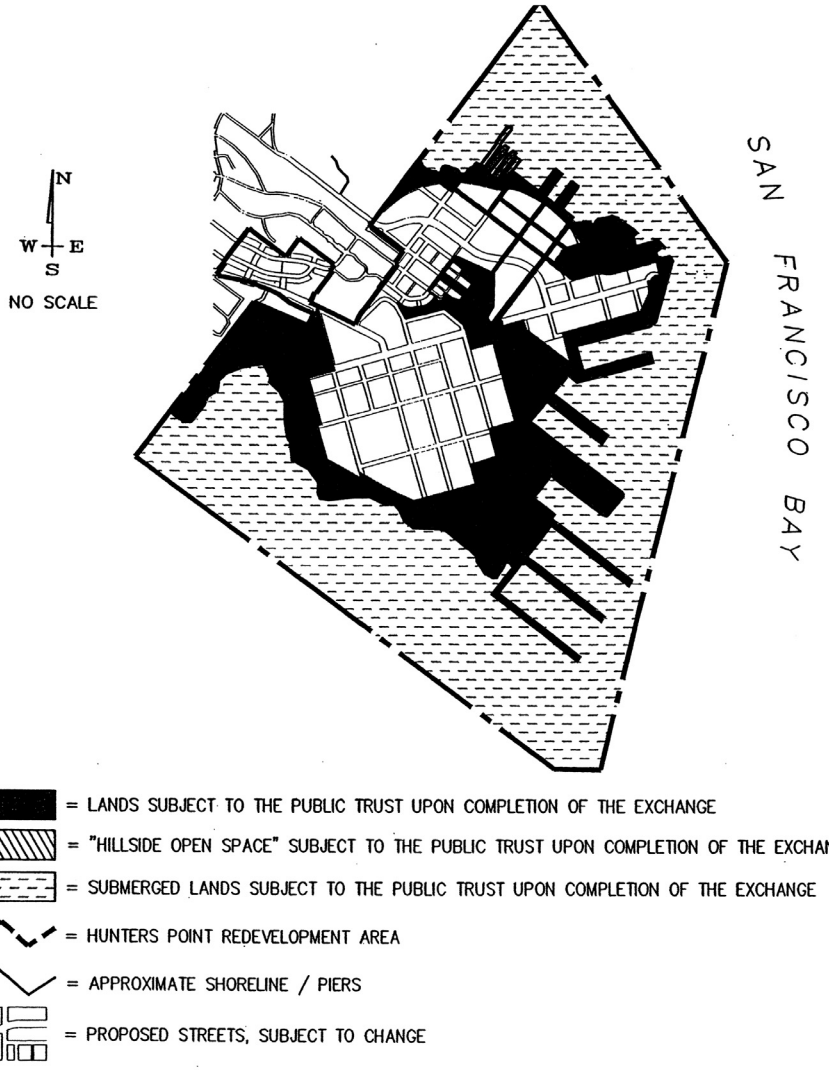
(3) Convey to the trustee by patent all of the right, title, and interest of the state in lands that are to be subject to the public trust and the terms of this act and the conversion act upon completion of an exchange of lands as authorized by this act and as approved by the commission, subject to the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

SEC. 8. Any agreement for the exchange of, or trust termination over, granted tidelands, or to establish boundary lines, entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of the agreement commenced within 60 days after the recording of the agreement.

SEC. 9. An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure by the parties to any agreement entered into pursuant to this act to confirm the validity of the agreement. Notwithstanding any provision of Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts and a determination whether the agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

SEC. 10. The following diagram is a part of this act:

HUNTERS POINT SHIPYARD
PUBLIC TRUST EXCHANGE ACT OF 2003



SEC. 11. Section 2 of Chapter 464 of the Statutes of 2002 is repealed.

SEC. 12. Section 2 is added to Chapter 464 of the Statutes of 2002, to read:

Sec. 2. The following definitions apply for purposes of this act:

(a) ''Agency'' means the San Francisco Redevelopment Agency.

(b) ''Burton Act'' means Chapter 1333 of the Statutes of 1968, as amended.

(c) ''City'' means the City and County of San Francisco.

(d) ''Public trust'' or ''trust'' means the public trust for commerce, navigation, and fisheries.

(e) ''Redevelopment area'' means the project area as described in the redevelopment plan, consisting of the Hunters Point Shipyard and the Hunters Point submerged lands.

(f) ''Redevelopment plan'' means the Hunters Point Shipyard Redevelopment Plan adopted by the agency pursuant to Chapter 4.5 (commencing with Section 33492) of Part 1 of Division 24 of the Health and Safety Code.

(g) ''Hunters Point trust lands'' means all lands, including tide and submerged lands, within the redevelopment area that presently, or upon conveyance out of federal ownership, are subject to the public trust.

(h) ''Hunters Point Shipyard'' or ''Shipyard'' means all that real property situate in the City and County of San Francisco, State of California, described as follows:

Beginning at the intersection of the southeasterly line of Fitch Street (64 feet wide) with the northeasterly line of Palou Avenue (80 feet wide), said intersection also being in the southerly line of the Lands of Lowpensky as described in that document filed in the Office of the County Recorder of said County in Book D238 Official Records at page 80; thence easterly along the southerly line of said Lands of Lowpensky to the southeasterly corner of the said Lands of Lowpensky being also the southwesterly corner of the Lands of the Regents of University of California as described in that document filed in the Office of the County Recorder of said County in Book C562 Official Records at page 582; thence easterly, northerly and northwesterly along the southerly, easterly and northeasterly lines of said Lands of the Regents to the northwesterly corner of said Lands of the Regents and also being the northeasterly corner of said Lands of Lowpensky. Thence northwesterly along the northeasterly line of said Lands of Lowpensky to the most westerly corner of said Lands of Lowpensky, being also a point in the northeasterly line of said Palou Avenue; thence northwesterly along the northeasterly line of said Palou Avenue to the southeasterly line of Griffith Street (64 feet wide); thence northeasterly along the

southeasterly line of said Griffith Street 200 feet to the southwesterly line of Oakdale Avenue (80.00 feet wide); thence northwesterly along the southwesterly line of said Oakdale Avenue, 32 feet to the centerline of said Griffith Street; thence northeasterly along the centerline of said Griffith Street 600 feet to the centerline of McKinnon Avenue (80 feet wide); thence southeasterly along the centerline of said McKinnon Avenue 664 feet to the centerline of said Fitch Street (64 feet wide); thence northeasterly along the centerline of said Fitch Street 320 feet to the northeasterly line of La Salle Avenue (80 feet wide); thence southeasterly along the northeasterly line of said La Salle Avenue, 632 feet to the northwesterly line of Earl Street (64 feet wide) and an angle point in the northwesterly boundary of Inchon Village as shown on the ''Map of Inchon Village'' filed in the Office of the County Recorder of said County in Book 17 of Condominium Maps at pages 112 through 130; thence southwesterly along the northwesterly boundary of said Inchon Village to the centerline of McKinnon Avenue (80 feet wide) and the most northerly corner of the Lands of Crisp Building, Inc., described in that certain document filed in the Office of the County Recorder of said County in Book D767 Official Records at page 1051; thence southwesterly, southeasterly and northeasterly along the northwesterly, southwesterly and southeasterly lines of said Lands of Crisp Building, Inc. to the most easterly corner of said Lands of Crisp Building, Inc., being also the most southerly corner of the land shown on the ''Parcel Map of Inchon and Solomon Village'' filed in the Office of the County Recorder of said County in Book 17 of Parcel Maps at page 77 and the centerline of said McKinnon Avenue; thence northeasterly along the southeasterly line of said Inchon and Solomon Village to the most easterly corner of said Inchon and Solomon village and the southwesterly line of Innes Avenue (80.00 feet wide); thence northwesterly along the southwesterly line of said Innes Avenue 641 feet to the centerline of said Earl Street (64 feet wide); thence northeasterly along the centerline of said Earl Street 40 feet to the centerline of said Innes Avenue; thence southeasterly along the centerline of said Innes Avenue 32 feet to the southeasterly line of said Earl Street; thence northeasterly along the southeasterly line of said Earl Street and its prolongation 3,151 feet to the 1948 Bulkhead Line as shown on the map entitled ''Real Estate Summary Map NAVFAC Drawing No. 1045757'' on file at the Department of the Navy, WESTDIV, San Bruno, California; thence southeasterly along said 1948 Bulkhead Line and the northeasterly line of that certain property conveyed in declaration of taking, Civil Action No. 22147 as shown on said summary map 2,553 feet more or less to a point on a line parallel with and 450 feet southeasterly of the southeasterly line of Boalt Street (64 feet wide), thence southwesterly along said parallel line a distance of 52 feet more

or less to the northeasterly line of the land described in the deed filed in Book 3677 of Official Records at page 349 in the Office of the County Recorder of said County, said northeasterly line being the arc of a curve, concave southwesterly and having a radius of 1,800 feet; thence southeasterly and southerly along said arc to the southeasterly prolongation of the northeasterly line of Evans Avenue (80 feet wide); thence northwesterly along said prolongation and said northeasterly line of Evans Avenue, to the 1941 Bulkhead Line as shown on said summary map; thence southerly along said 1941 Bulkhead Line, to the northeasterly line of that certain property conveyed in declaration of taking, Civil Action No. 36272 as shown on said summary map; thence southeasterly along said northeasterly line to said 1948 Bulkhead Line as shown on said summary map; thence southerly along said 1948 Bulkhead Line to the line dividing the City and County of San Francisco from the County of San Mateo; thence westerly along said county line 127 feet more or less to the southeasterly prolongation of the northeasterly line of Bancroft Avenue (80 feet wide); thence northwesterly along said prolongation and said northeasterly line of said Bancroft Avenue 7,484 feet more or less to the southeasterly line of said Fitch Street (64 feet wide); thence northeasterly along the southeasterly line of said Fitch Street 2,800 feet to the point of beginning.

(i) ''Hunters Point submerged lands'' means all that real property situate in the City and County of San Francisco, State of California, described as follows:

Beginning at the intersection of the northeasterly prolongation of the southeasterly line of Earl Street (64 feet wide) with the 1948 Bulkhead Line as shown on the map entitled ''Real Estate Summary Map NAVFAC Drawing No. 1045757'' on file at the Department of the Navy, WESTDIV, San Bruno, California; thence southeasterly along said 1948 Bulkhead Line and the northeasterly line of that certain property conveyed in declaration of taking, Civil Action No. 22147 as shown on said summary map to a line parallel with and 450 feet southeasterly of the southeasterly line of Boalt Street (64 feet wide); thence southwesterly along said parallel line to the northeasterly line of the land described in the deed filed in Book 3677 of Official Records at page 349 in the Office of the County Recorder of said county, said northeasterly line being the arc of a curve, concave southwesterly and having a radius of 1,800 feet; thence southeasterly and southerly along said arc to the southeasterly prolongation of the northeasterly line of Evans Avenue (80 feet wide); thence northwesterly along said prolongation and said northeasterly line of Evans Avenue to the 1941 Bulkhead Line as shown on said summary map; thence southerly along said 1941 Bulkhead Line to the northeasterly line of that certain property conveyed in declaration of taking, Civil Action No. 36272 as shown on said summary map;

thence southeasterly along said northeasterly line to said 1948 Bulkhead Line as shown on said summary map; thence southerly along said 1948 Bulkhead Line to the line dividing the City and County of San Francisco from the County of San Mateo; thence easterly along said county line to the United States Pierhead Line as shown on the map entitled ''Hunters Point Naval Shipyard, General Development Map, Key Map No. 1174922'' on file at the Department of the Navy, Western Division San Bruno, California; thence northeasterly and northwesterly along said Pierhead Line as shown on said General Development Map to said northeasterly prolongation of the southeasterly line of said Earl Street (64 feet wide); thence southwesterly along said prolongation of the southeasterly line of said Earl Street to the said 1948 Bulkhead Line and the point of beginning.

SEC. 13. Section 4.5 is added to Chapter 464 of the Statutes of 2002, to read as follows:

Sec. 4.5. Notwithstanding Section 6359 of the Public Resources Code or any other provision of law, the grant of the Hunters Point trust lands to the agency shall be deemed effective as of the effective date of this act, and the grant of the Hunters Point submerged lands to the agency shall be deemed effective upon conveyance by the federal government to the agency of any piers or other appurtenances located in part on the Hunters Point submerged lands.

SEC. 14. Section 9.5 is added to Chapter 464 of the Statutes of 2002, to read as follows:

Sec. 9.5. (a) Notwithstanding any other provision of this act, the buildings, or any portion of a building, identified by the State Historic Preservation Officer as contributors to the Hunters Point Commercial Drydock Historic District, commonly known as the Gatehouse (Building 204), Pumphouse 2 (Building 205), Pumphouse 3 (Building 140) and the Tool and Paint Building (Building 207), may be used for purposes not otherwise consistent with the public trust provided the trustee makes a finding that there are no trust uses available that would allow for the restoration and preservation of the space. Any lease renewal, extension, or granting of a new lease for a nontrust purpose shall require a new finding that no trust uses are then available that would allow for the restoration and preservation of the building, or a part of it.

(b) If any of the buildings described in subdivision (a) is used for a nontrust purpose, and is remodeled, renovated, or used in a manner that is inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings as implemented by the exchange agreement, the building shall be put to a public trust use from the commencement of the inconsistent remodel, renovation, or use, unless the continued nonpublic trust use is then

authorized to continue under Section 8 of Chapter 464 of the Statutes of 2002.

(c) If any of the buildings described in subdivision (a) are demolished, subsequent use of the land and any replacement structures shall be consistent with the public trust and the requirements of this act.

SEC. 15. Section 16 of Chapter 464 of the Statutes of 2002 is amended to read:

Sec. 16. Upon written agreement between the agency and the San Francisco Port Commission, and approval by the State Lands Commission, the agency may transfer some or all of the Hunters Point trust lands to the city. All of the right, title, and interest granted to the agency under this act in any lands transferred to the city under this section shall, upon transfer, be granted to and vest in the city. The city, by and through its port commission, shall hold the transferred lands subject to the public trust and shall assume authority as trust administrator over those lands. Lands transferred to the city under this section shall be subject to the Burton Act and shall no longer be subject to this act, except that Section 9.5 of this act shall remain applicable to those lands.

SEC. 16. Nothing in this act may be construed to nullify the trustee's obligations for increasing, improving, and preserving the community's supply of low- and moderate-income housing imposed by the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), including, but not limited to, the requirements of Sections 33334.2 and 33413 of the Health and Safety Code.

SEC. 17. Nothing in this act may be construed to authorize the development of housing on public trust land.

SEC. 18. The Legislature finds and declares that, because of the unique circumstances applicable only to the trust lands described in this act, relating to the transfer of the Hunters Point Shipyard out of federal ownership, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

CHAPTER 436

An act to add and repeal Chapter 14 (commencing with Section 15800) of Part 3 of Division 9 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

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

(1) In California, several home- and community-based programs enable older persons and persons with disabilities to live in their homes rather than in nursing homes. Each of these programs uses a separate assessment instrument to determine the client's functional abilities and the types of supportive services that will best enable the client to maintain self-sufficiency.

(2) Aggregate long-term care data collected at the state level are seriously flawed, as a result of differences in the types of data collected and inconsistencies in the definition of specific data elements among programs.

(3) Due to the use of different assessment instruments, it is not possible to compare long-term care data for residents of nursing homes, clients served by a home health agency, or participants in home- and community-based programs, such as the In-Home Supportive Services program, the Multipurpose Senior Services Program, adult day programs, and adult day health care programs.

(4) The process of providing appropriate care at the least restrictive level is based on a high quality assessment of the care and service needs of the individual, the availability of all components of the mix of necessary care or services within a geographic area, and the ability to fund payment for the care or services, either through government or private means.

(5) The Minimum Data Set-Home Care (MDS-HC) is a uniform assessment instrument that shares a common language with the Minimum Data Set (MDS) for nursing facilities and the Outcome and Assessment Information Set (OASIS) instrument used by home health agencies. This assessment instrument is oriented to obtaining specific information about the client's functional abilities and needs.

(6) Implementing the uniform assessment tool is a critical step in the development and implementation of an integrated long-term care service system.

(b) Therefore, it is the intent of the Legislature in enacting this act to do all of the following:

(1) Test the efficacy of a uniform, automated screening and eligibility assessment tool for all persons accessing long-term care services in a specific geographic area.

(2) Ensure the use of an assessment instrument that recognizes that many older and disabled people have both health care and social care needs, which will be provided from a number of sources and funding streams.

(3) Enable agencies to work together so that assessment and subsequent care planning are person-centered, effective, and coordinated.

(4) Ensure that agencies and programs do not duplicate each other's assessments and that the data collected are consistent. A uniform assessment tool can guide both clinical management and policy decisionmaking processes, so that health and community programs can serve the right person, in the right setting, at the right time.

(5) Ensure that assessments are performed in a timely manner in order to expedite service delivery.

(6) Evaluate the potential adoption of the MDS-HC statewide to improve planning, funding, and service delivery.

SEC. 2. Chapter 14 (commencing with Section 15800) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 14. HOME CARE ASSESSMENT PILOT PROJECT

15800. (a) The County of San Mateo shall adopt the use of the Minimum Data Set-Home Care (MDS-HC) assessment instrument for use, until December 31, 2008, by all home- and community-based programs within the county that serve elderly and disabled persons with the primary goal of enabling them to continue to live in their homes as independently as possible. These programs may include the Multipurpose Senior Services Program, the In-Home Supportive Services program, adult day health care programs, and adult day programs.

(b) For purposes of this chapter, the "Minimum Data Set-Home Care (MDS-HC) assessment instrument" means a uniform assessment instrument that shares a common language with Minimum Data Set (MDS) for nursing facilities and the Outcome and Assessment Information Set (OASIS) instrument used by home health agencies, and that is oriented to obtaining specific information about the client's functional abilities and needs.

15801. (a) This chapter shall not modify existing program eligibility requirements, reporting timeframes, or other program standards.

(b) Home health agencies licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code shall not be subject to the requirements of this chapter.

15802. To ensure that program staff are adequately trained, the use of the MDS-HC assessment instrument pursuant to this chapter shall be phased in, beginning with the Multipurpose Senior Services Program, and the AIDS case management services, Linkages, and In-Home Supportive Services programs administered through the Aging and

Adult Services Division of the San Mateo County Health Services Agency. If the County of San Mateo determines that the use of the MDS-HC assessment instrument is successful in those programs, it shall expand the implementation of the use of the MDS-HC assessment instrument to include other home- and community-based programs, including adult day care and adult day health care.

15803. (a) The county shall seek funding for the evaluation of the use of the MDS-HC assessment instrument by an independent research organization. The results of the evaluation shall be reported to the Legislature, and to the Long-Term Care Council established pursuant to Section 12803.2 of the Government Code, on or before May 31, 2009.

(b) State funds shall not be appropriated for purposes of this chapter. The county shall only be required to implement this chapter to the extent that the county receives federal or private funds for that purpose.

15804. This chapter shall become inoperative on July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Due to the unique circumstances concerning the County of San Mateo, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, this act is necessarily applicable only to the County of San Mateo.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 437

An act to add Sections 2987.2, 4984.75, and 4996.65 to the Business and Professions Code, and to add Article 4 (commencing with Section 128454) to Chapter 5 of Part 3 of Division 104 of the Health and Safety Code, relating to health professions.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

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

(a) An adequate supply of licensed mental health service providers is critical to ensuring the health and well-being of the citizens of California, particularly those who live in multicultural, linguistically diverse, and medically underserved areas.

(b) The California Mental Health Planning Council has identified the shortage of human resources at all levels as one of the most urgent issues facing the mental health system. The shortage is most acute for child psychiatrists, licensed clinical social workers, and especially for multilingual and multicultural staff in all mental health occupations.

(c) In an effort to address the crisis facing the mental health system, the California Mental Health Planning Council developed the Human Resources Project that is directed by its Human Resources Committee. Beginning in 2001, the project convened focus groups targeting social workers from three of the most prevalent ethnic communities: Latino, Asian/Pacific Islander, and African-American. The focus groups were conducted in collaboration with the California Institute for Mental Health and funded by the State Department of Mental Health and the Zellerbach Family Fund.

(d) The Human Resources Project's September 2002 report entitled ''Human Resources Pilot Ethnic Focus Group Project: Summary of Recommendations'' found that financial barriers to practice was the primary reason cited by the participants. All participant groups indicated that they had encountered serious difficulty in meeting the expenses of graduate school while struggling with living and child care expenses. All groups advocated for additional forms of financial assistance, like the loan forgiveness programs currently available to doctors and nurses.

SEC. 2. Section 2987.2 is added to the Business and Professions Code, to read:

2987.2. In addition to the fees charged pursuant to Section 2987 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

SEC. 3. Section 4984.75 is added to the Business and Professions Code, to read:

4984.75. In addition to the fees charged pursuant to Section 4984.7 for the biennial renewal of a license pursuant to Section 4984, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

SEC. 4. Section 4996.65 is added to the Business and Professions Code, to read:

4996.65. In addition to the fees charged pursuant to Section 4996.6 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

SEC. 5. Article 4 (commencing with Section 128454) is added to Chapter 5 of Part 3 of Division 104 of the Health and Safety Code, to read:

Article 4. Licensed Mental Health Service Provider Education Program

128454. (a) There is hereby created the Licensed Mental Health Service Provider Education Program within the Health Professions Education Foundation.

(b) For purposes of this article, the following definitions shall apply:

(1) ''Licensed mental health service provider'' means a psychologist, marriage and family therapist, and licensed clinical social worker.

(2) ''Mental health professional shortage area'' means an area designated as such by the Health Resources and Services Administration (HRSA) of the United States Department of Health and Human Services.

(c) Commencing January 1, 2005, any licensed mental health service provider who provides direct patient care in a publicly funded facility or a mental health professional shortage area may apply for grants under the program to reimburse his or her educational loans related to a career as a licensed mental health service provider.

(d) The Health Professions Education Foundation shall make recommendations to the director of the office concerning all of the following:

(1) A standard contractual agreement to be signed by the director and any licensed mental health service provider who is serving in a publicly funded facility or a mental health professional shortage area that would require the licensed mental health service provider who receives a grant under the program to work in the publicly funded facility or a mental health professional shortage area for at least one year.

(2) The maximum allowable total grant amount per individual licensed mental health service provider.

(3) The maximum allowable annual grant amount per individual licensed mental health service provider.

(e) The Health Professions Education Foundation shall develop the program, which shall comply with all of the following requirements:

(1) The total amount of grants under the program per individual licensed mental health service provider shall not exceed the amount of educational loans related to a career as a licensed mental health service provider incurred by that provider.

(2) The program shall keep the fees from the different licensed providers separate to ensure that all grants are funded by those fees collected from the corresponding licensed provider groups.

(3) A loan forgiveness grant may be provided in installments proportionate to the amount of the service obligation that has been completed.

(4) The number of persons who may be considered for the program shall be limited by the funds made available pursuant to Section 128458.

128456. In developing the program established pursuant to this article, the Health Professions Education Foundation shall solicit the advice of representatives of the Board of Behavioral Science Examiners, the Board of Psychology, the State Department of Mental Health, the California Mental Health Directors Association, the California Mental Health Planning Council, professional mental health care organizations, the California Healthcare Association, the Chancellor of the California Community Colleges, and the Chancellor of the California State University. The foundation shall solicit the advice of representatives who reflect the demographic, cultural, and linguistic diversity of the state.

128458. There is hereby established in the State Treasury the Mental Health Practitioner Education Fund. The moneys in the fund, upon appropriation by the Legislature, shall be available for expenditure by the Office of Statewide Health Planning and Development for purposes of this article.

CHAPTER 438

An act to add Section 2115 to the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. The Legislature hereby finds and declares the following:

(a) California is facing an extreme shortage of primary care physicians, especially in clinics and underserved areas, which are areas of the state where other medical professionals are unwilling to practice.

(b) Having more physicians in clinics now and in the future will help to alleviate the burden on existing physicians and will help to ensure access to primary care for clinic patients.

(c) Since most clinics specialize in primary care or family practice rather than subspecialty care, this act will enable, and possibly encourage, more primary care physicians to take fellowships in primary care or family practice medicine.

SEC. 2. It is the intent of the Legislature, given that many clinics exist in medically underserved areas, to help address access to care issues, which is a major concern for California, by making certain that more patients are seen by qualified medical personnel in these underserved areas.

SEC. 3. Section 2115 is added to the Business and Professions Code, to read:

2115. (a) Physicians who are not citizens but are legally admitted to the United States and who seek postgraduate study may, after application to and approval by the Division of Licensing, be permitted to participate in a fellowship program in a specialty or subspecialty field, providing the fellowship program is given in a clinic or hospital in a medically underserved area of this state that is licensed by the State Department of Health Services or is exempt from licensure pursuant to subdivision (b) or (c) of Section 1206 of the Health and Safety Code, and providing service is satisfactory to the division. These physicians shall at all times be under the direction and supervision of a licensed, board certified physician and surgeon who has an appointment with a medical school in California and is a specialist in the field in which the fellow is to be trained. The supervisor, as part of the application process, shall submit his or her curriculum vitae and a protocol of the fellowship program to be completed by the foreign fellow. Approval of the program and supervisor is for a period of one year, but may be renewed annually upon application to and approval by the division. The approval may not be renewed more than four times. The division may determine a fee, based on the cost of operating this program, which shall be paid by the applicant at the time the application is filed.

(b) Except to the extent authorized by this section, no visiting physician may engage in the practice of medicine or receive compensation therefor. The time spent under appointment in a clinic pursuant to this section may not be used to meet the requirements for licensure under Section 2102.

(c) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school

located in a foreign country from participating in any program established pursuant to this section.

(d) For purposes of this section, a medically underserved area means a federally designated Medically Underserved Area, a federally designated Health Professional Shortage Area, and any other clinic or hospital determined by the board to be medically underserved. Clinics or hospitals determined by the board pursuant to this subdivision shall be reported to the Office of Statewide Health Planning and Development.

CHAPTER 439

An act to amend Section 1794.41 of the Civil Code, and to amend Sections 116, 116.5, and 1634 of, and to add Part 8 (commencing with Section 12800) to Division 2 of, the Insurance Code, relating to service contracts.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 1794.41 of the Civil Code is amended to read:

1794.41. (a) No service contract covering any motor vehicle, home appliance or home electronic product purchased for use in this state may be offered for sale or sold unless all of the following elements exist:

(1) The contract shall contain the disclosures specified in Section 1794.4 and shall disclose in the manner described in that section the buyer's cancellation and refund rights provided by this section.

(2) The contract shall be available for inspection by the buyer prior to purchase and either the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract, and the provisions of this section relating to contract delivery, cancellation, and refund, shall be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself shall be delivered to the buyer. If a service contract for a home appliance or a home electronic product is sold by means of a telephone solicitation, the seller may elect to satisfy the requirements of this paragraph by mailing or delivering the contract to the buyer not later than 30 days after the date of the sale of the contract.

(3) The contract is applicable only to items, costs, and time periods not covered by the express warranty. However, a service contract may run concurrently with or overlap an express warranty if (A) the contract

covers items or costs not covered by the express warranty or (B) the contract provides relief to the purchaser not available under the express warranty, such as automatic replacement of a product where the express warranty only provides for repair.

(4) The contract shall be cancelable by the purchaser under the following conditions:

(A) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, within the first 30 days after receipt of the contract, the full amount paid shall be refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, and if no claims have been made against the contract. If a claim has been made against the contract either within the first 60 days after receipt of the contract, or with respect to a used motor vehicle without manufacturer warranties, home appliance, or home electronic product, within the first 30 days after receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract.

(B) Unless the contract provides for a longer period for obtaining a full refund, after the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, after the first 30 days after the receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract. In addition, the seller may assess a cancellation or administrative fee, not to exceed 10 percent of the price of the service contract or twenty-five dollars ($25), whichever is less.

(C) If the purchase of the service contract was financed, the seller may make the refund payable to the purchaser, the assignee, or lender of record, or both.

(b) Nothing in this section shall apply to a home protection plan that is issued by a home protection company which is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(c) The amendments to this section made at the 1988 portion of the 1987–88 Regular Session of the Legislature that extend the application of this section to service contracts on home appliances and home electronic products shall become operative on July 1, 1989.

(d) If any provision of this section conflicts with any provision of Part 8 (commencing with Section 12800) of Division 2 of the Insurance Code, the provision of the Insurance Code shall apply instead of this section.

SEC. 2. Section 116 of the Insurance Code is amended to read:

116. (a) Automobile insurance includes insurance of automobile owners, users, dealers, or others having insurable interests therein, against hazards incident to ownership, maintenance, operation, and use of automobiles, other than loss resulting from accident or physical injury, fatal or nonfatal, to, or death of, any natural person.

(b) Automobile insurance also includes any contract of warranty, or guaranty that promises service, maintenance, parts replacement, repair, money, or any other indemnity in event of loss of or damage to a motor vehicle or a trailer, as defined by Section 630 of the Vehicle Code, or any part thereof from any cause, including loss of or damage to or loss of use of the motor vehicle or trailer by reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage if made by a warrantor or guarantor who is doing an insurance business.

(c) Automobile insurance also includes any agreement that promises repair or replacement of a motor vehicle, or part thereof, after a mechanical or electrical breakdown, at either no cost or a reduced cost for the agreement holder. However, automobile insurance does not include a vehicle service contract subject to Part 8 (commencing with Section 12800) of Division 2, or an agreement deemed not to be insurance under that part.

(d) The doing or proposing to do any business in substance equivalent to the business described in this section in a manner designed to evade the provisions of this section is the doing of an insurance business.

SEC. 3. Section 116.5 of the Insurance Code is amended to read:

116.5. An express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of the lubricant, treatment, fluid, or additive, shall constitute automobile insurance, unless each of the following requirements is met:

(a) The obligor is the primary manufacturer of the product. For the purpose of this section, ''manufacturer'' means a person who can prove clearly and convincingly that the per unit cost of owned or leased capital goods, including the factory, plus the per unit cost of nonsubcontracted labor, exceeds twice the per unit cost of raw materials. ''Manufacturer'' also means a person who has formulated or produced, and continuously offered in this state for more than 10 years, a motor vehicle lubricant, treatment, fluid, or additive.

(b) The commissioner has issued a written determination that the obligor is a manufacturer as defined in subdivision (a). An obligor shall

provide the commissioner with all information, documents, and affidavits reasonably necessary for this determination to be made. Approval by the commissioner shall be obtained prior to January 1, 2004, or prior to the issuance of a warranty subject to this section, whichever is later. If the commissioner determines that the obligor is not a manufacturer, the obligor may obtain a hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The agreement covers only damage incurred while the product was in the vehicle.

(d) The agreement is provided automatically with the product at no extra charge.

SEC. 4. Section 1634 of the Insurance Code is amended to read:

1634. No license is required under this chapter for a person to act in any of the following capacities:

(a) As a full-time salaried employee of a title insurer, controlled escrow company or an underwritten title company.

(b) As a salaried solicitor or agent of a mortgage insurer or mortgage guaranty insurer provided no part of the compensation of the person is on a commission basis.

(c) As the attorney in fact of a reciprocal or interinsurance exchange.

(d) As a life and disability insurance analyst.

(e) As a surplus line broker or special lines surplus line broker.

(f) As a bail agent, bail solicitor or bail permittee.

(g) As an employee, not paid on a commission basis, of a home protection company, including, but not limited to, soliciting, negotiating, or effecting home protection contracts by the employee.

(h) As an employee of a creditor who secures and forwards information for the purpose of obtaining group credit life, credit disability, or involuntary unemployment insurance, or for enrolling individuals in a group credit life, credit disability, or involuntary unemployment insurance plan or issuing certificates of insurance thereunder where no commission is paid to the employee for those services.

SEC. 5. Part 8 (commencing with Section 12800) is added to Division 2 of the Insurance Code, to read:

PART 8. SERVICE CONTRACTS

12800. The following definitions apply for purposes of this part:

(a) ''Motor vehicle'' means a self-propelled device operated solely or primarily upon roadways to transport people or property. However, ''motor vehicle'' shall not include a self-propelled vehicle, or a

component part of such a vehicle, that has any of the following characteristics:

(1) Has a gross vehicle weight rating of 30,000 pounds or more, and is not a recreational vehicle as defined by Section 18010 of the Health and Safety Code.

(2) Is designed to transport more than 10 passengers, including the driver.

(3) Is used in the transportation of materials considered hazardous pursuant to the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), as amended.

(b) ''Watercraft'' means a vessel, as defined in Section 21 of the Harbors and Navigation Code.

(c) ''Vehicle service contract'' means a contract or agreement for a separately stated consideration and for a specific duration to repair, replace, or maintain a motor vehicle or watercraft, or to indemnify for the repair, replacement, or maintenance of a motor vehicle or watercraft because of an operational or structural failure due to a defect in materials or workmanship, or due to normal wear and tear. A vehicle service contract may also provide for the incidental payment of indemnity under limited circumstances only in the form of the following additional benefits: coverage for towing, substitute transportation, emergency road service, rental car reimbursement, road hazard protection, reimbursement of deductible amounts under a manufacturer's warranty, and reimbursement for travel, lodging, or meals. ''Vehicle service contract'' also includes an agreement, for separately stated consideration, that promises repairs at a discount to the purchaser for any combination of parts and labor in excess of 20 percent.

(d) ''Service contract administrator'' or ''administrator'' means any person, other than an obligor, who performs or arranges, directly or indirectly, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a vehicle service contract, and who also performs or arranges, directly or indirectly, any of the following activities with respect to vehicle service contracts in which a seller located within this state is the obligor:

(1) Providing sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(e) ''Purchaser'' means any person who purchases a vehicle service contract from a seller.

(f) ''Seller'' means either of the following:

(1) With respect to motor vehicles, a dealer or lessor-retailer licensed in one of those capacities by the Department of Motor Vehicles and who sells vehicle service contracts incidental to his or her business of selling or leasing motor vehicles.

(2) With respect to watercraft, a person who sells vehicle service contracts incidental to that person's business of selling or leasing watercraft vehicles.

(g) ''Obligor'' means the entity legally obligated under the terms of a service contract.

12805. (a) Notwithstanding Sections 103 and 116, the following types of agreements shall not constitute insurance:

(1) A vehicle service contract that does each of the following:

(A) Names as the obligor a motor vehicle manufacturer or distributor licensed in that capacity by the Department of Motor Vehicles, or a watercraft manufacturer.

(B) Covers only motor vehicles or watercraft manufactured, distributed, or sold by that obligor.

(2) A vehicle service contract in which the obligor is a seller, provided that the obligor complies with all provisions of this part except Section 12815.

(3) A vehicle service contract sold by a seller in which the obligor is a party other than the seller, provided that the obligor complies with all provisions of this part.

(4) An agreement in which the obligor is a motor vehicle or watercraft part manufacturer, distributor, or retailer, that covers no more than the following items:

(A) The repair or replacement of a part manufactured, distributed, or retailed by that obligor.

(B) Consequential and incidental damage resulting from the failure of that part.

(5) An agreement in which the obligor is a repair facility, that is entered into pursuant and subsequent to repair work previously performed by that repair facility, and that is limited in scope to the following:

(A) The repair or replacement of the part that was previously repaired.

(B) Consequential and incidental damage resulting from the failure of that part.

(6) A maintenance service contract with a term of one year or less that does not contain provisions for indemnification and does not provide a discount to the purchaser for any combination of parts and labor in excess of 20 percent.

(b) The types of agreements described in paragraphs (4), (5), and (6) of subdivision (a) are exempt from all provisions of this part.

(c) Vehicle service contracts described in paragraph (1) are exempt from the provisions of Sections 12815, 12830, 12835, and 12845.

12810. (a) No person, other than a seller, shall sell or offer for sale a vehicle service contract to a purchaser.

(b) No obligor shall use a seller as a fronting company and no seller shall act as a fronting company. For purposes of this section, a ''fronting company'' is a seller that authorizes a third-party obligor to use its name or business to evade or circumvent the provisions of subdivision (a).

12815. (a) An obligor who is not a seller shall possess a vehicle service contract provider license. A vehicle service contract provider license shall be applied for and maintained, and its holder shall be subject to disciplinary action, as if it were a fire and casualty broker-agent license, with the following exceptions:

(1) An applicant for a vehicle service contract provider license is exempt from having to satisfy prelicensing and continuing education requirements, and from having to pass a qualifying exam.

(2) The fee to obtain or renew a vehicle service contract provider license shall be the same as that to obtain or renew a certificate of authority to operate a motor club.

(b) A service contract administrator shall be licensed as a fire and casualty broker-agent.

12820. (a) Prior to offering a vehicle service contract form to a purchaser or providing a vehicle service contract form to a seller, an obligor shall file with the commissioner a specimen of that vehicle service contract form.

(b) A vehicle service contract form shall comply with all of the following requirements:

(1) The vehicle service contract shall include a disclosure in substantially the following form: ''Performance to you under this contract is guaranteed by a California approved insurance company. You may file a claim with this insurance company if any promise made in the contract has been denied or has not been honored within 60 days the date proof of loss was filed. The name and address of the insurance company is: (insert name and address). If you are not satisfied with the insurance company's response, you may contact the California Department of Insurance at 1-800-927-4357.''

(2) All vehicle service contract language that excludes coverage, or imposes duties upon the purchaser, shall be conspicuously printed in boldface type no smaller than the surrounding type.

(3) The vehicle service contract shall do each of the following:

(A) State the obligor's full corporate name or a fictitious name approved by the commissioner, the obligor's mailing address, the obligor's telephone number, and the obligor's vehicle service contract provider license number.

(B) State the name of the purchaser and the name of the seller.

(C) Conspicuously state the vehicle service contract's purchase price.

(D) Comply with Sections 1794.4 and 1794.41 of the Civil Code.

(E) Name the administrator, if any, and provide the administrator's license number.

(4) If the vehicle service contract excludes coverage for preexisting conditions, the contract must disclose this exclusion in 12-point type.

(c) The following benefits constitute insurance, whether offered as part of a vehicle service contract or in a separate agreement:

(1) Indemnification for a loss caused by misplacement, theft, collision, fire, or other peril typically covered in the comprehensive coverage section of an automobile insurance policy, a homeowner's policy, or a marine or inland marine policy.

(2) Locksmith services, unless offered as part of an emergency road service benefit.

12825. (a) In addition to any other right of rescission an obligor or purchaser may have, an obligor may include a provision in a service contract that reserves to the obligor the right to cancel the service contract within 60 days under the following conditions:

(1) Notice of cancellation is mailed to the purchaser postmarked before the 61st day after the date the contract was sold by the seller.

(2) The obligor provides the purchaser with a refund equal to the full purchase price stated on the contract within 30 days from the date of cancellation. However, if the obligor has paid a claim, or has advised the purchaser in writing that it will pay a claim, it may provide a pro rata refund, less the amount of any claims paid prior to cancellation.

(3) The service contract ceases to be valid no less than five days after the postmark date of the notice.

(4) The notice states the specific grounds for the cancellation.

(b) An obligor may at any time cancel a service contract for nonpayment by the purchaser, conditioned upon each of the following:

(1) Notice of cancellation is mailed to the purchaser.

(2) If any refund is owed pursuant to Section 1794.41 of the Civil Code, the refund is paid within 30 days of the date of cancellation.

(3) The service contract ceases to be valid no less than five days after the postmark date of the notice.

(4) The notice states the specific grounds for the cancellation.

(c) An obligor may at any time cancel a service contract for material misrepresentation or fraud by the purchaser, conditioned upon each of the following:

(1) Notice of cancellation is mailed to the purchaser

(2) A pro rata refund of the purchase price stated on the contract is paid within 30 days of the date of cancellation.

(3) The notice states the specific nature of the misrepresentation.

(d) An obligor who cancels a contract is liable for any claim reported to a person designated in the contract for the reporting of claims if the claim is reported prior to the effective date of cancellation and is covered

by the contract. For the purpose of this subdivision, a purchaser is deemed to have reported a claim if he or she has completed the first step required under the contract for reporting a claim.

(e) An obligor canceling a contract pursuant to subdivision (b), (c), or (d) who pays a claim, or has advised the purchaser in writing that he or she will pay a claim, may provide a prorata rather than full refund, less the amount of any claims paid prior to cancellation.

12830. (a) Prior to incurring an obligation under a vehicle service contract, an obligor shall file with the commissioner, to the attention of the legal division, and receive the commissioner's approval to use, a copy of an insurance policy covering 100 percent of the obligor's vehicle service contract obligations. The policy must be issued by an insurer admitted in this state and authorized by the commissioner to issue that insurance in this state. The policy may also be issued by a risk retention group, as that term is defined in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is in full compliance with the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 and following), is in good standing in its domiciliary jurisdiction, and has registered with the commissioner pursuant to Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1. The insurance required by this subdivision shall be subject to the following:

(1) The insurer or risk retention group shall, at the time the policy is filed with the commissioner, and continuously thereafter, be rated ''B++'' or better by A. M. Best Company, Inc., maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars ($15,000,000), and annually file audited financial statements with the commissioner.

(2) The commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than fifteen million dollars ($15,000,000) but at least equal to ten million dollars ($10,000,000) to issue the insurance required by this paragraph if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not less than 3 to 1.

(3) An obligor required to maintain insurance pursuant to this paragraph who is an affiliate of a distributor of new motor vehicles licensed as such in any state prior to January 1, 2003, and continuously thereafter, is exempt from the requirement that its insurer or risk retention group satisfy the rating, surplus, and paid-in capital requirements of paragraph (1). This exemption shall apply only if the distributor sold or distributed at least 25,000 new motor vehicles to licensed dealers in the preceding five years. For the purpose of this

paragraph, ''affiliate'' has the meaning set forth in subdivision (a) of Section 1215.

(b) An insurance policy filed with the commissioner pursuant to subdivision (a) shall state the name of the obligor. The policy shall provide that all purchasers of vehicle service contracts shall be entitled to satisfaction by the insurer of any and all obligations arising under vehicle service contracts of the named obligor, upon the existence of all of the following conditions and no others:

(1) The service contract obligor refuses or fails to satisfy an obligation arising under the vehicle service contract within 60 days of the date the purchaser submits proof of loss to the obligor.

(2) The purchaser provides written notice to the insurer that the obligor has failed to comply with an obligation under the vehicle service contract.

(3) The purchaser possesses a vehicle service contract sold after the inception and prior to any cancellation of the insurance policy required by subdivision (a), and the vehicle service contract recites the name of the obligor that is insured by the policy as the obligor of the service contract.

(c) An insurer's liability under a policy filed pursuant to subdivision (a) shall not be negated by any failure of the seller, an administrator, the obligor, or agents of any of these persons, to report the issuance of a vehicle service contract or to remit moneys to another person pursuant to a contractual agreement. The policy must state that the insurer is deemed to have received the premium for the policy upon payment by the purchaser for a vehicle service contract insured by that policy.

(d) An obligor may have on file with the commissioner only one active policy from one insurer at any time.

(e) No policy cancellation by an insurer shall be valid unless a notice of the intent to cancel the policy was filed with the commissioner 30 days prior to the effective date of the cancellation, or 10 days prior in the event that the cancellation is due to fraud, material misrepresentation, or defalcation by the obligor or its administrator, if any.

12835. (a) In the event an insurer cancels a policy that it has filed with the commissioner pursuant to Section 12830, the obligor named on the policy shall do either of the following:

(1) File a copy of a new policy with the commissioner, before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy.

(2) Discontinue acting as an obligor as of the termination date of the policy until a new policy becomes effective and has been accepted and acknowledged by the commissioner.

(b) This section shall not relieve an obligor from any obligation incurred under service contracts issued with its name as obligor prior to the date the policy was terminated.

12840. (a) Every obligor or its administrator shall maintain at its principal office complete and accurate accounts, books, and records of all transactions among the obligor, its administrator, if any, sellers, insurers, and purchasers. Records maintained pursuant to this section shall be made available to the commissioner upon reasonable request. Any computerized recordkeeping system must be capable of producing a legible hard copy of all required records. Accounts, books, and records shall include:

(1) A complete set of accounting records, including, but not limited to, a general ledger, cash receipts and disbursements journals, accounts receivable registers, and accounts payable registers.

(2) Copies of each type of service contract sold.

(3) The name and address of each service contract purchaser to the extent that the name and address have been furnished by the service contract purchaser.

(4) A list of the locations where service contracts are marketed, sold, or offered for sale.

(5) Written claims files which shall contain at least the dates and descriptions of claims related to the service contracts.

(b) All required records pertaining to a service contract shall be maintained by the obligor, its administrator, or the insurer underwriting the contract, for at least three years after the expiration of the contract.

(c) Every insurer that has issued a policy to an obligor shall have an ongoing right to access that obligor's books and records in order to permit the insurer to fulfill all obligations to purchasers.

(d) The commissioner may examine and investigate the affairs of every obligor and any administrator of an obligor. Any examination or investigation shall be at the expense of the obligor or the administrator, in the discretion of the commissioner. Any information contained in the books and records, including, but not limited to, the identity and addresses of sellers and purchasers of service contracts, shall be confidential, except that the commissioner may use the information in any proceeding or investigation instituted against an obligor or an administrator.

(e) An obligor's failure to keep or maintain the required accounts, books, or records, or to provide the commissioner with full and immediate access to those records, shall be grounds for the immediate suspension or revocation of the obligor's vehicle service contract provider's license, and also shall be grounds for the commissioner to issue a cease and desist order pursuant to Section 1065.2.

12845. Any vehicle service contract obligor or administrator that provides vehicle service contract forms to sellers or purchasers, directly or indirectly, and fails to comply with Sections 12815, 12830 and 12835, is guilty of a public offense punishable by imprisonment in the state prison, or by a fine not exceeding five hundred thousand dollars ($500,000), or both, and shall be enjoined from further violations by a court of competent jurisdiction on petition of the commissioner. This section shall not apply to a seller who is an obligor under vehicle service contracts it sells. The commissioner may issue a cease and desist order pursuant to Section 1065.2 to an obligor or administrator who violates Section 12830 or 12835. The commissioner may issue a cease and desist order pursuant to Section 12921.8 to an obligor or administrator in violation of Section 12815.

12850. (a) An obligor has the burden of proving that a claim is not covered by a service contract. An obligor has the burden of proving that a claim settlement amount is proper under the terms of the contract.

(b) No seller of a service contract who participates in or influences, directly or indirectly, the processing, administration, or adjustment of claims, shall enter into any agreement or understanding the effect of which is to make the amount of the seller's commission or compensation contingent upon savings effected in the adjustment, settlement, or payment of losses covered by the contract.

12855. The commissioner may adopt regulations necessary or desirable to implement this chapter.

12860. The provisions of this part are severable. If any provision of this part 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.

12865. A promise to refund some or all of the purchase price of a service contract if the purchaser does not file any claims, files a limited number of claims, or files claims the dollar amount of which does not exceed a set amount or percentage, shall constitute insurance, unless subdivisions (a) and (b) are satisfied. If conditions (a) and (b) are satisfied, the promise shall constitute a refund agreement.

(a) The promise is offered without separate consideration, and the promisor complies with subdivisions (a)(1), (a)(2) or (a)(3).

(1) The promisor is a service contract obligor, the promise is contained within a service contract, and the obligor has complied with all provisions of this part.

(2) The promisor is a seller, the refund agreement provides no benefits other than the refund of some or all of the purchase price, and the promisor utilizes a refund agreement administrator.

(3) The promisor is neither a seller nor a service contract obligor. Such a person shall be deemed a refund agreement obligor, and shall comply with subdivisions (c)(1), (c)(2) and (c)(3).

(b) A person other than the seller who performs or arranges, directly or indirectly, the collection, maintenance, or disbursement of moneys to compensate any party under a refund agreement, and who also provides sellers with refund agreement forms and participates in the adjustment of refund agreement claims, shall be deemed a refund agreement administrator, and shall comply with subdivision (b)(2).

(1) The sections enumerated in subdivision (b)(2) shall apply to refund agreements and refund agreement administrators. In applying those sections, the terms vehicle service contract administrator, administrator and obligor shall instead mean refund agreement administrator, the word sold shall instead mean provided and the terms vehicle service contract and service contract shall instead mean refund agreement. The sections enumerated in subdivision (b)(2) shall be construed in accordance with the nature of refund agreement forms, refund agreement administrators, and the refund agreement business.

(2) The following sections shall apply and be interpreted pursuant to subdivision (b)(1): 12815(b); 12820(a), (b)(1), (b)(2), (b)(3)(A), (b)(3)(B), 12830(a), (a)(1), (a)(2), (b), (c), (d), (e); 12835; 12840; 12845; 12850; 12855.

(c) (1) The sections enumerated in subdivision (c)(2) shall apply to refund agreements and refund agreement obligors. In applying those sections, the terms vehicle service contract obligor and obligor shall instead mean refund agreement obligor, the word sold shall instead mean provided and the terms vehicle service contract and service contract shall instead mean refund agreement. The sections enumerated in subdivision (c)(2) shall be construed in accordance with the nature of refund agreement forms, refund agreement obligors, and the refund agreement business.

(2) The following sections shall apply and be interpreted pursuant to subdivision (c)(1): 12810(b); 12815(a); 12820(a), (b)(1), (b)(2), (3)(A), (3)(B); 12830(a), (a)(1), (a)(2), (b), (c), (d), (e); 12835; 12840; 12845; 12850; 12855.

(3) A refund agreement obligor may not promise any benefit other than a refund of some or all of the purchase price of a service contract if the purchaser does not file any claims, files a limited number of claims, or files claims the dollar amount of which does not exceed a set amount or percentage.

(4) No person other than a seller shall provide or offer to provide a refund agreement to a purchaser.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 7. This act shall become operative on July 1, 2004.

CHAPTER 440

An act to add Section 12401.71 to the Insurance Code, relating to title insurance.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 12401.71 is added to the Insurance Code, to read:

12401.71. (a) Notwithstanding Sections 12401.1 and 12401.7, a title insurer, underwritten title company, or controlled escrow company may use a new rate prior to 30 days after the filing if the new rate results in a reduction from an existing rate, the earlier effective date is set forth in the filing, and the new rate has been publicly displayed and made readily available to the public prior to its effective date.

(b) Any rate reduction filed by a title insurer, underwritten title company, or controlled escrow company pursuant to subdivision (a) shall be subject to the authority of the commissioner as set forth in this article and Article 6.7 (commencing with Section 12414.13).

(c) Five years from the effective date of this section, and within existing resources, the department shall review the reduced rates authorized by this section to determine if they are inadequate or if they increase the possibility of title insurers becoming insolvent. This review shall be in addition to any other authorized by statute.

CHAPTER 441

An act to amend Sections 987.65, 987.71, 987.775, and 988.4 of the Military and Veterans Code, relating to veterans, and making an appropriation therefor.

[Approved by Governor September 20, 2003. Filed with
Secretary of State September 22, 2003.]

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

SECTION 1. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, or the purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code, or the purchase price of a mobilehome converted to a fixture and improvement to the underlying real property in a mobilehome park that has been converted to a resident-owned subdivision, cooperative, condominium, or nonprofit corporation as set forth in Section 18555 of the Health and Safety Code, may not exceed the then current maximum Fannie Mae loan limit that is annually set by Fannie Mae for a single-family home.

(b) The purchase price of a mobilehome that is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, in addition to any assistance provided by the department to a veteran pursuant to subdivision (e) of Section 987.85, may not exceed one hundred twenty-five thousand dollars ($125,000).

(c) A veteran purchasing the home may advance, subject to Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department adds, under Section 987.69, to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(d) The purchase price of a farm to the department may not exceed 150 percent of the current maximum Fannie Mae loan limit described in subdivision (a). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount that the department adds, under Section 987.69, to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

SEC. 2. Section 987.71 of the Military and Veterans Code is amended to read:

987.71. (a) The purchaser shall make an initial payment of at least 2 percent of the selling price of the property. The department may waive

the initial payment in any case where the value of the property as determined by the department from an appraisal equals the amount to be paid by the department plus at least 5 percent. In the case of a purchase requiring a loan guaranty by the United States Department of Veterans Affairs, the department may waive the initial payment and the purchaser shall pay the loan guaranty fee, which may be added to the loan amount. The department may require the purchaser to pay a loan origination fee, not to exceed 1 percent of the loan amount, which may be added to the loan amount.

(b) The balance of the loan amount may be amortized over a period fixed by the department, not exceeding 40 years for farms or homes and not exceeding 30 years for mobilehomes located in mobilehome parks, as defined in Section 18214 of the Health and Safety Code, together with interest thereon at the rate determined by the department pursuant to Section 987.87 for these amortization purposes.

(c) The department may, in order to allow the veteran to purchase the home selected without incurring excessive monthly payments, at the time of initial purchase, postpone the commencement of payment of the principal balance for a period not to exceed five years if the veteran's current income meets the standards for purchase on these terms and if the department determines, in accordance with previously established criteria for these determinations, that the veteran's income can reasonably be expected to increase sufficiently within the five-year period to make the transition to fully amortized principal and interest payments, so long as the total term of the contract of purchase does not exceed 40 years, or 30 years where the contract relates to a mobilehome located in a mobilehome park, as defined in Section 18214 of the Health and Safety Code.

(d) The purchaser on any installment date may pay any or all installments still remaining unpaid.

(e) In any individual case, the department may for good cause postpone, from time to time, upon terms the department determines to be proper, the payment of the whole or any part of any installment of the purchase price or interest thereon.

(f) Each installment shall include an amount sufficient to pay the principal and interest on the participation contract to which the interest of the department is subject, and any amount as may be required by a covenant or provision contained in any resolution of issuance.

(g) When a purchaser makes an initial payment of less than 20 percent of the selling price of the property, the department shall do all of the following:

(1) Take prudent measures to minimize losses from loan defaults and loan delinquencies.

(2) (A) Ensure the continued financial solvency of the loan program by charging fees to cover the costs, as determined by the department, of any loan guaranty, primary mortgage insurance, or other similar arrangement.

(B) Fees charged under this paragraph may be included in the amount of the loan, collected in advance, or collected as part of the monthly payment.

(h) (1) Subject to paragraph (2), the department may provide initial payment assistance to lower income first-time purchasers by providing a deferred-payment second loan, upon which simple interest shall be charged at a rate established by the department.

(2) A deferred-payment second loan described in paragraph (1) is subject to all of the following conditions:

(A) The loan may not exceed 3 percent of the selling price of the farm or home.

(B) The loan shall be secured by a deed of trust.

(C) The loan shall be due and payable upon the payment in full of the contract or upon the sale or transfer of the farm or home.

SEC. 3. Section 987.775 of the Military and Veterans Code is amended to read:

987.775. Whenever the department proceeds under Section 987.77 to declare a forfeiture and to retain all payments made under the forfeited contract as rental paid for occupancy, the department may, in lieu of paying any net gain to the purchaser in accordance with Section 987.79, deposit that net gain into a segregated account in the Veterans' Farm and Home Building Fund of 1943 created to receive funds pursuant to this section. The funds in the account shall be accumulated until June 30 of each year, and any losses on the sales of forfeited properties during the fiscal year shall be deducted from the total of the net gains deposited in the account during the fiscal year. The department may expend the funds remaining in the account on June 30 each year, after deduction for losses on sales of forfeited properties, for purposes of assistance to lower income purchasers pursuant to subdivision (c), (e), or (h) of Section 987.71.

SEC. 4. Section 988.4 of the Military and Veterans Code is amended to read:

988.4. (a) For purposes of this section, ''purchaser'' includes any veteran whose only loan with the department is for the purpose of a home improvement on property that is the principal place of residence of the veteran.

(b) (1) Out of any money available in the Veterans' Farm and Home Building Fund of 1943, the department may advance to a purchaser upon his or her application, and under the policies as the department may, from time to time, prescribe, sums for the purpose of making alterations,

repairs, or improvements on or in connection with the principal place of residence of the purchaser.

(2) Notwithstanding any other provision of law, in making the advances described in paragraph (1), the department may secure that advance by issuing a deed of trust, a promissory note, or other security interest that is subordinate to any existing financing on the principal place of residence of the purchaser.

(c) The department shall be the sole judge of the need and desirability of making advances and the method of repayment by the purchaser under this section.

CHAPTER 442

An act to amend Section 791.12 of the Insurance Code, relating to underwriting.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 791.12 of the Insurance Code is amended to read:

791.12. No insurance institution or agent may base an adverse underwriting decision in whole or in part on the following:

(a) On the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism; provided, however, an insurance institution or agent may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision. The further information, when requested, shall create a conclusive presumption that the information is necessary to perform the requesting insurer's function in connection with an insurance transaction involving the individual and, when reasonably available, shall be furnished the requesting insurer and the individual, if applicable.

(b) On personal information received from an insurance-support organization whose primary source of information is insurance institutions; provided, however, an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as the result of information received from an insurance-support organization.

(c) On the fact that an individual has previously inquired and received information about the scope or nature of coverage under a residential fire or property insurance policy, if the information is received from an insurance-support organization whose primary source of information is insurance institutions and the inquiry did not result in the filing of a claim.

CHAPTER 443

An act to add Sections 14132.28 and 14132.29 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 14132.28 is added to the Welfare and Institutions Code, to read:

14132.28. (a) If the department decides to terminate or not renew a health facility's subacute care services provider contract, the department shall notify the health facility 30 days before the termination or nonrenewal becomes effective.

(b) (1) Once the department has notified the health facility pursuant to subdivision (a), the department shall provide guidance to the health facility regarding expectations for the transfer of patients. The guidance shall consider the need to minimize trauma of a patient due to transfer, and shall ensure, prior to any transfer or discharge, that the facility has complied with the transfer and discharge requirements of Section 1336.2 of the Health and Safety Code, subsection (a) of Section 483.12 of Title 42 of the Code of Federal Regulations, and any other state and federal laws applicable to the transfer and discharge of patients of a nursing facility, as defined in subdivision (k) of Section 1250 of the Health and Safety Code. The department's Medi-Cal division shall coordinate with the department's Licensing and Certification Division in developing the guidance for the protection of patients' transfer rights.

(2) Prior to any transfer, the health facility shall continue to provide the subacute level of services required by a patient and shall comply with state laws governing subacute staffing levels. The health facility shall continue to be paid commensurate with that subacute level of service. If the health facility fails to comply with applicable state laws regarding subacute staffing levels, the facility shall be paid at the facility's Medi-Cal nursing facility rate.

(3) Any health facility that has a subacute services provider contract that has been terminated or has not been renewed may not be reimbursed commensurate with the subacute level of service for patients admitted after the contract is terminated or not renewed, unless and until the facility obtains a new subacute services provider contract. The facility may be reimbursed commensurate with the subacute level of service where the patient returns to the facility during the bed-hold period. Where the patient returns to the facility following the bed-hold period, the facility shall be reimbursed at the facility's Medi-Cal nursing facility rate.

SEC. 2. Section 14132.29 is added to the Welfare and Institutions Code, to read:

14132.29. (a) A health facility that has a subacute services provider contract with the department under this chapter shall comply with the patient transfer and discharge requirements of this section.

(b) Before patients are transferred due to any change in the status of the license or operation of the facility, including the termination of the subacute services provider contract by the department, the facility shall comply with the transfer and discharge requirements of Section 1336.2 of the Health and Safety Code, subsection (a) of Section 483.12 of Title 42 of the Code of Federal Regulations, and any other state and federal laws applicable to the transfer and discharge of patients of a nursing facility, as defined in subdivision (k) of Section 1250 of the Health and Safety Code.

(c) All of the rights and procedures that apply to the appeal of the transfer or discharge of a nursing facility patient pursuant to the sections cited in subdivision (b) shall apply to an appeal pursuant to this subdivision. The facility shall ensure that each patient and patient's representative is notified of this right to appeal. The notification shall be in writing and shall be communicated in a language and manner that is understood by the patient or patient's representative.

CHAPTER 444

An act to amend Section 21350 of the Probate Code, relating to wills and trusts.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 21350 of the Probate Code is amended to read:

21350. (a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following:

(1) The person who drafted the instrument.

(2) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of, the person who drafted the instrument.

(3) Any partner or shareholder of any law partnership or law corporation in which the person described in paragraph (1) has an ownership interest, and any employee of that law partnership or law corporation.

(4) Any person who has a fiduciary relationship with the transferor, including, but not limited to, a conservator or trustee, who transcribes the instrument or causes it to be transcribed.

(5) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of a person who is described in paragraph (4).

(6) A care custodian of a dependent adult who is the transferor.

(7) A person who is related by blood or marriage to, is a domestic partner of, is a cohabitant with, or is an employee of, a person who is described in paragraph (6).

(b) For purposes of this section, ''a person who is related by blood or marriage'' to a person means all of the following:

(1) The person's spouse or predeceased spouse.

(2) Relatives within the third degree of the person and of the person's spouse.

(3) The spouse of any person described in paragraph (2).

In determining any relationship under this subdivision, Sections 6406, 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6 shall be applicable.

(c) For purposes of this section, the term ''dependent adult'' has the meaning as set forth in Section 15610.23 of the Welfare and Institutions Code and also includes those persons who (1) are older than age 64 and (2) would be dependent adults, within the meaning of Section 15610.23, if they were between the ages of 18 and 64. The term ''care custodian'' has the meaning as set forth in Section 15610.17 of the Welfare and Institutions Code.

(d) For purposes of this section, ''domestic partner'' means a domestic partner as defined under Section 297 of the Family Code.

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CHAPTER 445

An act to amend Sections 273, 506, 645, 646, 687, 688, 1547, 1780, 1938, 3359, 3369, 3376, 14256, 16201, and 16901 of, to add Section 216.3 to, and to repeal Section 14210 of, the Financial Code, relating to financial institutions.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 216.3 is added to the Financial Code, to read:

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

(1) ''Applicable Law'' means:

(A) With respect to any bank, Division 1.5 (commencing with Section 4800), and any of the following provisions of Division 1 (commencing with Section 99) of the Financial Code:

(i) Article 5 (commencing with Section 270) of Chapter 2.

(ii) Article 3 (commencing with Section 640) of Chapter 5.

(iii) Article 4.5 (commencing with Section 670) of Chapter 5.

(iv) Article 6 (commencing with Section 690) of Chapter 5.

(v) Chapter 6 (commencing with Section 750).

(vi) Chapter 10 (commencing with Section 1200).

(vii) Article 1 (commencing with Section 1400) of Chapter 11.

(viii) Chapter 12 (commencing with Section 1500).

(ix) Chapter 13.5 (commencing with Section 1700).

(x) Section 1936.

(xii) Section 1937.

(xiii) Section 1938.

(xiv) Section 1939.

(xv) Section 1945.

(xvi) Section 1951.

(xvii) Section 3359.

(xviii) Chapter 19 (commencing with Section 3500).

(xix) Chapter 21.5 (commencing with Section 3750).

(xx) Chapter 22 (commencing with Section 3800).

(B) With respect to any savings association, any provision of Division 1.5 (commencing with Section 4800) and Division 2 (commencing with Section 5000).

(C) With respect to any issuer of travelers checks, any provision of Chapter 14A (commencing with Section 1851) of Division 1.

(D) With respect to any insurance premium finance company, any provision of Division 7 (commencing with Section 18000).

(E) With respect to any business and development corporation, any provision of Division 15 (commencing with Section 31000).

(F) With respect to any credit union, any of the following provisions:

(i) Section 14252.

(ii) Section 14253.

(iii) Section 14255.

(iv) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

(v) Section 14401.

(vi) Section 14404.

(vii) Section 14408, only as that section applies to gifts to directors, volunteers, and employees, and the related family or business interests of the directors, volunteers, and employees.

(viii) Section 14409.

(ix) Section 14410.

(x) Article 5 (commencing with Section 14600) of Chapter 4 of Division 5.

(xi) Article 6 (commencing with Section 14650) of Chapter 4 of Division 5, excluding subdivision (a) of Section 14651.

(xii) Section 14803.

(xiii) Section 14851.

(xiv) Section 14858.

(xv) Section 14860.

(xvi) Section 14861.

(xvii) Section 14863.

(G) With respect to any person licensed to transmit money abroad, any provision of Chapter 14 (commencing with Section 1800).

(H) With respect to any person licensed to sell payment instruments, any provision of Division 16 (commencing with Section 33000).

(2) ''Licensee'' means any bank, savings association, credit union, transmitter of money abroad, issuer of payment instruments, issuer of travelers checks, insurance premium finance agency, or business and industrial development corporation that is authorized by the commissioner to conduct business in this state.

(b) Notwithstanding any other provision of this code that applies to a licensee or a subsidiary of a licensee, after notice and an opportunity to be heard, the commissioner may, by order that shall include findings of fact which incorporates a determination made in accordance with subdivision (e), levy civil penalties against any licensee or any subsidiary of a licensee who has violated any provision of applicable law, any order issued by the commissioner, any written agreement between the commissioner and the licensee or subsidiary of the licensee, or any condition of any approval issued by the commissioner. Notwithstanding any other provision of law, neither the commissioner

nor any employee of the department shall disclose or permit the disclosure of any record, record of any action, or information contained in a record of any action, taken by the commissioner under the provisions of this section, unless the action was taken pursuant to paragraph (2) of subdivision (b), to persons other than federal or state government employees who are authorized by statute to obtain the records in the performance of their official duties, unless the disclosure is authorized or requested by the affected licensee or the affected subsidiary of the licensee. The commissioner shall have the sole authority to bring any action with respect to a violation of applicable law subject to a penalty imposed under this section.

Except as provided in paragraphs (1) and (2) , any penalty imposed by the commissioner may not exceed one thousand dollars ($1,000) a day, provided that the aggregate penalty of all offenses in any one action against any licensee or subsidiary of a licensee shall not exceed fifty thousand dollars ($50,000).

(1) If the commissioner determines that any licensee or subsidiary of the licensee has recklessly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed five thousand dollars ($5,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed seventy-five thousand dollars ($75,000).

(2) If the commissioner determines that any licensee or subsidiary of the licensee has knowingly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed ten thousand dollars ($10,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed 1 percent of the total assets of the licensee or subsidiary of a licensee subject to the penalty.

(c) Nothing in this section shall be construed to impair or impede the commissioner from pursuing any other administrative action allowed by law.

(d) Nothing in this section shall be construed to impair or impede the commissioner from bringing an action in court to enforce any law or order he or she has issued, including orders issued under this section. Nothing in this section shall be construed to impair or impede the commissioner from seeking any other damages or injunction allowed by law.

(e) In determining the amount and the appropriateness of initiating a civil money penalty under subdivision (b), the commissioner shall consider all of the following:

(1) Evidence that the violation or practice or breach of duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution.

(2) The duration and frequency of the violations, practices, or breaches of duties.

(3) The continuation of the violations, practices, or breaches of duty after the licensee or subsidiary of the licensee was notified, or, alternatively, its immediate cessation and correction.

(4) The failure to cooperate with the commissioner in effecting early resolution of the problem.

(5) Evidence of concealment of the violation, practice, or breach of duty or, alternatively, voluntary disclosure of the violation, practice, or breach of duty.

(6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of that harm.

(7) Evidence that a licensee or subsidiary of a licensee received financial gain or other benefit as a result of the violation, practice, or breach of duty.

(8) Evidence of any restitution paid by a licensee or subsidiary of a licensee of losses resulting from the violation, practice, or breach of duty.

(9) History of prior violations, practices, or breaches of duty, particularly where they are similar to the actions under consideration.

(10) Previous criticism of the institution for similar actions.

(11) Presence or absence of a compliance program and its effectiveness.

(12) Tendency to engage in violations of law, unsafe or unsound banking practices, or breaches of duties.

(13) The existence of agreements, commitments, orders, conditions imposed in writing intended to prevent the violation, practice, or breach of duty.

(14) Whether the violation, practice, or breach of duty causes quantifiable, economic benefit or loss to the licensee or the subsidiary of the licensee. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with the applicable law, order, or written agreement. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct.

(15) Other factors as the commissioner may, in his or her opinion, consider relevant to assessing the penalty or establishing the amount of the penalty.

(f) The amounts collected under this section shall be deposited in the appropriate fund of the department. For purposes of this subdivision, the term ''appropriate fund'' means the fund to which the annual assessments of fined licensees, or the parent licensee of the fined subsidiary, are credited.

SEC. 2. Section 273 of the Financial Code is amended to read:

273. If any bank or trust company fails to make timely payment of any assessment made pursuant to Section 270, 271, or 272, the commissioner may, in the commissioner's sole discretion, (a) cancel the certificate of authority of the bank or trust company to conduct a banking or trust business or (b) levy a civil penalty pursuant to Section 216.3.

SEC. 3. Section 506 of the Financial Code is amended to read:

506. A bank or trust company which opens a branch office without first obtaining the approval of the commissioner shall be subject to a civil penalty levied pursuant to Section 216.3.

SEC. 4. Section 645 of the Financial Code is amended to read:

645. If the commissioner finds that the shareholders' equity of a bank is not adequate or that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to the shareholders of the bank would be unsafe or unsound for the bank, the commissioner may order the bank and its majority-owned subsidiaries not to make any distribution to the shareholders of the bank. In addition to the order authorized by this section, the commissioner may levy a civil penalty against bank pursuant to Section 216.3.

SEC. 5. Section 646 of the Financial Code is amended to read:

646. (a) For purposes of Section 506 of the Corporations Code, the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of the bank in violation of any provision of this article shall be deemed to be prohibited by, and to be a violation of, Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 506 of the Corporations Code for the benefit of a bank against any shareholder of the bank on account of receiving, with knowledge of facts indicating the impropriety thereof, any distribution prohibited by any provision of this article or by any provision of Sections 501, 502, and 503 of the Corporations Code, to the same extent as a creditor of the bank who did not consent to the illegal distribution to the shareholder and who had a valid claim against the bank which arose prior to the time of the illegal distribution to the shareholder and which exceeded the amount of the illegal distribution to the shareholder, might bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner may levy a civil penalty against the bank pursuant to Section 216.3.

SEC. 6. Section 687 of the Financial Code is amended to read:

687. (a) For purposes of Section 316 of the Corporations Code, to the extent that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of the bank is contrary to any provision of Article 3 (commencing with Section 640), the making of the distribution shall, to the extent, be deemed to be contrary to the provisions of Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of the bank or of any majority-owned subsidiary of the bank on account of the making of a distribution to any shareholder of the bank contrary to any provision of Article 3 (commencing with Section 640) or any provision of Sections 501, 502, and 503 of the Corporations Code, to the same extent as a creditor of the bank who did not consent to the illegal distribution and who had a valid claim against the bank which arose prior to the time of the illegal distribution, and which exceeded the amount of the illegal distribution, may bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner my levy a civil penalty against the bank pursuant to Section 216.3.

SEC. 7. Section 688 of the Financial Code is amended to read:

688. (a) For purposes of Section 316 of the Corporations Code, the making of a loan or guarantee by a bank or any other extending of credit by a bank contrary to any provision of this division shall be deemed to be contrary to Section 315 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of the bank on account of the making of a loan or guarantee or any other extending of credit contrary to any provision of this division, to the same extent as a creditor of the bank who did not consent to the illegal making of the loan or guarantee or the other illegal extending of credit and who had a valid claim against the bank which arose prior to the time of the illegal making of the loan or guarantee or the other illegal extending of credit and which exceeded the amount of loss suffered by the bank as a result of the illegal making of the loan or guarantee or the other illegal extending of credit, might bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner may levy a civil penalty against the bank pursuant to Section 216.3.

SEC. 8. Section 1547 of the Financial Code is amended to read:

1547. The commissioner may, pursuant to Section 216.3, levy a civil penalty against any trust company that fails to comply with this article.

SEC. 9. Section 1780 of the Financial Code is amended to read:

1780. If the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order the person to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.

SEC. 10. Section 1938 of the Financial Code is amended to read:

1938. (a) Each report required under this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) shall be filed with the commissioner at the time that the commissioner may by regulation or order require. If any bank, trust company, or foreign bank fails to make any report required by this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) at the time specified by the commissioner or fails to include therein any matter required by this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) or by the commissioner, it shall be liable to the people of this state in the sum of not more than one hundred dollars ($100) for each day that the report is delayed or withheld by the failure or neglect of the bank, trust company, or foreign bank.

(b) The provisions of Section 216.3 shall not apply to this section.

SEC. 11. Section 3359 of the Financial Code is amended to read:

3359. (a) For purposes of this section, the following terms have the following meanings:

(1) ''Carrying a security'' means maintaining, reducing, or retiring indebtedness originally incurred to acquire a security.

(2) ''Controlling person'' has the same meaning specified in Section 700.

(3) ''Security'' has the following meanings:

(A) When used with respect to a bank, ''security'' has the same meaning set forth in subdivision (c) of Section 690.

(B) When used with respect to any other person, ''security'' has the same meaning set forth in Section 25019 of the Corporations Code.

(b) No bank shall acquire, hold, extend credit on the security of, or extend credit for the purpose of acquiring or carrying, any security of the bank or of any controlling person of the bank.

(c) (1) Any bank which acquires or holds securities in violation of this section shall be liable to the people of this state for twice the market, book, or face value of the securities, whichever is greatest.

(2) Any bank which extends credit in violation of this section shall be liable to the people of this state for twice the amount of the credit so extended.

(d) This section does not apply to any of the following transactions:

(1) Any acquisition or extension of credit by a bank which is necessary to reduce or prevent loss to the bank on debts previously contracted in good faith.

(2) Any redemption by a bank of any of its redeemable shares in accordance with applicable provisions of this division and of Division 1 (commencing with Section 100) of Title 1 of the Corporations Code.

(3) Any acquisition by a bank of any of its shares, other than an acquisition of the type described in paragraph (1) or (2), if the acquisition is approved in advance by the commissioner.

(e) The provisions of Section 216.3 shall not apply to this section.

SEC. 12. Section 3369 of the Financial Code is amended to read:

3369. (a) Any person who willfully and knowingly makes, circulates, or transmits to another or others, any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank doing business in this State, or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year, or both.

(b) The provisions of Section 216.3 shall not apply to this section.

SEC. 13. Section 3376 of the Financial Code is amended to read:

3376. Any bank that makes an extension of credit in violation of this article is subject to a civil penalty pursuant to Section 216.3. Any person, other than the bank making the extension of credit, who knowingly makes or procures an extension of credit in violation of this article is guilty of a felony.

SEC. 14. Section 14210 of the Financial Code is repealed.

SEC. 15. Section 14256 of the Financial Code is amended to read:

14256. (a) If any credit union fails to file with the commissioner any report required by this division on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the failure is grounds for the suspension or revocation of the certificate authorizing the credit union to act as a credit union.

(b) If any credit union fails to file with the commissioner any report required by this division or by any order or regulation of the commissioner, on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner,

within the extended time, or fails to include in the report any matter required by the commissioner, the commissioner may order the credit union to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.

SEC. 16. Section 16201 of the Financial Code is amended to read:

16201. If, after notice and hearing, the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order the person to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.

SEC. 17. Section 16901 of the Financial Code is amended to read:

16901. If, after notice and hearing, the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order the person to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.

CHAPTER 446

An act to add Section 7912 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

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

(a) Public utilities serve a vital function, providing basic infrastructure essential to the efficient conduct of commerce and societal interaction.

(b) In exchange for the state's granting of a certificate of public convenience and necessity or a wireless identification registration number, public utilities bear a heightened responsibility for contributing to the public interest.

(c) The public interest has been interpreted to include providing an adequate level of public utility service at a just and reasonable rate. A more complete interpretation of the public interest would also give consideration to the benefits of public utility employment to the state and its residents.

(d) Given the difficult economic climate and the increasing unemployment rate within the State of California, it is necessary and

proper state policy to encourage the employment of Californians by California's public utilities.

(e) The Public Utilities Commission should monitor and annually report to the Legislature, information showing the levels of employment of California residents and capital investment in California by public utilities, so that the state can ensure greater oversight of public utilities and more comprehensive, informed policymaking.

SEC. 2. Section 7912 is added to the Public Utilities Code, to read:

7912. (a) A public utility employing more than 750 total employees shall annually report to the commission all of the following:

(1) The number of customers served in California by the public utility.

(2) The percentage of the public utility's total domestic customer base that resides in California.

(3) The number of California residents employed by the public utility, calculated on a full-time or full-time equivalent basis.

(4) The percentage of the public utility's total domestic workforce, calculated on a full-time or full-time equivalent basis, that resides in California.

(5) The capital investment in the public utility's tangible and intangible plant which ordinarily have a service life of more than one year, including plant used by the company or others in providing public utility services, in California during the yearly reporting period.

(6) The number of California residents employed by independent contractors and consultants hired by the public utility, calculated on a full-time or full-time equivalent basis, when the public utility has obtained this information upon requesting it from the independent contractor or consultant, and the public utility is not contractually prohibited from disclosing the information to the public. This subdivision is inapplicable to contractors and consultants that are a public utility subject to the reporting requirements of this section. This paragraph applies only to those employees of an independent contractor or consultant that are personally providing services to the public utility, and does not apply to employees of an independent contractor or consultant not personally performing services for the public utility.

(b) The commission shall annually report the information required to be reported by public utilities pursuant to subdivision (a), to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet Web site.

CHAPTER 447

An act to amend Sections 12962, 12980, 12981, and 12983 of the Government Code, relating to fair employment and housing.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 12962 of the Government Code is amended to read:

12962. (a) The department shall cause any verified complaint filed for investigation under the provisions of this part to be served, either personally or by certified mail with return receipt requested, upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of.

(b) Notwithstanding subdivision (a), where a person claiming to be aggrieved by an alleged unlawful practice hires or retains private counsel for purposes of representation of the claim, the private counsel, and not the department, shall cause the verified complaint filed under the provisions of this part to be served, either personally or by certified mail with return receipt requested, upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice.

(c) Service shall be made at the time of initial contact with the person, employer, labor organization, or employment agency or the agents thereof, or within 60 days, whichever first occurs. At the discretion of the director, the complaint may not contain the name of the complaining party unless the complaint is filed by the director or his or her authorized representative.

SEC. 2. Section 12980 of the Government Code is amended to read:

12980. This article governs the procedure for the prevention and elimination of discrimination in housing made unlawful pursuant to Article 2 (commencing with Section 12955) of Chapter 6.

(a) Any person claiming to be aggrieved by an alleged violation of Section 12955, 12955.1, or 12955.7 may file with the department a verified complaint in writing that shall state the name and address of the person alleged to have committed the violation complained of, and that shall set forth the particulars of the alleged violation and contain any other information required by the department.

The filing of a complaint and pursuit of conciliation or remedy under this part shall not prejudice the complainant's right to pursue effective judicial relief under other applicable laws, but if a civil action has been filed under Section 52 of the Civil Code, the department shall terminate

proceedings upon notification of the entry of final judgment unless the judgment is a dismissal entered at the complainant's request.

(b) The Attorney General or the director may, in a like manner, make, sign, and file complaints citing practices that appear to violate the purpose of this part or any specific provisions of this part relating to housing discrimination.

No complaint may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated.

(c) The department may thereupon proceed upon the complaint in the same manner and with the same powers as provided in this part in the case of an unlawful practice, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than the provisions of Article 1 (commencing with Section 12960), the provisions of this article shall prevail.

(d) Upon the filing of a complaint, the department shall serve notice upon the complainant of the time limits, rights of the parties, and choice of forums provided for under the law.

(e) The department shall commence proceedings with respect to a complaint within 30 days of filing of the complaint.

(f) An investigation of allegations contained in any complaint filed with the department shall be completed within 100 days after receipt of the complaint, unless it is impracticable to do so. If the investigation is not completed within 100 days, the complainant and respondent shall be notified, in writing, of the department's reasons for not doing so.

(g) Upon the conclusion of each investigation, the department shall prepare a final investigative report containing all of the following:

(1) The names of any witnesses and the dates of any contacts with those witnesses.

(2) A summary of the dates of any correspondence or other contacts with the aggrieved persons or the respondent.

(3) A summary of witness statements.

(4) Answers to interrogatories.

(5) A summary description of other pertinent records.

A final investigative report may be amended if additional evidence is later discovered.

(h) If an accusation is not issued within 100 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify the person claiming to be aggrieved. This notice shall, in any event, be issued no more than 30 days after the date of the determination or 30 days after the date of the expiration of the 100-day period, whichever date first occurs. The notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person named in the verified complaint within the time period specified in Section 12989.1. The notice shall also

indicate, unless the department has determined that no accusation will be issued, that the person claiming to be aggrieved has the option of continuing to seek redress for the alleged discrimination through the procedures of the department if he or she does not desire to file a civil action. The superior and municipal courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in any of these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorneys' fees.

(i) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be made public, unless otherwise agreed by the complainant and respondent, and the department determines that the disclosure is not required to further the purposes of the act.

(j) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be agreements between the respondent and complainant, and shall be subject to approval by the department.

SEC. 3. Section 12981 of the Government Code is amended to read:

12981. (a) In the case of failure to eliminate a violation of Section 12955, 12955.1, or 12955.7 that has occurred, or is about to occur, through conference, conciliation, and persuasion, or in advance thereof if circumstances warrant, the director shall cause to be issued in the name of the department, notwithstanding Section 12971, a written accusation, in the same manner and with the same powers as provided in Section 12965, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than Section 12965, the provisions of this article shall prevail. An accusation alleging an unfair housing practice shall be issued within 100 days after the filing of a complaint unless it is impracticable to do so. The accusation shall require the respondent to answer the charges at an administrative hearing or civil trial as elected by the parties pursuant to Section 12989. Any aggrieved person may intervene as a matter of right in the proceeding, and the appeal or other judicial review of that proceeding.

(b) If the department determines that an allegation concerns the legality of any zoning or other land use law or ordinance, the department

or the Attorney General shall take appropriate action with respect to the complaint according to the procedures established in this part for other complaints of housing discrimination.

(c) The commission shall hold hearings on accusations issued pursuant to subdivision (a) in the same manner and with the same powers as provided in Sections 12967 to 12972, inclusive, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than do Sections 12967 to 12972, inclusive, the provisions of this article shall prevail. The commission shall make final administrative disposition of a complaint alleging unfair housing practices within one year of the date of filing of the complaint, unless it is impracticable to do so. If the department is unable to make final administrative disposition of a complaint within one year, it shall notify the complainant and the respondent, in writing, of its reasons for not doing so.

(d) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

(e) Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall refer the matter to the Attorney General with a recommendation that a civil action be filed for the enforcement of the agreement.

(f) If the time for judicial review of a final commission order or decision has lapsed, or if all means of judicial review have been exhausted, the department may apply to the superior court in any county in which an action could have been brought under subdivision (b) of Section 12965 for the enforcement of the order or decision or order as modified in accordance with a decision on judicial review. If, after a hearing, the court determines that an order or decision has been issued by the commission and that either the time limits for judicial review have lapsed, or the order or decision was upheld in whole or in part on judicial review, the court shall issue a judgment and order enforcing the order or decision or order as modified in accordance with a decision on judicial review. The court shall not review the merits of the order or decision. The court's judgment shall be nonappealable and 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.

SEC. 4. Section 12983 of the Government Code is amended to read:

12983. The department, or at its election the Attorney General, at any time after a complaint is filed with it and it has been determined that probable cause exists for believing that the allegations of the complaint are true and constitute a violation of this part, may bring an action in the superior court to enjoin the owner of the property from taking further

action with respect to the rental, lease, or sale of the property, as well as to require compliance with Section 12956, until the department has completed its investigation and made its determination; but a temporary restraining order obtained under this section shall not, in any event, be in effect for more than 20 days. In this action an order or judgment may be entered awarding the temporary restraining order or the preliminary or final injunction in accordance with Section 527 of the Code of Civil Procedure.

CHAPTER 448

An act to amend Section 3 of Chapter 899 of the Statutes of 1995, and to amend Section 2 of Chapter 895 of the Statutes of 2001, relating to seismic activity, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 3 of Chapter 899 of the Statutes of 1995 is amended to read:

Sec. 3. The sum of four million four hundred thousand dollars ($4,400,000) is appropriated from the California Residential Earthquake Recovery Fund to the Department of Insurance for the program established pursuant to this act. During the second half of the 1995–96 fiscal year, the Department of Insurance may use up to one hundred fifty-nine thousand dollars ($159,000) for costs of initial implementation and administration of the program. During the 1996–97 and 1997–98 fiscal years, no more than two hundred thousand dollars ($200,000) per fiscal year may be used by the department to administer this program. During the 1998–99 through 2002–03 fiscal years, no more than two hundred sixty-five thousand dollars ($265,000) per fiscal year may be used by the department to administer this program. Thereafter, no more than two hundred ninety thousand dollars ($290,000)'' per fiscal year may be used by the department to administer the program.

Money appropriated by this section shall be available for expenditure until July 1, 2007. On and after that date, the program established by Chapter 899 of the Statutes of 1995 shall no longer be operative.

SEC. 2. Section 2 of Chapter 895 of the Statutes of 2001 is amended to read:

Sec. 2. The sum of two million nine hundred thousand dollars ($2,900,000) and all interest earnings, calculated daily, is appropriated from the California Residential Earthquake Recovery Fund to the Department of Insurance for the program established pursuant to Chapter 899 of the Statutes of 1995.

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 facilitate the issuance of grants and loans to provide an enhanced level of residential earthquake protection to homeowners living in high-risk areas, it is necessary that for this act to take effect immediately as an urgency statute.

CHAPTER 449

An act to amend Section 17511.12 of the Business and Professions Code, to amend Sections 798.61 and 1780 of the Civil Code, to amend Sections 116.130, 116.530, 198.5, 393, 415.50, 1141.10, 1141.11, 1141.12, 1141.16, 1141.18, 1141.24, and 1161.2 of the Code of Civil Procedure, to amend Section 48295 of the Education Code, to amend Sections 12150 and 12151 of the Fish and Game Code, to amend Sections 68097, 68097.1, and 68097.2 of the Government Code, to amend Sections 664 and 667 of the Harbors and Navigation Code, to amend Sections 108580, 110375, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 6436 of the Labor Code, to amend Sections 1035, 1038, and 1462.2 of, and to repeal Sections 1034 and 1039 of, the Penal Code, to amend Section 5560 of the Public Resources Code, and to amend Section 310 of the Water Code, relating to courts.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 17511.12 of the Business and Professions Code is amended to read:

17511.12. (a) Every telephonic seller shall maintain a bond issued by a surety company admitted to do business in this state. The bond shall be in the amount of one hundred thousand dollars ($100,000) in favor of the State of California for the benefit of any person suffering pecuniary loss in a transaction commenced during the period of bond

coverage with a telephonic seller who violated this chapter. The bond shall include coverage for the payment of the portion of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for restitution to any person suffering pecuniary loss, notwithstanding whether the surety is joined or served in the action or proceeding. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. This bond may not be required of any cable television operator franchised or licensed pursuant to Section 53066 of the Government Code.

(b) (1) At least 10 days prior to the inception of any promotion offering a premium with an actual market value or advertised value of five hundred dollars ($500) or more, the telephonic seller shall notify the Attorney General in writing of the details of the promotion, describing the premium, its current market value, the value at which it is advertised or held out to the customer, and the date the premium shall be awarded. All premiums offered shall be awarded. The telephonic seller shall maintain an additional bond for the total current market value or advertised value, whichever is greater, of the premiums held out or advertised to be available to a purchaser or recipient. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. The bond shall be for the benefit of any person entitled to the premium who did not receive it within 30 days of the date disclosed to the Attorney General as the date on which the premium would be awarded. The amount paid to a person under a bond required by this subdivision may not exceed the greater of the current market value or advertised or represented value of the premium offered to that person. The bond shall include coverage for the payment of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for payment of the value of premiums that were not timely awarded, notwithstanding whether the surety is joined or served in the action or proceeding. The bond shall also provide for payment upon motion by the Attorney General pursuant to subdivision (d) in the event the seller fails to provide the Attorney General with proof of the award of premiums as required in paragraph (2).

(2) Within 45 days after the date disclosed to the Attorney General for the award of premiums, the seller shall provide to the Attorney General proof that all premiums were awarded. The proof shall include the names, addresses, and telephone numbers of the recipients of the premiums and the date or dates on which the premiums were awarded. The bond shall be maintained until the seller files proof with the Attorney General as required by this subdivision or until payment of the amount of the bond is ordered pursuant to subdivision (d).

(c) (1) In addition to any other means for the enforcement of the surety's liability on a bond required by this section, the surety's liability

on the bond may be enforced by motion, as provided in this subdivision, after a judgment has been obtained against the seller.

(2) The Attorney General, district attorney, city attorney, or any other person who obtained a judgment for restitution against the seller, as described in subdivision (a), may file a motion in the court that entered the judgment to enforce liability on the bond without first attempting to enforce the judgment against any party liable under the judgment.

(3) The notice of motion, the motion, and a copy for the judgment shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The notice shall set forth the amount of the claim and a brief statement indicating that the claim is covered by the bond. Service shall also be made on the Consumer Law Section of the Department of Justice.

(4) The court shall grant the motion unless the surety establishes that the claim is not covered by the bond, or the court sustains an objection made by the Attorney General that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest.

(d) (1) In addition to any other means for the enforcement of the surety's liability on a bond required by subdivision (b), the surety's liability on the bond may be enforced by motion as provided in this subdivision.

(2) The Attorney General, district attorney, city attorney, or any person who claims the premium, may file a motion in the superior court of the county from which the seller made an offer of a premium, in which the seller maintains any office or place of business, or in which an offeree of the premium resides, or in any other court of competent jurisdiction. The motion shall set forth the nature of the seller's offer, the greater of the current market value or advertised or represented value of the premium, the date by which the premium should have been awarded, and the fact that the premium was not awarded as represented.

(3) The notice of motion and motion shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

(4) The court shall grant the motion unless the surety establishes that the claim is untrue or is not covered by the bond.

(5) The Attorney General may file a motion in the superior court of the county from which the seller made an offer of a premium, or in which an offeree of a premium resides, or in any other court of competent jurisdiction, for the payment of the entire bond if the seller fails to file proof with the Attorney General of the award of all premiums as required by paragraph (2) of subdivision (b). The notice of motion and motion shall be served as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The motion shall be granted if the Attorney General establishes that the seller failed

to file proof of making the timely award of all premiums. The recovery on the bond shall be distributed pro rata to the promised recipients of the premiums to the extent their identity is actually known to the Attorney General at the time payment is made by the surety. The balance of the recovery shall be paid to any judicially established consumer protection trust fund designated by the Attorney General or as directed by the court under the cy pres doctrine.

(e) No stay of a motion filed pursuant to this section may be granted pending the determination of conflicting claims among beneficiaries. An order enforcing liability on a bond may be enforced in the same manner as a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. Nothing herein affects the rights of the surety against the principal.

(f) The surety is not liable on the bond for payment of a judgment against a seller for any violation of this chapter unless the action or proceeding is filed within two years after the cancellation or termination of the bond, the termination of the seller's registration, or the seller's cessation of business, whichever is later.

(g) The surety is not liable on a motion made pursuant to subdivision (d) unless the motion is filed within two years of the date on which the seller represented the premium was to have been awarded.

(h) For the purpose of this section, ''judgment'' includes a final order in a proceeding for the termination of telephone service pursuant to Public Utilities Commission Tariff Rule 31.

(i) Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure shall apply to the enforcement of a bond given pursuant to this section except to the extent of any inconsistency with this section, in which event this section shall apply.

SEC. 2. Section 798.61 of the Civil Code is amended to read:

798.61. (a) (1) As used in this section, ''abandoned mobilehome'' means a mobilehome about which all of the following are true:

(A) It is located in a mobilehome park on a site for which no rent has been paid to the management for the preceding 60 days.

(B) It is unoccupied.

(C) A reasonable person would believe it to be abandoned.

(2) For purposes of this section:

(A) ''Mobilehome'' shall include a trailer coach, as defined in Section 635 of the Vehicle Code, or a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, if the trailer coach or recreational vehicle also satisfies the requirements of paragraph (1), including being located on any site within a mobilehome park, even if the site is in a separate designated section pursuant to Section 18215 of the Health and Safety Code.

(B) ''Abandoned mobilehome'' shall include a mobilehome that is uninhabitable because of its total or partial destruction that cannot be rehabilitated, if the mobilehome also satisfies the requirements of paragraph (1).

(b) After determining a mobilehome in a mobilehome park to be an abandoned mobilehome, the management shall post a notice of belief of abandonment on the mobilehome for not less than 30 days, and shall deposit copies of the notice in the United States mail, postage prepaid, addressed to the homeowner at the last known address and to any known registered owner, if different from the homeowner, and to any known holder of a security interest in the abandoned mobilehome. This notice shall be mailed by registered or certified mail with a return receipt requested.

(c) Thirty or more days following posting pursuant to subdivision (b), the management may file a petition in the superior court in the county in which the mobilehome park is located, for a judicial declaration of abandonment of the mobilehome. A proceeding under this subdivision is a limited civil case. Copies of the petition shall be served upon the homeowner, any known registered owner, and any known person having a lien or security interest of record in the mobilehome by posting a copy on the mobilehome and mailing copies to those persons at their last known addresses by registered or certified mail with a return receipt requested in the United States mail, postage prepaid.

(d) (1) Hearing on the petition shall be given precedence over other matters on the court's calendar.

(2) If, at the hearing, the petitioner shows by a preponderance of the evidence that the criteria for an abandoned mobilehome has been satisfied and no party establishes an interest therein at the hearing, the court shall enter a judgment of abandonment, determine the amount of charges to which the petitioner is entitled, and award attorney's fees and costs to the petitioner. For purposes of this subdivision, an interest in the mobilehome shall be established by evidence of a right to possession of the mobilehome or a security or ownership interest in the mobilehome.

(3) A default may be entered by the court clerk upon request of the petitioner, and a default judgment shall be thereupon entered, if no responsive pleading is filed within 15 days after service of the petition by mail.

(e) (1) Within 10 days following a judgment of abandonment, the management shall enter the abandoned mobilehome and complete an inventory of the contents and submit the inventory to the court.

(2) During this period the management shall post and mail notice of intent to sell the abandoned mobilehome and its contents under this section, and announcing the date of sale, in the same manner as provided for the notice of determination of abandonment under subdivision (b).

(3) At any time prior to the sale of a mobilehome under this section, any person having a right to possession of the mobilehome may recover and remove it from the premises upon payment to the management of all rent or other charges due, including reasonable costs of storage and other costs awarded by the court. Upon receipt of this payment and removal of the mobilehome from the premises pursuant to this paragraph, the management shall immediately file an acknowledgment of satisfaction of judgment pursuant to Section 724.030 of the Code of Civil Procedure.

(f) Following the judgment of abandonment, but not less than 10 days following the notice of sale specified in subdivision (e), the management may conduct a public sale of the abandoned mobilehome and its contents. The management may bid at the sale and shall have the right to offset its bids to the extent of the total amount due it under this section. The proceeds of the sale shall be retained by the management, but any unclaimed amount thus retained over and above the amount to which the management is entitled under this section shall be deemed abandoned property and shall be paid into the treasury of the county in which the sale took place within 30 days of the date of the sale. The former homeowner or any other owner may claim any or all of that unclaimed amount within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays any or all of that unclaimed amount to a claimant, neither the county nor any officer or employee of the county is liable to any other claimant as to the amount paid.

(g) Within 30 days of the date of the sale, the management shall submit to the court an accounting of the moneys received from the sale and the disposition of the money and the items contained in the inventory submitted to the court pursuant to subdivision (e).

(h) The management shall provide the purchaser at the sale with a copy of the judgment of abandonment and evidence of the sale, as shall be specified by the State Department of Housing and Community Development or the Department of Motor Vehicles, which shall register title in the abandoned mobilehome to the purchaser upon presentation thereof. The sale shall pass title to the purchaser free of any prior interest, including any security interest or lien, except the lien provided for in Section 18116.1 of the Health and Safety Code, in the abandoned mobilehome.

SEC. 3. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000).

(2) An order enjoining the methods, acts, or practices.
(3) Restitution of property.
(4) Punitive damages.
(5) Any other relief that the court deems proper.

(b) (1) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars ($5,000) where the trier of fact does all of the following:

(A) Finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(B) Makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345.

(C) Finds that an additional award is appropriate.

(2) Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member that additional award if the trier of fact has made the foregoing findings.

(c) An action under subdivision (a) or (b) may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

In any action subject to the provisions of 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 county described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice.

(d) The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

SEC. 4. Section 116.130 of the Code of Civil Procedure is amended to read:

116.130. In this chapter, unless the context indicates otherwise:

(a) ''Plaintiff'' means the party who has filed a small claims action. The term includes a defendant who has filed a claim against a plaintiff.

(b) ''Defendant'' means the party against whom the plaintiff has filed a small claims action. The term includes a plaintiff against whom a defendant has filed a claim.

(c) ''Judgment creditor'' means the party, whether plaintiff or defendant, in whose favor a money judgment has been rendered.

(d) ''Judgment debtor'' means the party, whether plaintiff or defendant, against whom a money judgment has been rendered.

(e) ''Person'' means an individual, corporation, partnership, limited liability partnership, limited liability company, firm, association, or other entity.

(f) ''Individual'' means a natural person.

(g) ''Party'' means a plaintiff or defendant.

(h) ''Motion'' means a party's written request to the court for an order or other action. The term includes an informal written request to the court, such as a letter.

(i) ''Declaration'' means a written statement signed by an individual which includes the date and place of signing, and a statement under penalty of perjury under the laws of this state that its contents are true and correct.

(j) ''Good cause'' means circumstances sufficient to justify the requested order or other action, as determined by the judge.

(k) ''Mail'' means first-class mail with postage fully prepaid, unless stated otherwise.

SEC. 5. Section 116.530 of the Code of Civil Procedure is amended to read:

116.530. (a) Except as permitted by this section, no attorney may take part in the conduct or defense of a small claims action.

(b) Subdivision (a) does not apply if the attorney is appearing to maintain or defend an action in any of the following capacities:

(1) By or against himself or herself.

(2) By or against a partnership in which he or she is a general partner and in which all the partners are attorneys.

(3) By or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys.

(c) Nothing in this section shall prevent an attorney from doing any of the following:

(1) Providing advice to a party to a small claims action, either before or after the commencement of the action.

(2) Testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify.

(3) Representing a party in an appeal to the superior court.

(4) Representing a party in connection with the enforcement of a judgment.

SEC. 6. Section 198.5 of the Code of Civil Procedure, as amended by Section 41 of Chapter 784 of the Statutes of 2002, 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 divides the county in a manner that provides all qualified persons in the county an equal opportunity to be considered for jury service. Nothing in this section precludes the court, in its discretion, from ordering a countywide venire in the interest of justice.

SEC. 7. Section 393 of the Code of Civil Procedure is amended to read:

393. Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the cause, or some part of the cause, arose, is the proper county for the trial of the following actions:

(a) For the recovery of a penalty or forfeiture imposed by statute, except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be tried in any county bordering on the lake, river, or stream, and opposite to the place where the offense was committed.

(b) Against a public officer or person especially appointed to execute the duties of a public officer, for an act done by the officer or person in virtue of the office, or against a person who, by the officer's command or in the officer's aid, does anything touching the duties of the officer.

SEC. 8. Section 415.50 of the Code of Civil Procedure is amended to read:

415.50. (a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:

(1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.

(2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

(b) The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside this state that is most likely to give actual notice to that party. The order shall direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained before expiration of the time prescribed for publication of the summons. Except as otherwise provided by statute, the publication shall be made as provided by Section 6064 of the Government Code unless the court, in its discretion, orders publication for a longer period.

(c) Service of a summons in this manner is deemed complete as provided in Section 6064 of the Government Code.

(d) Notwithstanding an order for publication of the summons, a summons may be served in another manner authorized by this chapter, in which event the service shall supersede any published summons.

(e) As a condition of establishing that the party to be served cannot with reasonable diligence be served in another manner specified in this article, the court may not require that a search be conducted of public databases where access by a registered process server to residential addresses is prohibited by law or by published policy of the agency providing the database, including, but not limited to, voter registration rolls and records of the Department of Motor Vehicles.

SEC. 9. Section 1141.10 of the Code of Civil Procedure is amended to read:

1141.10. (a) The Legislature finds and declares that litigation involving small civil cases can be so costly and complex that efficiently resolving these civil cases is difficult, and that the resulting delays and expenses may deny parties their right to a timely resolution of minor civil disputes. The Legislature further finds and declares that arbitration has proven to be an efficient and equitable method for resolving small civil cases, and that courts should encourage or require the use of arbitration for those actions whenever possible.

(b) It is the intent of the Legislature that:

(1) Arbitration hearings held pursuant to this chapter shall provide parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes.

(2) Arbitration hearings shall be as informal as possible and shall provide the parties themselves maximum opportunity to participate directly in the resolution of their disputes, and shall be held during nonjudicial hours whenever possible.

(3) Members of the State Bar selected to serve as arbitrators should have experience with cases of the type under dispute and are urged to volunteer their services without compensation whenever possible.

SEC. 10. 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 nonexempt unlimited civil cases shall be submitted to arbitration 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.

(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 nonexempt, unlimited civil cases shall be submitted to arbitration 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.

(c) Each superior court may provide by local rule, when it is determined to be in the best interests of justice, that all nonexempt, limited civil cases shall be submitted to arbitration 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.

(d) (1) In each court that has adopted judicial arbitration pursuant to subdivision (c), all limited civil cases 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.

(2) 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.

(3) For the purposes of this subdivision, the term ''single defendant'' means any of the following:

(A) An individual defendant, whether a person or an entity.

(B) Two or more persons covered by the same insurance policy applicable to the motor vehicle collision.

(C) Two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision.

(4) 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.

SEC. 11. Section 1141.12 of the Code of Civil Procedure is amended to read:

1141.12. In all superior courts, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes:

(a) Any cause, regardless of the amount in controversy, upon stipulation of the parties.

(b) 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.

SEC. 12. Section 1141.16 of the Code of Civil Procedure is amended to read:

1141.16. (a) The determination of the amount in controversy, under subdivision (a) or (b) of Section 1141.11, shall be made by the court and

the case referred to arbitration after all named parties have appeared or defaulted. The determination shall be made at a case management conference or based upon review of the written submissions of the parties, as provided in rules adopted by the Judicial Council. The determination shall be based on the total amount of damages, and the judge may not consider questions of liability or comparative negligence or any other defense. At that time the court shall also make a determination whether any prayer for equitable relief is frivolous or insubstantial. The determination of the amount in controversy and whether any prayer for equitable relief is frivolous or insubstantial may not be appealable. No determination pursuant to this section shall be made if all parties stipulate in writing that the amount in controversy exceeds the amount specified in Section 1141.11.

(b) The determination and any stipulation of the amount in controversy shall be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo.

(c) Except as provided in this section, the arbitration hearing may not be held until 210 days after the filing of the complaint, or 240 days after the filing of a complaint if the parties have stipulated to a continuance pursuant to subdivision (d) of Section 68616 of the Government Code. A case shall be submitted to arbitration at an earlier time upon any of the following:

(1) The stipulation of the parties to an earlier arbitration hearing.

(2) The written request of all plaintiffs, subject to a motion by a defendant for good cause shown to delay the arbitration hearing.

(3) An order of the court if the parties have stipulated, or the court has ordered under Section 1141.24, that discovery other than that permitted under Section 2034 will be permitted after the arbitration award is rendered.

SEC. 13. Section 1141.18 of the Code of Civil Procedure is amended to read:

1141.18. (a) Arbitrators shall be retired judges, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators. Compensation for arbitrators may not be less than one hundred fifty dollars ($150) per case, or one hundred fifty dollars ($150) per day, whichever is greater. A superior court may set a higher level of compensation for that court. Arbitrators may waive compensation in whole or in part. No compensation shall be paid before the filing of the award by the arbitrator, or before the settlement of the case by the parties.

(c) In cases submitted to arbitration under Section 1141.11 or 1141.12, an arbitrator shall be assigned within 30 days from the time of submission to arbitration.

(d) Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1.

SEC. 14. Section 1141.24 of the Code of Civil Procedure is amended to read:

1141.24. In cases ordered to arbitration pursuant to Section 1141.11, no discovery other than that permitted by Section 2034 is permissible after an arbitration award except by stipulation of the parties or by leave of court upon a showing of good cause.

SEC. 15. Section 1161.2 of the Code of Civil Procedure is amended to read:

1161.2. (a) Except as provided in subdivision (g), in any case filed under this chapter as a limited civil case, the court clerk may not allow access to the court file, index, register of actions, or other court records until 60 days following the date the complaint is filed, except pursuant to an ex parte court order upon a showing of good cause therefor by any person, including, but not limited to, a newspaper publisher. However, the clerk of the court shall allow access to the court file to a party in the action, an attorney of a party in the action, or any other person who provides to the clerk the names of either of the following:

(1) At least one plaintiff, one defendant, and the address, including the apartment, unit, or space number, if applicable, of the subject premises.

(2) One of the parties or the case number, and can establish through proper identification that he or she resides at the subject premises.

(b) For purposes of this section, ''good cause'' includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Except as provided in subdivision (g), upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days

except to a party, an attorney for one of the parties, or any other person who provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex parte order upon a showing of good cause therefor. The notice shall contain on its face the name and telephone number of the county bar association and the name and telephone number of an office funded by the federal Legal Services Corporation that provides legal services to low-income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to ''all occupants'' and mailed separately to the subject premises. The notice does not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall charge an additional fee of four dollars ($4) for filing a first appearance by the plaintiff. This fee shall be included as part of the total filing fee for actions filed under this chapter.

(e) A superior court, after consultation with local associations of rental property owners, tenant groups, and providers of legal services to tenants, may exempt itself from the operation of this section upon a finding that unscrupulous eviction defense services are not a substantial problem in the county. The court shall review the finding every 12 months. An exempt court may not charge the additional fee authorized in subdivision (d).

(f) The Judicial Council shall examine the extent to which requests for access to files pursuant to an ex parte order under subdivision (a) are granted or denied, and if denied, the reason for the denial of access.

(g) This section does not apply to a case that seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

SEC. 16. Section 48295 of the Education Code is amended to read:

48295. Any judge of the superior court, in the county in which the school district is located, or in which the offense is committed, has jurisdiction of offenses committed under this article. A juvenile court has jurisdiction of a violation of Section 48293 as provided by Section 601.4 of the Welfare and Institutions Code.

SEC. 17. Section 12150 of the Fish and Game Code is amended to read:

12150. Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the superior court of the county in which the act occurred for the purpose of determining the cause of the killing or the wounding. These proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury.

If it is found that the defendant did the killing or wounding, but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that the defendant did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting the defendant from taking any bird or mammal.

If it is found that the defendant was negligent, but not grossly negligent, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.

SEC. 18. Section 12151 of the Fish and Game Code is amended to read:

12151. Whenever any person, while taking a bird or mammal, kills or wounds any domestic animal belonging to another and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the superior court of the county in which the act occurred for the purpose of determining the cause of the killing or wounding. These proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury.

If it is found that the defendant did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that the defendant did the killing or wounding intentionally or negligently, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period of five years.

SEC. 19. Section 68097 of the Government Code is amended to read:

68097. Witnesses in civil cases may demand the payment of their mileage and fees for one day, in advance, and when so demanded may not be compelled to attend until the allowances are paid except as hereinafter provided for employees of the Department of Justice who are peace officers or analysts in technical fields, peace officers of the Department of the California Highway Patrol, peace officer members of the State Fire Marshal's Office, other state employees, trial court employees, sheriffs, deputy sheriffs, marshals, deputy marshals, district attorney inspectors, probation officers, building inspectors, firefighters, and city police officers. For the purposes of this section and Sections 68097.1 to 68097.10, inclusive, only, the term ''peace officer of the California Highway Patrol'' shall include those persons employed as vehicle inspection specialists by the Department of the California Highway Patrol, the term ''firefighter'' has the definition provided in Section 50925, and a volunteer firefighter shall be deemed to be employed by the public entity for which he or she volunteers as a firefighter.

SEC. 20. Section 68097.1 of the Government Code is amended to read:

68097.1. (a) Whenever an employee of the Department of Justice who is a peace officer or an analyst in a technical field, peace officer of the Department of the California Highway Patrol, peace officer member of the State Fire Marshal's Office, sheriff, deputy sheriff, marshal, deputy marshal, district attorney inspector, probation officer, building inspector, firefighter, or city police officer is required as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties, a subpoena requiring his or her attendance may be served by delivering a copy either to the person personally, or by delivering two copies to his or her immediate superior at the public entity by which he or she is employed or an agent designated by that immediate superior to receive that service.

(b) Whenever any other state employee or any employee of the trial courts is required as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter, event, or transaction concerning which he or she has expertise gained in the course of his or her duties, a subpoena requiring his or her attendance may be served by delivering a copy either to the person personally or by delivering two copies to his or her immediate superior or agent designated by that immediate superior to receive that service.

(c) The attendance of any person described in subdivisions (a) and (b) may be required pursuant to this section only in accordance with Section 1989 of the Code of Civil Procedure.

(d) As used in this section and in Sections 68097.2 and 68097.5, ''tribunal'' means any person or body before whom or which attendance of witnesses may be required by subpoena, including an arbitrator in arbitration proceedings.

SEC. 21. Section 68097.2 of the Government Code is amended to read:

68097.2. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, any firefighter, any state employee, any trial court employee, or any county employee, who is obliged by a subpoena issued pursuant to Section 68097.1 to attend as a witness, shall receive the salary or other compensation to which he or she is normally entitled from the public entity by which he or she is employed during the time that he or she travels to and from the place where the court or other tribunal is located and while he or she is required to remain at that place pursuant to the subpoena. He or she shall also receive from the public entity by which he or she is employed the actual necessary and reasonable traveling expenses incurred by him or her in complying with the subpoena.

(b) The party at whose request the subpoena is issued shall reimburse the public entity for the full cost to the public entity incurred in paying the peace officer, firefighter, state employee, trial court employee, or specified county employee his or her salary or other compensation and traveling expenses as provided for in this section, for each day that the peace officer, firefighter, state employee, trial court employee, or specified county employee is required to remain in attendance pursuant to the subpoena. The amount of one hundred fifty dollars ($150), together with the subpoena, shall be tendered to the person accepting the subpoena for each day that the peace officer, firefighter, state employee, trial court employee, or specified county employee is required to remain in attendance pursuant to the subpoena.

(c) If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded.

(d) If the actual expenses should later prove to be more than the amount deposited, the difference shall be paid to the public entity by the party at whose request the subpoena is issued.

(e) If a court continues a proceeding on its own motion, no additional witness fee shall be required prior to the issuance of a subpoena or the making of an order directing the peace officer, firefighter, state employee, or trial court employee to appear on the date to which the proceeding is continued.

(f) For the purposes of the payment of the salary or other compensation of a volunteer firefighter pursuant to subdivision (a), a volunteer firefighter who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which he or

she has perceived or investigated in the course of his or her duties as a volunteer firefighter, shall be deemed to be entitled to reasonable compensation evidenced by the compensation paid to firefighters in jurisdictions with similar geographic and economic characteristics. However, the requirements of subdivision (a) and of this subdivision are not applicable if a volunteer firefighter will receive his or her regular salary or other compensation pursuant to the policy of his or her regular employer, for the periods during which compensation is required under subdivision (a).

SEC. 22. Section 664 of the Harbors and Navigation Code is amended to read:

664. (a) When any person is arrested for a violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels, and that person is not immediately taken before a magistrate, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of that person, the offense charged, and the time and place where and when that person shall appear in court.

(b) The time specified in the notice to appear must be at least five days after the arrest.

(c) The place specified in the notice to appear shall be any of the following:

(1) Before a superior court judge who is within the county in which the offense charged is alleged to have been committed and who is nearest and most accessible to the place where the arrest is made.

(2) Upon demand of the person arrested, before a superior court judge at the county seat of the county in which the offense is alleged to have been committed.

(3) Before an officer authorized by the county, city, or city and county, to receive a deposit of bail.

(4) Before a superior court judge within 50 miles by the nearest road to the place of the alleged offense and whose county contains any portion of the body of water upon which the offense charged is alleged to have been committed.

(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give a written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in the magistrate's judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable

and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by the defendant in the form set forth in Section 815a of the Penal Code. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in the magistrate's discretion order that no further proceedings shall be had in the case.

Upon the making of any order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of the Penal Code.

(f) No warrant shall issue on any charge for the arrest of a person who has given a written promise to appear in court, unless and until the person has violated that promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

SEC. 23. Section 667 of the Harbors and Navigation Code is amended to read:

667. In addition to any other court which may be a proper place of trial, any superior court location where cases of that type are tried, within 50 miles by the nearest road to the place of the alleged offense, shall be a proper place of trial of any person on a charge of violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels if the county in which the court is located includes any portion of the body of water upon which the offense charged is alleged to have been committed.

SEC. 24. Section 108580 of the Health and Safety Code is amended to read:

108580. When a toy is alleged to be in violation of this article, the department or the local health officer shall commence proceedings in the superior court in whose county the toy is located, for condemnation of the article.

SEC. 25. Section 110375 of the Health and Safety Code is amended to read:

110375. (a) No container wherein commodities are packed shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

(b) No container shall be made, formed, or filled as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual

capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

(1) Protection of the contents of the package.

(2) The requirements of machines used for enclosing the contents of the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need to utilize a larger than required package or container to provide adequate space for the legible presentation of mandatory and necessary labeling information, such as those based on the regulations adopted by the Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industrywide voluntary labeling program.

(5) The fact that the product consists of a commodity that is packaged in a decorative or representational container where the container is part of the presentation of the product and has value that is both significant in proportion to the value of the product and independent of its function to hold the product, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.

(6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.

(8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on the exterior packaging, accompanied by a clear and conspicuous disclosure that the representation is the ''actual size'' of the product or the immediate product container.

(9) The presence of any headspace within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.

(10) The exterior packaging contains a product delivery or dosing device if the device is visible, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.

(11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.

(12) The exterior packaging of the product is routinely displayed using tester units or demonstrations to consumers in retail stores, so that customers can see the actual, immediate container of the product being sold, or a depiction of the actual size of the container prior to purchase.

(13) The exterior packaging consists of single or multiunit presentation boxes of holiday or gift packages if the purchaser can adequately determine the quantity and sizes of the immediate product container at the point of sale.

(14) The exterior packaging is for a combination of one purchased product, together with a free sample or gift, wherein the exterior packaging is necessarily larger than it would otherwise be due to the inclusion of the sample or gift, if the presence of both products and the quantity of each product are clearly and conspicuously disclosed on the exterior packaging.

(c) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the superior court of the county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon any condition as the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner if the owner furnishes proper facilities for the return.

SEC. 26. Section 111880 of the Health and Safety Code is amended to read:

111880. If a food, drug, device, or cosmetic is alleged to be adulterated, misbranded, falsely advertised, or the sale of which is otherwise in violation of this part, the department shall commence proceedings in the superior court in whose jurisdiction the food, drug, device, or cosmetic is located, for condemnation of the article.

SEC. 27. Section 111895 of the Health and Safety Code is amended to read:

111895. Any superior court of this state may condemn any food, drug, device, or cosmetic under provisions of this part. In the absence of an order, the food, drug, device, or cosmetic may be destroyed under the supervision of an authorized agent of the department who has the written consent of the owner, his or her attorney, or authorized representative.

SEC. 28. Section 117070 of the Health and Safety Code is amended to read:

117070. Any violation of any rule or regulation lawfully made by the public agency is a misdemeanor. The superior court of the county within which the reservoir lies in whole or in part is a proper place for trial of all prosecutions for violations of any rules and regulations adopted by the public agency.

SEC. 29. Section 117120 of the Health and Safety Code is amended to read:

117120. Any violation of any rule or regulation lawfully made by the governmental agency is a misdemeanor. The superior court of the county within which the reservoir lies in whole or in part is a proper place for trial of all prosecutions for violations of any rules and regulations adopted by the governmental agency.

SEC. 30. Section 6436 of the Labor Code is amended to read:

6436. The criminal complaint regarding a violation of Section 6505.5 may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in the superior court of any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act or failure to act within that county. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint, but if the case was referred to the prosecutor by the division, or some other governmental unit, one-half of the civil or criminal penalty assessed shall be paid to that governmental unit.

SEC. 31. Section 1034 of the Penal Code is repealed.

SEC. 32. Section 1035 of the Penal Code is amended to read:

1035. A defendant arrested, held, or present in a county other than that in which an indictment, information, felony complaint, or felony probation violation is pending against the defendant, may state in writing his or her agreement to plead guilty or nolo contendere to some or all of the pending charges, to waive trial or hearing in the county in which the pleading is pending, and to consent to disposition of the case in the county in which that defendant was arrested, held, or present, subject to the approval of the district attorney for each county. Upon receipt of the defendant's statement and of the written approval of the district attorneys, the clerk of the court in which the pleading is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the county in which the defendant is arrested, held, or present, and the prosecution shall continue in that county. However, the proceedings shall be limited solely to the purposes of plea and sentencing and not for trial. If, after the proceeding has been transferred pursuant to this section, the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced and the proceeding shall be restored to the docket of that

court. The defendant's statement that the defendant wishes to plead guilty or nolo contendere may not be used against the defendant.

SEC. 33. Section 1038 of the Penal Code is amended to read:

1038. The Judicial Council shall adopt rules of practice and procedure for the change of venue in criminal actions.

SEC. 34. Section 1039 of the Penal Code is repealed.

SEC. 35. Section 1462.2 of the Penal Code is amended to read:

1462.2. Except as otherwise provided in the Vehicle Code, the proper court for the trial of criminal cases amounting to misdemeanor shall be the superior court of the county within which the offense charged was committed.

If an action or proceeding is commenced in a court other than the court herein designated as the proper court for the trial, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time of pleading, requests an order transferring the action or proceeding to the proper court. If after that request it appears that the action or proceeding was not commenced in the proper court, the court shall order the action or proceeding transferred to the proper court. The judge shall, at the time of arraignment, inform the defendant of the right to be tried in the county where the offense was committed.

SEC. 36. Section 5560 of the Public Resources Code is amended to read:

5560. (a) Violation of any ordinance, rule, or regulation adopted pursuant to this article is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500) or by imprisonment in the county jail for a period not to exceed six months, or by both fine and imprisonment, unless the board provides that a violation of any ordinance, rule, or regulation is an infraction, which shall be punishable by a fine not to exceed fifty dollars ($50).

(b) Any superior court of a county lying wholly or in part within the district is a proper court for trial of all prosecutions under this article for violations of any ordinance, rule, or regulation adopted by the board.

SEC. 36.5. Section 5560 of the Public Resources Code is amended to read:

5560. (a) Violation of an ordinance, rule, or regulation adopted pursuant to this article is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail for a period not to exceed six months, or by both that fine and imprisonment, unless the board provides that a violation of an ordinance, rule, or regulation is an infraction, that is punishable by:

(1) A fine not exceeding one hundred dollars ($100) for a first violation.

(2) A fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance, rule, or regulation within one year.

(3) A fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance, rule, or regulation within one year.

(b) A superior court of a county lying wholly or in part within the district is a proper court for trial of all prosecutions under this article for violations of an ordinance, rule, or regulation adopted by the board.

SEC. 37. Section 310 of the Water Code is amended to read:

310. All prosecutions for the violation of any of the provisions of this article shall be instituted in the superior court of the county where the well is situated.

SEC. 38. Section 36.5 of this bill incorporates amendments to Section 5560 of the Public Resources Code proposed by both this bill and AB 504. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 5560 of the Public Resources Code, and (3) this bill is enacted after AB 504, in which case Section 36 of this bill shall not become operative.

CHAPTER 450

An act to amend Section 17605 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 17605 of the Welfare and Institutions Code is amended to read:

17605. (a) For the 1992–93 fiscal year, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount to be determined by the Department of Finance, that represents the sum of the shortfalls between the actual realignment revenues received by each county and each city and county from the Social Services Subaccount of the Local Revenue Fund in the 1991–92 fiscal year and the net costs incurred by each of those counties and cities and counties in the fiscal year for the programs described in Sections 10101, 10101.1, 11322, 11322.2, 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 15204.2 and 18906.5. The Department of Finance shall provide the Controller with an allocation schedule on or before August 15, 1993, that shall be used by the

Controller to allocate funds deposited to the Caseload Subaccount under this subdivision. The Controller shall allocate these funds no later than August 27, 1993.

(b) (1) For the 1993–94 fiscal year and fiscal years thereafter, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount determined by the Department of Finance, in consultation with the appropriate state departments and the California State Association of Counties, that is sufficient to fund the net cost for the realigned portion of the county or city and county share of growth in social services caseloads, as specified in paragraph (2), and any share of growth from the previous year or years for which sufficient revenues were not available in the Caseload Subaccount. The Department of Finance shall provide the Controller with an allocations schedule on or before March 15 of each year. The schedule shall be used by the Controller to allocate funds deposited into the Caseload Subaccount under this subdivision.

(2) For purposes of this subdivision, "growth" means the increase in the actual caseload expenditures for the prior fiscal year over the actual caseload expenditures for the fiscal year preceding the prior fiscal year for the programs described in Section 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 10101, 15204.2 and 18906.5 of this code, and for which funds are allocated pursuant to subdivision (b) of Section 123940 of the Health and Safety Code.

(3) The difference in caseload expenditures between the fiscal years shall be multiplied by the factors that represent the change in county or city and county shares of the realigned programs. These products shall then be added or subtracted, taking into account whether the county's or city and county's share of costs was increased or decreased as a result of realignment, to yield each county's or city and county's allocation for caseload growth. Allocations for counties or cities and counties with allocations of less than zero shall be set at zero.

(c) On or before the 27th day of each month, the Controller shall allocate, to the local health and welfare trust fund social services account, the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Caseload Subaccount, pursuant to the schedule of allocations of caseload growth described in subdivision (b). If there are insufficient funds to fully satisfy all caseload growth obligations, each county's or city and county's allocation for each program specified in subdivision (d) shall be prorated.

(d) Prior to allocating funds pursuant to subdivision (b), to the extent that funds are available from funds deposited in the Caseload Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, the Controller shall allocate money to counties or cities and

counties to correct any inequity or inequities in the computation of the child welfare services portion of the schedule required by subdivision (a) of Section 17602.

(e) (1) For the 2003–04 fiscal year, no Sales Tax Growth Account funds shall be allocated pursuant to this chapter until the caseload portion of the base of each county's social services account in the county's health and welfare trust fund is funded to the level of the 2001–02 fiscal year. Funds to meet this requirement shall be allocated from the Sales Tax Account of the Local Revenue Fund. If sufficient funds are not available in the Sales Tax Account of the Local Revenue Fund to achieve that funding level in the 2003–04 fiscal year, this requirement shall be funded in each succeeding fiscal year in which there are sufficient funds in the Sales Tax Account of the Local Revenue Fund until the caseload base funding level for which each county would have otherwise been eligible in accordance with subdivision (e) of Section 17602 for that year.

(2) The caseload portion of each county's social services account base shall be determined by subtracting its noncaseload portion of the base, as determined by the Department of Finance in its annual calculation of General Growth Account allocations, from the total base of each county's social services account for the 2001–02 fiscal year.

SEC. 2. It is the intent of the Legislature that the budget committees and appropriate policy committees of the Senate and Assembly develop recommendations on realignment by April 1, 2004. The recommendations shall include the best means of financing realigned social services, mental health services, and health services to ensure program stability and minimize tension between caseload and noncaseloaddriven programs. Interested and affected parties, including, but not limited to, counties, service providers, advocates, and service recipients, shall be consulted in the development of the recommendations.

CHAPTER 451

An act to amend Sections 116.870 and 116.880 of the Code of Civil Procedure, to repeal Section 229.40 of the Streets and Highways Code, and to amend Sections 544, 3014, 3015, 3050.1, 3050.2, 3050.3, 3050.4, 3050.6, 3050.7, 3052, 3062, 3066, 3067, 4453, 12810.5, 16076, 24403, and 40508 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 116.870 of the Code of Civil Procedure is amended to read:

116.870. Sections 16250 to 16381, inclusive, of the Vehicle Code, regarding the suspension of the judgment debtor's privilege to operate a motor vehicle for failing to satisfy a judgment, apply if the judgment (1) was for damage to property in excess of seven hundred fifty dollars ($750) or for bodily injury to, or death of, a person in any amount, and (2) resulted from the operation of a motor vehicle upon a California highway by the defendant, or by any other person for whose conduct the defendant was liable, unless the liability resulted from the defendant's signing the application of a minor for a driver's license.

SEC. 2. Section 116.880 of the Code of Civil Procedure is amended to read:

116.880. (a) If the judgment (1) was for seven hundred fifty dollars ($750) or less, (2) resulted from a motor vehicle accident occurring on a California highway caused by the defendant's operation of a motor vehicle, and (3) has remained unsatisfied for more than 90 days after the judgment became final, the judgment creditor may file with the Department of Motor Vehicles a notice requesting a suspension of the judgment debtor's privilege to operate a motor vehicle.

(b) The notice shall state that the judgment has not been satisfied, and shall be accompanied by (1) a fee set by the department, (2) the judgment of the court determining that the judgment resulted from a motor vehicle accident occurring on a California highway caused by the judgment debtor's operation of a motor vehicle, and (3) a declaration that the judgment has not been satisfied. The fee shall be used by the department to finance the costs of administering this section and may not exceed the department's actual costs.

(c) Upon receipt of a notice, the department shall attempt to notify the judgment debtor by telephone, if possible, otherwise by certified mail, that the judgment debtor's privilege to operate a motor vehicle will be suspended for a period of 90 days, beginning 20 days after receipt of notice by the department from the judgment creditor, unless satisfactory proof, as provided in subdivision (e), is provided to the department before that date.

(d) At the time the notice is filed, the department shall give the judgment creditor a copy of the notice that shall indicate the filing fee paid by the judgment creditor, and shall include a space to be signed by the judgment creditor acknowledging payment of the judgment by the judgment debtor. The judgment creditor shall mail or deliver a signed copy of the acknowledgment to the judgment debtor once the judgment is satisfied.

(e) The department shall terminate the suspension, or the suspension proceedings, upon the occurrence of one or more of the following:

(1) Receipt of proof that the judgment has been satisfied, either (A) by a copy of the notice required by this section signed by the judgment creditor acknowledging satisfaction of the judgment, or (B) by a declaration of the judgment debtor stating that the judgment has been satisfied.

(2) Receipt of proof that the judgment debtor is complying with a court-ordered payment schedule.

(3) Proof that the judgment debtor had insurance covering the accident sufficient to satisfy the judgment.

(4) A deposit with the department of the amount of the unsatisfied judgment, if the judgment debtor presents proof, satisfactory to the department, of inability to locate the judgment creditor.

(5) At the end of 90 days.

(f) When the suspension has been terminated under subdivision (e), the action is final and may not be reinstituted. Whenever the suspension is terminated, Section 14904 of the Vehicle Code shall apply. Money deposited with the department under this section shall be handled in the same manner as money deposited under subdivision (d) of Section 16377 of the Vehicle Code.

(g) A public agency is not liable for an injury caused by the suspension, termination of suspension, or the failure to suspend a person's privilege to operate a motor vehicle as authorized by this section.

SEC. 3. Section 229.40 of the Streets and Highways Code is repealed.

SEC. 4. Section 544 of the Vehicle Code is amended to read:

544. ''Total loss salvage vehicle'' means either of the following:

(a) A vehicle, other than a nonrepairable vehicle, of a type subject to registration that has been wrecked, destroyed, or damaged, to the extent that the owner, leasing company, financial institution, or the insurance company that insured or is responsible for repair of the vehicle, considers it uneconomical to repair the vehicle and because of this, the vehicle is not repaired by or for the person who owned the vehicle at the time of the event resulting in damage.

(b) A vehicle that was determined to be uneconomical to repair, for which a total loss payment has been made by an insurer, whether or not the vehicle is subsequently repaired, if prior to or upon making the payment to the claimant, the insurer obtains the agreement of the claimant to the amount of the total loss settlement, and informs the client that, pursuant to subdivision (a) or (b) of Section 11515, the total loss settlement must be reported to the Department of Motor Vehicles, which will issue a salvage certificate for the vehicle.

SEC. 5. Section 3014 of the Vehicle Code is amended to read:

3014. The board may appoint an executive director, who shall be exempt from civil service requirements, and who shall devote as much time as may be necessary to discharge the functions of the board as herein provided. The department shall provide the board with the necessary personnel, office space, equipment, supplies, and services that, in the opinion of the board, may be necessary to administer this chapter. However, the board may contract with the department or another state agency for office space, equipment, supplies, and services, as determined by the board to be appropriate, for the administration of this chapter.

SEC. 6. Section 3015 of the Vehicle Code is amended to read:

3015. In addition to the office of the executive director in Sacramento, the department shall, as the need therefor occurs, secure adequate rooms for the meetings of the board in Los Angeles, San Francisco, Sacramento, or other locations in the state as may be required in the discretion of the board, to administer this chapter.

SEC. 7. Section 3050.1 of the Vehicle Code is amended to read:

3050.1. (a) In a proceeding, hearing, or in the discharge of duties imposed under this chapter, the board, its executive director, or an administrative law judge designated by the board may administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, records, papers, and other documents in any part of the state.

(b) For purposes of discovery, the board or its executive director may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in the civil action discovery procedures in Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2030 of that code. Discovery shall be completed no later than 15 days prior to the commencement of the proceeding or hearing before the board. This subdivision shall apply only to those proceedings or hearings involving a petition or protest filed pursuant to subdivision (c) or (d) of Section 3050. The board, its executive director, or an administrative law judge designated by the board may issue subpoenas to compel attendance at depositions of persons having knowledge of the acts, omissions, or events that are the basis for the proceedings, as well as the production of books, records, papers, and other documents.

SEC. 8. Section 3050.2 of the Vehicle Code is amended to read:

3050.2. (a) Obedience to subpoenas issued to compel attendance of witnesses, or the production of books, records, papers, and other documents at the proceeding or hearing, may be enforced by application to the superior court as set forth in Article 2 (commencing with Section

11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Compliance with discovery procedures authorized pursuant to subdivision (b) of Section 3050.1 may be enforced by application to the executive director of the board. The executive director may, at the direction of the board, upon a showing of failure to comply with authorized discovery without substantial justification for that failure, dismiss the protest or petition or suspend the proceedings pending compliance. The executive director may, at the direction of the board, upon a failure to comply with authorized discovery without substantial justification for that failure, require payment of costs incurred by the board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery. Nothing in this section precludes the executive director from making application to the superior court to enforce obedience to subpoenas or compliance with other discovery procedures authorized pursuant to subdivision (b) of Section 3050.1.

SEC. 9. Section 3050.3 of the Vehicle Code is amended to read:

3050.3. A witness, other than an officer or employee of the state or of a political subdivision of the state, who appears by order of the board or its executive director, shall receive for his or her attendance the same fees and the same mileage allowed by law to witnesses in civil cases. The amount shall be paid by the party at whose request the witness is subpoenaed. The mileage and fees, if any, of a witness subpoenaed by the board or its executive director, but not at the request of a party, shall be paid from the funds provided for the use of the board in the same manner that other expenses of the board are paid.

SEC. 10. Section 3050.4 of the Vehicle Code is amended to read:

3050.4. In a protest or petition before the board, the board, its executive director, or an administrative law judge designated by the board or its executive director, may order a mandatory settlement conference. The failure of a party to appear, to be prepared, or to have authority to settle the matter may result in one or more of the following:

(a) The board, its executive director, or an administrative law judge designated by the board or its executive director, may suspend all proceedings before the board in the matter until compliance.

(b) The board, its executive director, or an administrative law judge designated by the board or its executive director, may dismiss the proceedings or any part thereof before the board with or without prejudice.

(c) The board, its executive director, or an administrative law judge designated by the board or its executive director, may require all the board's costs to be paid by the party at fault.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, may deem that the party at fault has abandoned the matter.

SEC. 11. Section 3050.6 of the Vehicle Code is amended to read:

3050.6. The board or its executive director may, in the event of a granting of a continuance of a scheduled matter, assess costs of the board upon the party receiving the continuance.

SEC. 12. Section 3050.7 of the Vehicle Code is amended to read:

3050.7. (a) The board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066, to resolve one or more issues raised by a protest or petition filed with the board. Whenever the parties to a protest or petition submit a proposed stipulated decision and proposed order of the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, subdivision (b) of Section 3060, which requires a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

SEC. 13. Section 3052 of the Vehicle Code is amended to read:

3052. (a) On or before the 10th day after the last day on which reconsideration of a final decision of the department can be ordered, the respondent may file an appeal with the executive director of the board. The appeal shall be in writing and shall state the grounds therefor. A copy of the appeal shall be mailed by the appellant to the department, and the

department shall thereafter be considered as a party to the appeal. The right to appeal is not affected by failure to seek reconsideration before the department.

(b) An appeal is considered to be filed on the date it is received in the office of the executive director of the board, except that an appeal mailed to the executive director by means of registered mail is considered to be filed with the executive director on the postmark date.

(c) The appeal shall be accompanied by evidence that the appellant has requested the administrative record of the department and advanced the cost of preparation of that record. The complete administrative record includes the pleadings, all notices and orders issued by the department, any proposed decision by an administrative law judge, the exhibits admitted or rejected, the written evidence, and any other papers in the case. All parts of the administrative record requested by the appellant may be filed with the appeal together with the appellant's points and authorities. If the board orders the filing of additional parts of the administrative record, the board may order prior payment by the appellant of the cost of providing those additional parts.

(d) Except as provided in subdivisions (e) and (f), a decision of the department may not become effective during the period an appeal may be filed, and the filing of an appeal shall stay the decision of the department until a final order is made by the board.

(e) When a decision has ordered revocation of a dealer's license, the department may, on or before the last day upon which an appeal may be filed with the board, petition the board to order the decision of the department into effect.

(f) With respect to the department's petition filed pursuant to subdivision (e), the department shall have the burden of proof. The board shall act upon the petition within 14 days or prior to the effective date of the department's decision, whichever is later. The board may order oral argument on the petition before the board. Oral argument by telephone conference call with a quorum of the board members present, either in person or by telephone, is permitted.

SEC. 14. Section 3062 of the Vehicle Code is amended to read:

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor,

a franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the dealership. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) If a franchisor seeks to enter into a franchise that authorizes a satellite warranty facility to be established at, or relocated to, a proposed location that is within two miles of a dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. Within 20 days of receiving the notice satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the satellite warranty facility. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish or relocate the proposed satellite warranty facility until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the satellite warranty facility. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(3) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

''NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you

file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.''

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to a location that is both within the same city as, and within one mile from, the existing dealership location.

(2) The establishment at a location that is both within the same city as, and within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

(c) Subdivision (a) does not apply to a display of vehicles at a fair, exposition, or similar exhibit if actual sales are not made at the event and the display does not exceed 30 days. This subdivision may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though the event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(e) As used in this section, the following definitions apply:

(1) ''Motor vehicle dealership'' or ''dealership'' means an authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new motor vehicles.

(2) ''Satellite warranty facility'' means a facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.

SEC. 15. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, or 3065.1, the board shall fix a time within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in a case involving a franchisee who deals exclusively in motorcycles, the board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing may not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, ''good cause'' includes, but is not limited to, the effects upon, and any irreparable harm

to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3060 or 3062, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In a hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, or 3065.1, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material to a protest filed pursuant to Section 3065 or 3065.1.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

SEC. 16. Section 3067 of the Vehicle Code is amended to read:

3067. (a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. If the board fails to act within 30 days after the hearing, within 30 days after the board receives a proposed decision where the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved. Copies of the board's decision shall be delivered to the parties personally or sent to them by registered mail, as well as to all individuals and groups that have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and a reconsideration or rehearing is not permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge

alone, 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney.

SEC. 17. Section 4453 of the Vehicle Code is amended to read:

4453. (a) The registration card shall contain upon its face, the date issued, the name and residence or business address or mailing address of the owner and of the legal owner, if any, the registration number assigned to the vehicle, and a description of the vehicle as complete as that required in the application for registration of the vehicle.

(b) The following motor vehicles shall be identified as such on the face of the registration card whenever the department is able to ascertain that fact at the time application is made for initial registration or transfer of ownership of the vehicle:

(1) A motor vehicle rebuilt and restored to operation that was previously declared to be a total loss salvage vehicle because the cost of repairs exceeds the retail value of the vehicle.

(2) A motor vehicle rebuilt and restored to operation that was previously reported to be dismantled pursuant to Section 11520.

(3) A motor vehicle previously registered to a law enforcement agency and operated in law enforcement work.

(4) A motor vehicle formerly operated as a taxicab.

(5) A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(6) A park trailer, as described in Section 18009.3 of the Health and Safety Code, that when moved upon the highway is required to be moved under a permit pursuant to Section 35780.

(7) A motor vehicle that has been reacquired under circumstances described in subdivision (c) of Section 1793.23 of the Civil Code, a vehicle with out-of-state titling documents reflecting a warranty return, or a vehicle that has been identified by an agency of another state as requiring a warranty return title notation, pursuant to the laws of that state. The notation made on the face of the registration and pursuant to this subdivision shall state ''Lemon Law Buyback.''

(c) The director may modify the form, arrangement, and information appearing on the face of the registration card and may provide for standardization and abbreviation of fictitious or firm names on the registration card whenever the director finds that the efficiency of the department will be promoted by so doing.

SEC. 18. Section 12810.5 of the Vehicle Code is amended to read:

12810.5. (a) Except as otherwise provided in subdivision (b), a person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months shall be prima facie presumed to be a negligent

operator of a motor vehicle. In applying this subdivision to a driver, if the person requests and appears at a hearing conducted by the department, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

(b) (1) A class A or class B licensed driver, except persons holding certificates pursuant to Section 12517, 12519, 12523, 12523.5, or 12527, or an endorsement issued pursuant to paragraph (2) or (4) of subdivision (a) of Section 15278, who is presumed to be a negligent operator pursuant to subdivision (a), and who requests and appears at a hearing and is found to have a driving record violation point count of six or more points in 12 months, eight or more points in 24 months, or 10 or more points in 36 months is presumed to be a prima facie negligent operator. However, the higher point count does not apply if the department reasonably determines that four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months are attributable to the driver's operation of a vehicle requiring only a class C license, and not requiring a certificate or endorsement, or a class M license.

(2) For purposes of this subdivision, each point assigned pursuant to Section 12810 shall be valued at one and one-half times the value otherwise required by that section for each violation reasonably determined by the department to be attributable to the driver's operation of a vehicle requiring a class A or class B license, or requiring a certificate or endorsement described in this section.

(c) The department may require a negligent operator whose driving privilege is suspended or revoked pursuant to this section to submit proof of financial responsibility, as defined in Section 16430, on or before the date of reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following that date of reinstatement.

SEC. 19. Section 16076 of the Vehicle Code is amended to read:

16076. (a) The department shall notify every person whose driving privilege is suspended, pursuant to Section 16070, of that person's right to apply for a restricted driving privilege authorized under Section 16072.

(b) For purposes of subdivision (a), the department shall prepare and publish a printed summary. The printed summary may contain, but is not limited to, the following wording:

> "If your driving privilege is suspended due to involvement in an accident while you were uninsured, you may apply for a restricted license at any office of the Department of Motor Vehicles, accompanied with proof of financial responsibility, payment of a

penalty fee of two hundred fifty dollars ($250), and, unless already paid, payment of a reissuance fee.

The Mello-McAlister Restricted Employment Driving Privilege Act allows you to apply for a driver's license limiting you to driving to and from work, and during the course of your primary employment, during the one-year mandatory term of suspension. The restricted license will not be issued if any other suspension or revocation action has been taken against your driving privilege.''

(c) This section shall be known and may be cited as the Mello-McAlister Restricted Employment Driving Privilege Act.

SEC. 20. Section 24403 of the Vehicle Code is amended to read:

24403. (a) A motor vehicle may be equipped with not more than two foglamps that may be used with, but may not be used in substitution of, headlamps.

(b) On a motor vehicle other than a motorcycle, the foglamps authorized under this section shall be mounted on the front at a height of not less than 12 inches nor more than 30 inches and aimed so that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle projects higher than a level of four inches below the level of the center of the lamp from which it comes, for a distance of 25 feet in front of the vehicle.

(c) On a motorcycle, the foglamps authorized under this section shall be mounted on the front at a height of not less than 12 inches nor more than 40 inches and aimed so that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle projects higher than a level of four inches below the level of the center of the lamp from which it comes, for a distance of 25 feet in front of the vehicle.

SEC. 21. Section 40508 of the Vehicle Code is amended to read:

40508. (a) A person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(b) A person willfully failing to pay a lawfully imposed fine for a violation of a provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due is guilty of a misdemeanor regardless of the full payment of the fine after that time.

(c) A person willfully failing to comply with a condition of a court order for a violation of this code, other than for failure to appear or failure

to pay a fine, is guilty of a misdemeanor, regardless of his or her subsequent compliance with the order.

(d) If a person convicted of an infraction fails to pay a fine or an installment thereof within the time authorized by the court, the court may, except as otherwise provided in this subdivision, impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Before returning the license to the person, the court shall endorse on the reverse side of the license that the person was ordered not to drive, the period for which that order was made, and the name of the court making the order. If a defendant with a class C or M driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of the limitation on the person's license. The impounding of the license and ordering the person not to drive or the order limiting the person's driving does not constitute a suspension of the license, but a violation of the order constitutes contempt of court.

CHAPTER 452

An act to add Sections 1701.5 and 1701.6 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 1701.5 is added to the Public Utilities Code, to read:

1701.5. (a) Except as specified in subdivision (b), in a ratesetting or quasi-legislative case, the commission shall resolve the issues raised in the scoping memo within 18 months of the date the scoping memo is issued, unless the commission makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. No single order may extend the deadline for more than 60 days.

(b) Notwithstanding subdivision (a), the commission may specify in a scoping memo a resolution date later than 18 months from the date the

scoping memo is issued, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date.

SEC. 2. Section 1701.6 is added to the Public Utilities Code, to read:

1701.6. (a) The president of the commission shall annually appear before the appropriate policy committees of the Senate and Assembly to report on the annual work plan access guide of the commission required pursuant to Section 321.6.

(b) The president of the commission shall annually appear before the appropriate policy committees of the Senate and Assembly to report on the annual report of the commission on the number of cases where resolution exceeded the time periods prescribed in scoping memos and the days that commissioners presided in hearings, pursuant to Section 13 of Chapter 856 of the Statutes of 1996.

CHAPTER 453

An act to amend Sections 113750, 113785, 113895, 113995, 113998, 114002, 114055, 114056, 114265, 114294, 114300, 114302, 114303, 114304, 114313, 114314, 114315, 114319, 114332.3, 114362, and 114367.5 of, to add Sections 113750.1, 113817, 113841, 114287.5, and 114305 to, and to repeal Section 114322 of, the Health and Safety Code, relating to retail food facilities.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 113750 of the Health and Safety Code is amended to read:

113750. ''Commissary'' means a food establishment in which food, containers, equipment, or supplies are stored or handled, food is prepared or prepackaged for sale or service at other locations, utensils are cleaned, liquid or solid wastes are disposed of, or potable water is obtained, for use in mobile food facilities, mobile food preparation units, stationary mobile food preparation units, or vending machines.

SEC. 2. Section 113750.1 is added to the Health and Safety Code, to read:

113750.1. ''Community event'' means an event that is of a civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other public gathering events approved by the local enforcement agency.

SEC. 3. Section 113785 of the Health and Safety Code is amended to read:

113785. (a) ''Food facility'' means all of the following:

(1) Any food establishment, mobile food facility, vending machine, produce stand, swap meet prepackaged food stand, temporary food facility, satellite food distribution facility, stationary mobile food preparation unit, mobile support unit, and mobile food preparation unit.

(2) Any place used in conjunction with the operations described in paragraph (1), including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(3) A certified farmers' market, for purposes of permitting and enforcement.

(b) ''Food facility'' does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food, or a private home, church, private club, or other nonprofit association that gives or sells food to its members and guests at occasional events, as defined in Section 113825, or a for-profit entity that gives or sells food at occasional events, as defined in Section 113825, for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition for participating in the event.

(2) Premises set aside for winetasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, if no food or beverage is offered for sale for onsite consumption.

SEC. 4. Section 113817 is added to the Health and Safety Code, to read:

113817. ''Mobile support unit'' means a vehicle, used in conjunction with a commissary, that travels to, and services, mobile food facilities as needed to replenish supplies, including food and potable water, clean the interior of the unit, or dispose of liquid or solid wastes.

SEC. 5. Section 113841 is added to the Health and Safety Code, to read:

113841. Customer access to a food establishment through the food preparation area is permissible, in the discretion of the permittee, if ready-to-eat foods are prepared in approved areas separated from sources of contamination by a space of at least three feet from the consumer and in areas that are separate from raw or undercooked foods. The route of access shall be separated from the required space by a rail or wall at least three feet high or otherwise clearly delineated.

SEC. 6. Section 113895 of the Health and Safety Code is amended to read:

113895. ''Temporary food facility'' means a food facility operating out of temporary facilities approved by the enforcement officer at a fixed

location for a period of time not to exceed 25 consecutive or nonconsecutive days in any 90-day period in conjunction with a single, weekly, or monthly community event, as defined in Section 113750.1.

SEC. 7. Section 113995 of the Health and Safety Code is amended to read:

113995. (a) Except as otherwise provided in this section, all potentially hazardous food being transported to or from a retail food facility for a period of longer than 30 minutes, excluding raw shell eggs, shall be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or shall be kept at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times. Storage and display of raw shell eggs shall be governed by Sections 113997 and 114351.

(b) A retail food facility may accept potentially hazardous food at or below 7 degrees Celsius (45 degrees Fahrenheit), per subdivision (a), if the potentially hazardous food is cooled within four hours of receipt to a temperature at or below 5 degrees Celsius (41 degrees Fahrenheit).

(c) All potentially hazardous food shall be held at or below 5 degrees Celsius (41 degrees Fahrenheit) or shall be kept at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times, except for the following:

(1) Unshucked live molluscan shellfish shall not be stored or displayed at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(2) Frozen potentially hazardous foods shall be stored and displayed in their frozen state unless being thawed in accordance with Section 114085.

(3) Potentially hazardous foods held for dispensing in serving lines and salad bars during periods not to exceed 12 hours in any 24-hour period or held in vending machines may not exceed 7 degrees Celsius (45 degrees Fahrenheit). For purposes of this subdivision, a display case shall not be deemed to be a serving line.

(4) Pasteurized milk and pasteurized milk products in original, sealed containers shall not be held at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(d) Potentially hazardous foods may be held at temperatures other than those specified in this section only under the following circumstances:

(1) While being heated or cooled.

(2) When the food facility operates pursuant to a HACCP plan adopted pursuant to Section 114055 or 114056.

(3) When time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, but only if all of the following conditions are met:

(A) The food shall be marked or otherwise identified to indicate the time that is four hours after the time when the food is removed from temperature control.

(B) The food shall be cooked and served, served if ready-to-eat, or discarded, within four hours after the time when the food is removed from temperature control.

(C) Food in unmarked containers or packages, or marked to exceed a four-hour time limit shall be discarded.

(D) Written procedures that ensure compliance with this paragraph and with Section 114002 for food that is prepared, cooked, and refrigerated before time is used as a public health control shall be maintained in the food facility and made available to the enforcement agency upon request.

(e) A thermometer accurate to plus or minus 1 degree Celsius (2 degrees Fahrenheit) shall be provided for each refrigeration unit, shall be located to indicate the air temperature in the warmest part of the unit and, except for vending machines, shall be affixed to be readily visible. Except for vending machines, an accurate easily readable metal probe thermometer suitable for measuring the temperature of food shall be readily available on the premises.

SEC. 8. Section 113998 of the Health and Safety Code is amended to read:

113998. (a) Whenever any potentially hazardous food, as defined in Section 113845, that has been prepared, cooked, and cooled by a food facility is thereafter reheated by that food facility for hot holding, it shall be reheated to a minimum internal temperature of 74 degrees Celsius (165 degrees Fahrenheit).

(b) Any potentially hazardous ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 57.2 degrees Celsius (135 degrees Fahrenheit) for hot holding. A minimum temperature shall not be required if the food described in this subdivision is prepared for immediate service.

SEC. 9. Section 114002 of the Health and Safety Code is amended to read:

114002. (a) Whenever food has been prepared so that it becomes potentially hazardous, or is potentially hazardous food that has been heated, it shall be rapidly cooled if not held at or above 57.2 degrees Celsius (135 degrees Fahrenheit).

(b) After heating or hot holding, potentially hazardous food shall be cooled rapidly according to the following:

(1) From 57.2 degrees Celsius, (135 degrees Fahrenheit) to 21 degrees Celsius (70 degrees Fahrenheit) within two hours.

(2) From 21 degrees Celsius (70 degrees Fahrenheit) to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours.

(c) If prepared at ambient temperature, potentially hazardous food shall be cooled rapidly from ambient temperature to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours.

(d) The rapid cooling of potentially hazardous food shall be completed by one or more of the following methods based on the type of food being cooled:

(1) Placing the food in shallow, heat-conducting pans.

(2) Separating the food into smaller or thinner portions.

(3) Using rapid-cooling equipment.

(4) Using containers that facilitate heat transfer.

(5) Adding ice as an ingredient.

(6) Inserting appropriately designed containers in an ice bath and stirring frequently.

(7) In accordance with a HACCP plan adopted pursuant to Section 114055 or 114056.

(8) Utilizing other effective means that have been approved by the enforcement agency.

(e) When potentially hazardous food is placed in cooling or cold-holding equipment, food containers in which the food is being cooled shall be:

(1) Arranged in the equipment, to the extent practicable, to provide maximum heat transfer through the container walls.

(2) Loosely covered, or uncovered if protected from overhead contamination, to facilitate heat transfer from the surface of the food.

(3) Stirred as necessary to evenly cool a liquid or a semiliquid food.

(f) Notwithstanding subdivision (e), other methods of cooling potentially hazardous food may be utilized, unless deemed unacceptable by the enforcing agency, including, but not limited to, a HACCP plan adopted pursuant to Section 114055 or 114056.

SEC. 10. Section 114055 of the Health and Safety Code is amended to read:

114055. (a) Food facilities may operate pursuant to a HACCP plan.

(b) The person operating a food facility pursuant to a HACCP plan shall designate at least one person to be responsible for developing HACCP plans, verifying that HACCP plans are effective, and training employees.

(1) The designated person shall have knowledge in the causes of foodborne illness.

(2) The designated person shall have knowledge of HACCP principles and their application.

(c) A minimum of one person per shift shall be designated who is knowledgeable in the HACCP plan or plans adopted by the operator to

be responsible for adherence to any HACCP plan used, take corrective actions when necessary, and assure monitoring records are properly completed.

(d) Food receiving, storage, display, and dispensing procedures may be addressed under a general HACCP plan if the foods have common hazards and critical control points.

(e) Food facilities may engage in the following only pursuant to a HACCP plan adopted pursuant to this section or Section 114056:

(1) Acidification of potentially hazardous foods to prevent bacterial growth.

(2) Packing potentially hazardous foods in an oxygen-reduced atmosphere for a period that exceeds 10 days.

(3) Storing partially cooked meals in sealed containers at temperatures above negative 17 degrees Celsius (0 degrees Fahrenheit) for a period that exceeds 10 days.

(4) Preserving foods by smoking, curing, or using food additives.

(f) All critical limit monitoring equipment shall be suitable for its intended purpose and be calibrated as specified by its manufacturer. The food facility shall maintain all calibration records for a period not less than two years.

(g) No verification of the effectiveness of a critical limit is required if the critical limits used in the HACCP plan do not differ from the critical limits set forth in Sections 113845, 113995, and 114003.

(h) HACCP training of employees shall be documented and HACCP training records of an employee shall be retained for the duration of employment or a period not less than two years, whichever is greater. Training given to employees shall be documented as to date, trainer, and subject.

(i) All critical control point monitoring records shall be retained for a period not less than 90 days.

(j) Nothing in this section shall be deemed to require the enforcement agency to review or approve a HACCP plan.

SEC. 11. Section 114056 of the Health and Safety Code is amended to read:

114056. (a) Any HACCP plan that uses critical limits other than those stated in Sections 113845, 113995, and 114003 shall not be implemented without prior review and approval by the enforcement agency.

(b) Any HACCP plan using acidification or water activity to prevent the growth of Clostridium botulinum shall not be implemented without prior review and approval by the department.

(c) The enforcement agency shall collect fees sufficient only to cover the costs for review, inspections, and any laboratory samples taken.

(d) Any HACCP plan may be disapproved if it does not comply with HACCP principles.

(e) The enforcement agency may suspend or revoke, as set forth in this subdivision, its approval of a HACCP plan without prior notice if the plan: is determined to pose a public health risk due to changes in scientific knowledge or the hazards present; or there is a finding that the food facility does not have the ability to follow its HACCP plan; or there is a finding that the food facility does not consistently follow its HACCP plan.

(1) Within 30 days of written notice of suspension or revocation of approval, the food facility may request a hearing to present information as to why the HACCP plan suspension or revocation should not have taken place or to submit HACCP plan changes.

(2) The hearing shall be held within 15 working days of the receipt of a request for a hearing. Upon written request of the permittee the hearing officer may postpone any hearing date, if circumstances warrant that action.

(3) The hearing officer shall issue a written notice of decision within five working days following the hearing. If the decision is to suspend or revoke approval, the reason for suspension or revocation shall be included in the written decision.

SEC. 12. Section 114265 of the Health and Safety Code is amended to read:

114265. (a) The name of the facility, city, state, ZIP Code, and name of the permittee, if different from the name of the facility, shall be permanently affixed to both sides of the facility so as to be legible and clearly visible to patrons of the mobile food facility. The facility's name shall be in letters at least 8 centimeters (3 inches) in height and shall be of a color contrasting with the exterior of the mobile food facility. Letters and numbers for the city, state, ZIP Code, and the name of the permittee shall not be less than 2.5 centimeters (one inch) in height.

(b) Mobile food facility equipment, including, but not limited to, the interior of cabinet units and compartments, shall be designed so as to, and made of materials that, result in smooth, readily accessible, and easily cleanable surfaces. Unfinished wooden surfaces are prohibited. Construction joints shall be tightly fitted and sealed so as to be easily cleanable. Equipment and utensils shall be constructed of durable, nontoxic materials and shall be easily cleanable.

(c) During operation, no food intended for retail shall be conveyed, held, stored, displayed, or served from any place other than a mobile food facility except for the restocking of product in a manner approved by the enforcement agency.

(d) Notwithstanding subdivision (k), food products remaining after each day's operation shall be stored only in an approved commissary or other approved facility.

(e) During transportation, storage, and operation of a mobile food facility, food, food-contact surfaces, and utensils shall be protected from contamination. Single-service utensils shall be individually wrapped or in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once. Food-contact surfaces and utensils shall be cleaned and sanitized in accordance with subdivisions (i), (j), and (k) of Section 114090.

(f) All food displayed, sold, or offered for sale from a mobile food facility shall be obtained from an approved source.

(g) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(h) Mobile food facilities shall be operated within 60 meters (200 feet) of approved and readily available toilet and hand washing facilities or as otherwise approved by the enforcement agency to ensure restroom facilities are available to facility employees.

(i) All mobile food facilities shall operate out of a commissary, mobile support unit, or other facility approved by the enforcement agency. Mobile food facilities shall be stored at or within a commissary or other location approved by the enforcement agency so as to be protected from unsanitary conditions.

(j) Potentially hazardous food shall be maintained at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times in accordance with Section 113995.

(k) Potentially hazardous food held at or above 57.2 degrees Celsius (135 degrees Fahrenheit) on a mobile food facility shall be destroyed at the end of the operating day.

(*l*) (1) Potable and wastewater tanks may be constructed so as to be removed from within the approved mobile food facility compartments for refilling and dispensing purposes only. All retail food operations shall cease during removal and replacement of tanks.

(2) All wastewater from a mobile food facility shall be drained to an approved wastewater receptor at the commissary or other approved facility.

(3) Refilling of a potable water tank shall be conducted through an approved and sanitary method.

(4) Storage of any prefilled potable water tank, or empty and clean water tanks, or both, shall be maintained within the cart, or in an approved manner that will protect against contamination.

(m) All new and replacement gas-fired appliances shall meet applicable ANSI standards. All new and replacement electrical appliances shall meet applicable Underwriters Laboratory standards. However, for units subject to Part 2 (commencing with Section 18000) of Division 13, these appliances shall comply with standards prescribed by Sections 18028, 18029.3, and 18029.5.

(n) Bulk beverage dispensers shall only be filled at the commissary or other facility approved by the enforcement agency unless a hand washing sink as described in paragraph (1) of subdivision (p) is provided.

(o) Where nonprepackaged food is handled for display or sale, the mobile food facility shall be equipped with a food compartment that completely encloses all food, food-contact surfaces, and the handling of ready-to-eat food. The opening to the food compartment shall be sized as appropriate to the food handling activity without compromising the intended protection from contamination, and shall be provided with tight-fitting doors that, when closed, protect interior surfaces from dust, debris, insects, and other vermin.

(p) Mobile food facilities, not under a valid public health permit as of January 1, 1997, on which nonprepackaged ready-to-eat food is sold, or offered for sale, shall be constructed and equipped in compliance with all of the following:

(1) A minimum of a one-compartment metal sink, hand washing cleanser and single-service towels in approved dispensers shall be provided. The sink shall be furnished with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet that permits both hands to be free for washing. The sink shall be large enough to accommodate the cleaning of the largest utensils washed. The sink, hand washing cleanser, and single-service towels shall be located as to be easily accessible and unobstructed for use by the operator in the working area. The minimum water heater capacity shall be one-half gallon.

(2) The potable water tank and delivery system shall be constructed of approved materials, provide protection from contamination, and shall be of a capacity commensurate with the level of food handling activity on the mobile food facility. The capacity of the system shall be sufficient to furnish enough hot and cold water for the following: steamtable, utensil washing and sanitizing, hand washing, and equipment cleaning. At least 18 liters (5 gallons) of water shall be provided exclusively for hand washing. Any water needed for other purposes shall be in addition to the 18 liters (5 gallons) for hand washing.

(3) (A) The wastewater tank or tanks shall have a minimum capacity that is 50 percent greater than the potable water tank or tanks supplying

the hand and utensil washing sink. In no case shall this wastewater capacity be less than 28 liters (7.5 gallons).

(B) Mobile food facilities utilizing ice in the storage, display, or service of food or beverages shall provide an additional minimum wastewater holding tank capacity equal to one-third of the volume of the ice cabinet to accommodate the drainage of ice melt.

(C) Mobile food facilities equipped with a tank supplying product water for the preparation of a food or beverage shall provide an additional wastewater tank capacity equal to at least 15 percent of this water supply.

(D) Additional wastewater tank capacity may be required where wastewater production or spillage is likely to occur.

(E) Any connection to a wastewater tank shall preclude the possibility of contaminating any food, food-contact surface, or utensil.

(4) A mobile food facility's potable water tank inlet shall be provided with a connection of a size and type that will prevent its use for any other service and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

(q) Mobile food facilities selling unpackaged frozen ice cream bars or holding cream, milk, or similar dairy products pursuant to Section 114270 shall be equipped with refrigeration units as described in Section 113860.

(r) Operators of mobile food facilities handling nonprepackaged food shall develop and follow written operational procedures for food handling and the cleaning and sanitizing of food-contact surfaces and utensils. The enforcement agency shall review and approve the procedures prior to implementation and an approved copy shall be kept on the mobile food facility during periods of operation.

(s) All potentially hazardous food shall be prepackaged in an approved food facility except as provided in Sections 114260 and 114270.

(t) Except to the extent that an alternative construction standard is explicitly prescribed by this section, construction standards for mobile food preparation units and stationary mobile food preparation units which are subject to Part 2 (commencing with Section 18000) of Division 13 shall be governed by the provisions of that part.

SEC. 12.5. Section 114265 of the Health and Safety Code is amended to read:

114265. (a) The name of the facility, city, state, ZIP Code, and name of the permittee, if different from the name of the facility, shall be permanently affixed to both sides of the facility so as to be legible and clearly visible to patrons of the mobile food facility. The facility's name

shall be in letters at least 8 centimeters (3 inches) in height and shall be of a color contrasting with the exterior of the mobile food facility. Letters and numbers for the city, state, ZIP Code, and the name of the permittee shall not be less than 2.5 centimeters (one inch) in height.

(b) Mobile food facility equipment, including, but not limited to, the interior of cabinet units and compartments, shall be designed so as to, and made of materials that, result in smooth, readily accessible, and easily cleanable surfaces. Unfinished wooden surfaces are prohibited. Construction joints shall be tightly fitted and sealed so as to be easily cleanable. Equipment and utensils shall be constructed of durable, nontoxic materials and shall be easily cleanable.

(c) During operation, no food intended for retail shall be conveyed, held, stored, displayed, or served from any place other than a mobile food facility except for the restocking of product in a manner approved by the enforcement agency.

(d) Notwithstanding subdivision (k), food products remaining after each day's operation shall be stored only in an approved commissary or other approved facility.

(e) During transportation, storage, and operation of a mobile food facility, food, food-contact surfaces, and utensils shall be protected from contamination. Single-service utensils shall be individually wrapped or in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once. Food-contact surfaces and utensils shall be cleaned and sanitized in accordance with subdivisions (i), (j), and (k) of Section 114090.

(f) All food displayed, sold, or offered for sale from a mobile food facility shall be obtained from an approved source.

(g) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(h) Mobile food facilities shall be operated within 60 meters (200 feet) of approved and readily available toilet and hand washing facilities or as otherwise approved by the enforcement agency to ensure restroom facilities are available to facility employees.

(i) All mobile food facilities shall operate out of a commissary, mobile support unit, or other facility approved by the enforcement agency. Mobile food facilities shall be stored at or within a commissary or other location approved by the enforcement agency so as to be protected from unsanitary conditions.

(j) Potentially hazardous food shall be maintained at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times in accordance with Section 113995.

(k) Potentially hazardous food held at or above 57.2 degrees Celsius (135 degrees Fahrenheit) on a mobile food facility shall be destroyed at the end of the operating day.

(*l*) (1) Potable and wastewater tanks may be constructed so as to be removed from within the approved mobile food facility compartments for refilling and dispensing purposes only. All retail food operations shall cease during removal and replacement of tanks.

(2) All wastewater from a mobile food facility shall be drained to an approved wastewater receptor at the commissary or other approved facility.

(3) Refilling of a potable water tank shall be conducted through an approved and sanitary method.

(4) Storage of any prefilled potable water tank, or empty and clean water tanks, or both, shall be maintained within the cart, or in an approved manner that will protect against contamination.

(m) All new and replacement gas-fired appliances shall meet applicable ANSI standards. All new and replacement electrical appliances shall meet applicable Underwriters Laboratory standards. However, for units subject to Part 2 (commencing with Section 18000) of Division 13, these appliances shall comply with standards prescribed by Sections 18028, 18029.3, and 18029.5.

(n) Bulk beverage dispensers shall only be filled at the commissary or other facility approved by the enforcement agency unless a hand washing sink as described in paragraph (1) of subdivision (p) is provided.

(o) Where nonprepackaged food is handled for display or sale, the mobile food facility shall be equipped with a food compartment that completely encloses all food, food-contact surfaces, and the handling of ready-to-eat food. The opening to the food compartment shall be sized as appropriate to the food handling activity without compromising the intended protection from contamination, and shall be provided with tight-fitting doors that, when closed, protect interior surfaces from dust, debris, insects, and other vermin.

(p) Mobile food facilities, not under a valid public health permit as of January 1, 1997, on which nonprepackaged ready-to-eat food is sold, or offered for sale, shall be constructed and equipped in compliance with all of the following:

(1) A minimum of a one-compartment metal sink, hand washing cleanser and single-service towels in approved dispensers shall be provided. The sink shall be furnished with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet that permits both hands to be free for washing. The sink shall be large enough to accommodate the cleaning

of the largest utensils washed. The sink, hand washing cleanser, and single-service towels shall be located as to be easily accessible and unobstructed for use by the operator in the working area. The minimum water heater capacity shall be one-half gallon.

(2) The potable water tank and delivery system shall be constructed of approved materials, provide protection from contamination, and shall be of a capacity commensurate with the level of food handling activity on the mobile food facility. The capacity of the system shall be sufficient to furnish enough hot and cold water for the following: steamtable, utensil washing and sanitizing, hand washing, and equipment cleaning. At least 18 liters (5 gallons) of water shall be provided exclusively for hand washing. Any water needed for other purposes shall be in addition to the 18 liters (5 gallons) for hand washing.

(3) (A) The wastewater tank or tanks shall have a minimum capacity that is 50 percent greater than the potable water tank or tanks supplying the hand and utensil washing sink. In no case shall this wastewater capacity be less than 28 liters (7.5 gallons).

(B) Mobile food facilities utilizing ice in the storage, display, or service of food or beverages shall provide an additional minimum wastewater holding tank capacity equal to one-third of the volume of the ice cabinet to accommodate the drainage of ice melt.

(C) Mobile food facilities equipped with a tank supplying product water for the preparation of a food or beverage shall provide an additional wastewater tank capacity equal to at least 15 percent of this water supply.

(D) Additional wastewater tank capacity may be required where wastewater production or spillage is likely to occur.

(E) Any connection to a wastewater tank shall preclude the possibility of contaminating any food, food-contact surface, or utensil.

(4) A mobile food facility's potable water tank inlet shall be provided with a connection of a size and type that will prevent its use for any other service and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

(5) (A) Mobile food facilities operating in accordance with subdivision (e) of Section 114260, shall meet the applicable requirements of Section 114090.

(B) The dimensions of each compartment of the utensil washing sink shall be at least 12 inches wide, 12 inches long, 10 inches deep or large enough to accommodate the cleaning of the largest utensil. The drainboards shall be installed with at least one-eighth inch per foot slope toward the sink compartment, and fabricated with a minimum one-half

of one inch lip or rim to prevent the draining liquid from spilling onto the floor.

(C) Hand washing facilities and utensil washing sinks shall be an integral part of the primary unit or on an approved auxiliary conveyance that is used in conjunction with and maintained immediately adjacent to the primary unit of the mobile food facility. When used in conjunction with a mobile food facility, an auxiliary conveyance shall contain all of the utility connections.

(D) Mobile food facilities operating at community events may satisfy the requirements of subparagraph (C) by operating in compliance with subdivision (f) of Section 114330, provided the utensil washing sink meets the requirements of subparagraph (B).

(E) Ground or floor surfaces where cooking processes occur, in accordance with Section 114260, shall be impervious, smooth, easily cleanable, and shall provide employee safety from slipping. Ground or floor surfaces in compliance with this section shall extend from beneath the mobile food facility a minimum of two feet on the open side or sides of where cooking processes are conducted.

(F) Mobile food facilities operating pursuant to subdivision (e) of Section 114260 shall be equipped with safety equipment as described in Section 114297 and mechanical exhaust ventilation as described in Section 114296.

(q) Mobile food facilities selling unpackaged frozen ice cream bars or holding cream, milk, or similar dairy products pursuant to Section 114270 shall be equipped with refrigeration units as described in Section 113860.

(r) Operators of mobile food facilities handling nonprepackaged food shall develop and follow written operational procedures for food handling and the cleaning and sanitizing of food-contact surfaces and utensils. The enforcement agency shall review and approve the procedures prior to implementation and an approved copy shall be kept on the mobile food facility during periods of operation.

(s) All potentially hazardous food shall be prepackaged in an approved food facility except as provided in Sections 114260 and 114270.

(t) Except to the extent that an alternative construction standard is explicitly prescribed by this section, construction standards for mobile food preparation units and stationary mobile food preparation units which are subject to Part 2 (commencing with Section 18000) of Division 13 shall be governed by the provisions of that part.

(u) Notwithstanding paragraph (2) of subdivision (a) of Section 114297, portable fire protection equipment shall be provided whenever mobile food facilities are in use. A minimum of two approved rated 40 K class portable fire extinguishers shall be onsite whenever cooking

processes are conducted within a mobile food facility. One approved fire extinguisher shall be mounted to the mobile food facility and one approved fire extinguisher shall be located no more than 30 feet from the mobile food facility unit.

(v) Mobile food facilities shall comply with all local fire codes, standards, and ordinances.

SEC. 13. Section 114287.5 is added to the Health and Safety Code, to read:

114287.5. (a) Mobile food facilities shall be cleaned and serviced at least once during each operating day.

(b) Except as specified in subdivision (c), all mobile food facilities shall report to the commissary or other approved facility on a daily basis.

(c) Mobile food facilities that are serviced by a mobile support unit and do not report to a commissary on a daily basis shall be stored in a manner that protects the mobile food facility from contamination. All food shall be stored at the commissary or other approved facility at the end of the operating day.

(d) Mobile support units shall report to a commissary or other approved facility for cleaning, servicing, and storage at least daily.

SEC. 14. Section 114294 of the Health and Safety Code is amended to read:

114294. (a) The name of the mobile food preparation unit or stationary mobile food preparation unit, city, state, ZIP Code, and the name of the permittee, if different from the name of the unit, shall be permanently affixed to both sides of the mobile food preparation unit or stationary mobile food preparation unit so as to be legible and clearly visible to patrons. The name shall be in letters at least eight centimeters (three inches) in height, and shall be of a color contrasting with the exterior of the vehicle. Letters and numbers for the city, state, ZIP Code, and the name of the permittee shall not be less than 2.5 centimeters (one inch) in height.

(b) Compressor units that are not an integral part of equipment, auxiliary engines, generators, and similar equipment, shall be installed in an area that is completely separated from food preparation and food storage and that is accessible from outside the unit for proper cleaning and maintenance.

SEC. 15. Section 114300 of the Health and Safety Code is amended to read:

114300. This article governs sanitation requirements for commissaries servicing mobile food preparation units, mobile food facilities, and mobile support units.

SEC. 16. Section 114302 of the Health and Safety Code is amended to read:

114302. (a) Adequate facilities shall be provided for the sanitary disposal of liquid waste from the mobile food preparation unit or mobile food facility, or mobile support unit being serviced.

(b) Adequate facilities shall be provided for the handling and disposal of garbage and rubbish originating from the mobile food preparation unit or mobile food facility, or mobile support unit.

SEC. 17. Section 114303 of the Health and Safety Code is amended to read:

114303. (a) Potable water shall be available for filling the water tanks of each mobile food preparation unit, mobile food facility, or mobile support unit that requires potable water. Faucets and other potable water sources shall be constructed, located, and maintained so as to minimize the possibility of contaminating the water being loaded.

(b) The hose used for filling water tanks shall be food grade, constructed of materials approved for potable water distribution, and shall be used for no other purposes. At all times, the hose shall be kept above the ground and protected from contamination. Liquid waste lines shall not be the same color as hoses used for potable water.

(c) Hot and cold water, under pressure, shall be available for cleaning the mobile food preparation unit, mobile food facility, or mobile support unit.

(d) The potable water supply shall be protected at all times from potential backflow. Approved backflow prevention devices shall be installed on the discharge side of all hose bibs.

SEC. 18. Section 114304 of the Health and Safety Code is amended to read:

114304. Adequate electrical outlets shall be provided for mobile food preparation units or, mobile food facilities, or mobile support units that require electrical service. The outlets shall be constructed to comply with applicable electrical codes.

SEC. 19. Section 114305 is added to the Health and Safety Code, to read:

114305. (a) A mobile support unit shall be subject to plan review and shall be approved by the enforcement agency. Requirements shall be based on the proposed method of operation and the number of mobile food facilities serviced.

(b) A mobile support unit shall meet all applicable requirements of Article 6 (commencing with Section 113975), Article 7 (commencing with Section 113990), and Article 8 (commencing with Section 114075).

(c) In addition, a mobile support unit shall meet all of the following conditions:

(1) Interior floors, sides, and top shall be free of cracks, seams, or linings where vermin may harbor, and shall be constructed of a smooth,

washable, impervious material capable of withstanding frequent cleaning with approved sanitizing agents.

(2) A mobile support unit shall be constructed and operated so that no liquid wastes can drain onto any street, sidewalk, or premises.

(3) If the mobile support unit is used to transport potentially hazardous food, approved equipment to maintain food at the required temperatures shall be provided.

(4) Food, utensils, and supplies shall be protected from contamination.

(5) A separate storage area shall be provided for all poisonous substances, detergents, bleaches, cleaning compounds, and all other injurious or poisonous materials.

(6) A mobile support unit shall not be approved for utensil washing.

(7) The name of the mobile support unit, city, state, ZIP Code, and name of the permittee, if different from the name of the unit, shall be permanently affixed to both sides of the mobile support unit so as to be legible and clearly visible to patrons. The unit's name shall be in letters at least 8 centimeters (3 inches) in height and shall be of a color contrasting with the exterior of the mobile support unit. Letters and number for the city, state, ZIP Code, and name of the permittee may not be less than 2.5 centimeters (1 inch) in height.

(8) A mobile support unit shall report to a commissary or other approved facility for cleaning, servicing, and storage at least daily.

SEC. 20. Section 114313 of the Health and Safety Code is amended to read:

114313. The name of the facility, city, state, ZIP Code, and name of the permittee, if different from the name of the facility, shall be permanently affixed to both sides of the facility during all periods of operations so as to be legible and clearly visible to patrons. The facility's name shall be in letters at least 8 centimeters (3 inches) in height and shall be of a color contrasting with the exterior of the facility. Letters and numbers for the city, state, ZIP Code, and the name of the permittee may not be less than 2.5 centimeters (1 inch) in height.

SEC. 21. Section 114314 of the Health and Safety Code is amended to read:

114314. (a) In addition to the permit issued to each complying temporary food facility, a permit shall be obtained by the person or organization responsible for facilities or equipment that are shared by two or more temporary food facilities operating at a community event.

(b) The permit application and site plan shall be submitted to the enforcement agency at least two weeks prior to the date that the community event is scheduled to commence.

(c) The site plan shall show the proposed locations of the temporary food facilities, restrooms, and all shared utensil washing, hand washing, and janitorial facilities.

SEC. 22. Section 114315 of the Health and Safety Code is amended to read:

114315. (a) Notwithstanding Section 113995, during operating hours of the temporary food facility, potentially hazardous food may be held at a temperature not to exceed 7 degrees Celsius (45 degrees Fahrenheit) for up to 12 hours in any 24-hour period. At the end of the operating day, potentially hazardous food that has been held in accordance with this subdivision shall be placed in refrigeration units that maintain the food at or below 5 degrees Celsius (41 degrees Fahrenheit) or the food shall be destroyed in a manner approved by the local enforcement agency.

(b) At the end of the operating day potentially hazardous food that is held at or above 57.2 degrees Celsius (135 degrees Fahrenheit) shall be either destroyed in a manner approved by the local enforcement agency or donated in accordance with Article 19 (commencing with Section 114435), but may not be reserved in a food facility.

(c) Adequate cold food and hot food holding equipment shall be provided to insure proper temperature control during transportation and operation of the temporary food facility.

SEC. 23. Section 114319 of the Health and Safety Code is amended to read:

114319. (a) Adequate and suitable facilities shall be provided for the storage of food, utensils, and related items. During periods of operation, supplies and nonpotentially hazardous foods in unopened containers may be stored adjacent to the temporary food facility, or in unopened containers in an approved nearby temporary storage unit. An ''unopened container'' means a factory-sealed container that has not been previously opened, and that is suitably constructed to be resistant to contamination from moisture, dust, insects, and rodents.

(b) All food-related and utensil-related items shall be stored at least 15 centimeters (6 inches) above the floor and in a manner that will protect these items from sources of contamination.

(c) During periods of inoperation, food shall be stored in one of the following methods:

(1) Within a fully enclosed temporary food facility that is in compliance with Sections 114030 and 114145.

(2) In lockable food storage compartments or containers meeting both of the following conditions:

(A) The food is adequately protected at all times from contamination, exposure to the elements, ingress of rodents and other vermin, and temperature abuse.

(B) The storage compartments or containers have been approved by the local enforcement agency.

(3) Within a permitted food facility or other facility approved by the local enforcement agency.

SEC. 24. Section 114322 of the Health and Safety Code is repealed.

SEC. 25. Section 114332.3 of the Health and Safety Code is amended to read:

114332.3. (a) No potentially hazardous food or beverage stored or prepared in a private home may be offered for sale, sold, or given away from a nonprofit charitable temporary food facility. Potentially hazardous food shall be prepared in a food establishment or on the premises of a nonprofit charitable temporary food facility.

(b) All food and beverage shall be protected at all times from unnecessary handling and shall be stored, displayed, and served so as to be protected from contamination.

(c) Potentially hazardous food and beverage shall be maintained at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.

(d) Ice used in beverages shall be protected from contamination and shall be maintained separate from ice used for refrigeration purposes.

(e) All food and food containers shall be stored off the floor on shelving or pallets located within the facility.

(f) Smoking is prohibited in nonprofit charitable temporary food facilities.

(g) (1) Except as provided in paragraph (2), live animals, birds, or fowl shall not be kept or allowed in nonprofit charitable temporary food facilities.

(2) Paragraph (1) does not prohibit the presence, in any room where food is served to the public, guests, or patrons, of a guide dog, signal dog, or service dog, as defined by Section 54.1 of the Civil Code, accompanied by a totally or partially blind person, deaf person, person whose hearing is impaired, or handicapped person, or dogs accompanied by persons licensed to train guide dogs for the blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code.

(3) Paragraph (1) does not apply to dogs under the control of uniformed law enforcement officers or of uniformed employees of private patrol operators and operators of a private patrol service who are licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while these employees are acting within the course and scope of their employment as private patrol persons.

(4) The persons and operators described in paragraphs (2) and (3) are liable for any damage done to the premises or facilities by the dog.

(5) The dogs described in paragraphs (2) and (3) shall be excluded from food preparation and utensil wash areas. Aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.

(h) All garbage shall be disposed of in a sanitary manner.

(i) Employees preparing or handling food shall wear clean clothing and shall keep their hands clean at all times.

SEC. 26. Section 114362 of the Health and Safety Code is amended to read:

114362. The onsite food establishment shall support a satellite food distribution facility as defined in subdivision (b) of Section 113880 by doing all of the following where appropriate:

(a) Unpacking from bulk potentially hazardous foods.

(b) Filling suitable dispensers with condiments.

(c) Mixing, blending, forming, cooking or otherwise preparing all unpackaged potentially hazardous foods.

(d) Heating to a minimum temperature of 57.2 degrees Celsius (135 degrees Fahrenheit) all potentially hazardous foods that are intended to be served or held hot.

(e) Cooling, to the temperatures specified in Section 113995, potentially hazardous foods that are intended to be served or held cold.

(f) Packing any unpackaged food into suitable, covered containers prior to transport.

(g) Providing storage for foods not described in Section 114361 during periods of inoperation.

(h) Cleaning and sanitizing all multiuse utensils and easily removable food contact surfaces in accordance with the requirements of Section 114090.

SEC. 27. Section 114367.5 of the Health and Safety Code is amended to read:

114367.5. (a) The enforcement agency shall review and approve written procedures, schedules, and record exemplars to assure all of the following:

(1) That in-place cleaning procedures for equipment and structures are adequate in frequency, soil removal, sanitizing, and disposal of wastewater, wash water, and refuse.

(2) That food transported to and from the onsite food establishment will not be exposed to contamination.

(3) That potentially hazardous food will be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.

(b) This section shall apply to mobile food facilities that operate within a defined and securable perimeter as prescribed in subdivision (b) of Section 113880.

SEC. 28. Section 12.5 of this bill incorporates amendments to Section 114265 of the Health and Safety Code proposed by both this bill and AB 1045. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 114265 of the Health and Safety Code, and (3) this bill is enacted after AB 1045, in which case Section 12 of this bill shall not become operative.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 454

An act to amend Sections 114260 and 114265 of the Health and Safety Code, relating to mobile food facilities.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 114260 of the Health and Safety Code is amended to read:

114260. (a) Mobile food facilities that are limited to the handling of prepackaged nonpotentially hazardous food and produce shall comply with subdivisions (a) to (i), inclusive, of Section 114265.

(b) Mobile food facilities that handle prepackaged potentially hazardous food, whole fish and whole aquatic invertebrates, or the bulk dispensing of nonpotentially hazardous beverages shall comply with subdivisions (a) to (m), inclusive, of Section 114265. For purposes of this section, tamales shall be considered prepackaged if dispensed to the customer in its original, inedible wrapper.

(c) Mobile food facilities that handle any of the following foods shall comply with subdivisions (a) to (t), inclusive, of Section 114265:

(1) Nonprepackaged nonpotentially hazardous food requiring no preparation other than heating, baking, popping, blending, assembly, portioning, or dispensing.

(2) Preparation of nonpotentially hazardous ingredients into a nonpotentially hazardous food.

(3) Churros, hot dogs, cappuccino and other coffee-based or cocoa-based beverages that may contain cream, milk, or similar dairy products, and frozen ice cream bars that meet the requirements of subdivision (b) of Section 114270.

(d) Only those foods described in this section may be prepared or dispensed on a mobile food facility.

(e) (1) Except as provided in paragraph (2), cooking processes, including, but not limited to, barbecuing, broiling, frying, and grilling are not permitted on a mobile food facility.

(2) The preparation of churros is exempt from the prohibition in paragraph (1).

SEC. 2. Section 114265 of the Health and Safety Code is amended to read:

114265. (a) The name, address, and telephone number of the owner, operator, permittee, business name, or commissary shall be legible, clearly visible, and permanently indicated on at least two sides of the exterior of the mobile food facility. The name shall be in letters at least 8 centimeters (3 inches) high and shall have strokes at least 1 centimeter ($^3/_8$ inch) wide, and shall be of a color contrasting with the mobile food facility exterior. Letters and numbers for address and telephone numbers shall not be less than 2.5 centimeters (one inch) high.

(b) Mobile food facility equipment, including, but not limited to, the interior of cabinet units and compartments, shall be designed so as to, and made of materials that, result in smooth, readily accessible, and easily cleanable surfaces. Unfinished wooden surfaces are prohibited. Construction joints shall be tightly fitted and sealed so as to be easily cleanable. Equipment and utensils shall be constructed of durable, nontoxic materials and shall be easily cleanable.

(c) During operation, no food intended for retail shall be conveyed, held, stored, displayed, or served from any place other than a mobile food facility except for the restocking of product in a manner approved by the enforcement agency.

(d) Notwithstanding subdivision (k), food products remaining after each day's operation shall be stored only in an approved commissary or other approved facility.

(e) During transportation, storage, and operation of a mobile food facility, food, food-contact surfaces, and utensils shall be protected from contamination. Single-service utensils shall be individually wrapped or in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once. Food-contact surfaces and utensils shall be cleaned and sanitized in accordance with subdivisions (i), (j), and (k) of Section 114090.

(f) All food displayed, sold, or offered for sale from a mobile food facility shall be obtained from an approved source.

(g) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(h) Mobile food facilities shall be operated within 60 meters (200 feet) of approved and readily available toilet and hand washing facilities or as otherwise approved by the enforcement agency to ensure restroom facilities are available to facility employees.

(i) All mobile food facilities shall operate out of a commissary or other approved facility in accordance with Article 12.5 (commencing with Section 114300). Mobile food facilities shall report to the commissary or other approved facility at least once each operating day for cleaning and servicing operations. Mobile food facilities shall be properly stored, cleaned, and serviced at, or within, a commissary or other facility as approved by the enforcement agency so as to provide protection from unsanitary conditions.

(j) Potentially hazardous food shall be maintained at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times in accordance with Section 113995.

(k) Potentially hazardous food held at or above 60 degrees Celsius (140 degrees Fahrenheit) on a mobile food facility shall be destroyed at the end of the operating day.

(*l*) (1) Potable and wastewater tanks may be constructed so as to be removed from within the approved mobile food facility compartments for refilling and dispensing purposes only. All retail food operations shall cease during removal and replacement of tanks.

(2) All wastewater from a mobile food facility shall be drained to an approved wastewater receptor at the commissary or other approved facility.

(3) Refilling of a potable water tank shall be conducted through an approved and sanitary method.

(4) Storage of any prefilled potable water tank, or empty and clean water tanks, or both, shall be maintained within the cart, or in an approved manner that will protect against contamination.

(m) All new and replacement gas-fired appliances shall meet applicable ANSI standards. All new and replacement electrical appliances shall meet applicable Underwriters Laboratory standards. However, for units subject to Part 2 (commencing with Section 18000) of Division 13, these appliances shall comply with standards prescribed by Sections 18028, 18029.3, and 18029.5.

(n) Bulk beverage dispensers shall only be filled at the commissary or other facility approved by the enforcement agency unless a hand

washing sink as described in paragraph (1) of subdivision (p) is provided.

(o) Where nonprepackaged food is handled for display or sale, the mobile food facility shall be equipped with a food compartment that completely encloses all food, food-contact surfaces, and the handling of ready-to-eat food. The opening to the food compartment shall be sized as appropriate to the food handling activity without compromising the intended protection from contamination, and shall be provided with tight-fitting doors that, when closed, protect interior surfaces from dust, debris, insects, and other vermin.

(p) Mobile food facilities, not under a valid public health permit as of January 1, 1997, on which nonprepackaged food is sold, or offered for sale, shall be constructed and equipped in compliance with all of the following:

(1) A minimum of a one-compartment metal sink, hand washing cleanser and single-service towels in approved dispensers shall be provided. The sink shall be furnished with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet that permits both hands to be free for washing. The sink shall be large enough to accommodate the cleaning of the largest utensils washed. The sink, hand washing cleanser, and single-service towels shall be located as to be easily accessible and unobstructed for use by the operator in the working area. The minimum water heater capacity shall be one-half gallon.

(2) The potable water tank and delivery system shall be constructed of approved materials, provide protection from contamination, and shall be of a capacity commensurate with the level of food handling activity on the mobile food facility. The capacity of the system shall be sufficient to furnish enough hot and cold water for the following: steamtable, utensil washing and sanitizing, hand washing, and equipment cleaning. At least 18 liters (5 gallons) of water shall be provided exclusively for hand washing. Any water needed for other purposes shall be in addition to the 18 liters (5 gallons) for hand washing.

(3) (A) The wastewater tank or tanks shall have a minimum capacity that is 50 percent greater than the potable water tank or tanks supplying the hand and utensil washing sink. In no case shall this wastewater capacity be less than 28 liters (7.5 gallons).

(B) Mobile food facilities utilizing ice in the storage, display, or service of food or beverages shall provide an additional minimum wastewater holding tank capacity equal to one-third of the volume of the ice cabinet to accommodate the drainage of ice melt.

(C) Mobile food facilities equipped with a tank supplying product water for the preparation of a food or beverage shall provide an

additional wastewater tank capacity equal to at least 15 percent of this water supply.

(D) Additional wastewater tank capacity may be required where wastewater production or spillage is likely to occur.

(E) Any connection to a wastewater tank shall preclude the possibility of contaminating any food, food-contact surface, or utensil.

(4) A mobile food facility's potable water tank inlet shall be provided with a connection of a size and type that will prevent its use for any other service and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

(5) (A) Mobile food facilities operating in accordance with subdivision (e) of Section 114260, shall meet the applicable requirements of Section 114090.

(B) The dimensions of each compartment of the utensil washing sink shall be at least 12 inches wide, 12 inches long, 10 inches deep or large enough to accommodate the cleaning of the largest utensil. The drainboards shall be installed with at least one-eighth inch per foot slope toward the sink compartment, and fabricated with a minimum one-half inch lip or rim to prevent the draining liquid from spilling onto the floor.

(C) Hand washing facilities and utensil washing sinks shall be an integral part of the primary unit or on an approved auxiliary conveyance that is used in conjunction with and maintained immediately adjacent to the primary unit of the mobile food facility. When used in conjunction with a mobile food facility, an auxiliary conveyance shall contain all of the utility connections.

(D) Mobile food facilities operating at community events may satisfy the requirements of subparagraph (C) by operating in compliance with subdivision (f) of Section 114330, provided the utensil washing sink meets the requirements of subparagraph (B).

(E) Ground or floor surfaces where cooking processes occur, in accordance with Section 114260, shall be impervious, smooth, easily cleanable, and shall provide employee safety from slipping. Ground or floor surfaces in compliance with this section shall extend from beneath the mobile food facility a minimum of two feet on the open side or sides of where cooking processes are conducted.

(F) Mobile food facilities operating pursuant to subdivision (e) of Section 114260 shall be equipped with safety equipment as described in Section 114297 and mechanical exhaust ventilation as described in Section 114296.

(q) Mobile food facilities selling unpackaged frozen ice cream bars or holding cream, milk, or similar dairy products pursuant to Section

114270 shall be equipped with refrigeration units as described in Section 113860.

(r) Operators of mobile food facilities handling nonprepackaged food shall develop and follow written operational procedures for food handling and the cleaning and sanitizing of food-contact surfaces and utensils. The enforcement agency shall review and approve the procedures prior to implementation and an approved copy shall be kept on the mobile food facility during periods of operation.

(s) All potentially hazardous food shall be prepackaged in an approved food facility except as provided in Sections 114260 and 114270.

(t) Except to the extent that an alternative construction standard is explicitly prescribed by this section, construction standards for mobile food preparation units and stationary mobile food preparation units which are subject to Part 2 (commencing with Section 18000) of Division 13 shall be governed by the provisions of that part.

(u) Notwithstanding paragraph (2) of subdivision (a) of Section 114297, portable fire protection equipment shall be provided whenever mobile food facilities are in use. A minimum of two approved rated 40 K class portable fire extinguishers shall be onsite whenever cooking processes are conducted within a mobile food facility. One approved fire extinguisher shall be mounted to the mobile food facility and one approved fire extinguisher shall be located no more than 30 feet from the mobile food facility unit.

(v) Mobile food facilities shall comply with all local fire codes, standards, and ordinances.

SEC. 3. Section 114265 of the Health and Safety Code is amended to read:

114265. (a) The name of the facility, city, state, ZIP Code, and name of the permittee, if different from the name of the facility, shall be permanently affixed to both sides of the facility so as to be legible and clearly visible to patrons of the mobile food facility. The facility's name shall be in letters at least 8 centimeters (3 inches) in height and shall be of a color contrasting with the exterior of the mobile food facility. Letters and numbers for the city, state, ZIP Code, and the name of the permittee shall not be less than 2.5 centimeters (one inch) in height.

(b) Mobile food facility equipment, including, but not limited to, the interior of cabinet units and compartments, shall be designed so as to, and made of materials that, result in smooth, readily accessible, and easily cleanable surfaces. Unfinished wooden surfaces are prohibited. Construction joints shall be tightly fitted and sealed so as to be easily cleanable. Equipment and utensils shall be constructed of durable, nontoxic materials and shall be easily cleanable.

(c) During operation, no food intended for retail shall be conveyed, held, stored, displayed, or served from any place other than a mobile food facility except for the restocking of product in a manner approved by the enforcement agency.

(d) Notwithstanding subdivision (k), food products remaining after each day's operation shall be stored only in an approved commissary or other approved facility.

(e) During transportation, storage, and operation of a mobile food facility, food, food-contact surfaces, and utensils shall be protected from contamination. Single-service utensils shall be individually wrapped or in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once. Food-contact surfaces and utensils shall be cleaned and sanitized in accordance with subdivisions (i), (j), and (k) of Section 114090.

(f) All food displayed, sold, or offered for sale from a mobile food facility shall be obtained from an approved source.

(g) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(h) Mobile food facilities shall be operated within 60 meters (200 feet) of approved and readily available toilet and hand washing facilities or as otherwise approved by the enforcement agency to ensure restroom facilities are available to facility employees.

(i) All mobile food facilities shall operate out of a commissary, mobile support unit, or other facility approved by the enforcement agency. Mobile food facilities shall be stored at or within a commissary or other location approved by the enforcement agency so as to be protected from unsanitary conditions.

(j) Potentially hazardous food shall be maintained at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times in accordance with Section 113995.

(k) Potentially hazardous food held at or above 57.2 degrees Celsius (135 degrees Fahrenheit) on a mobile food facility shall be destroyed at the end of the operating day.

(*l*) (1) Potable and wastewater tanks may be constructed so as to be removed from within the approved mobile food facility compartments for refilling and dispensing purposes only. All retail food operations shall cease during removal and replacement of tanks.

(2) All wastewater from a mobile food facility shall be drained to an approved wastewater receptor at the commissary or other approved facility.

(3) Refilling of a potable water tank shall be conducted through an approved and sanitary method.

(4) Storage of any prefilled potable water tank, or empty and clean water tanks, or both, shall be maintained within the cart, or in an approved manner that will protect against contamination.

(m) All new and replacement gas-fired appliances shall meet applicable ANSI standards. All new and replacement electrical appliances shall meet applicable Underwriters Laboratory standards. However, for units subject to Part 2 (commencing with Section 18000) of Division 13, these appliances shall comply with standards prescribed by Sections 18028, 18029.3, and 18029.5.

(n) Bulk beverage dispensers shall only be filled at the commissary or other facility approved by the enforcement agency unless a hand washing sink as described in paragraph (1) of subdivision (p) is provided.

(o) Where nonprepackaged food is handled for display or sale, the mobile food facility shall be equipped with a food compartment that completely encloses all food, food-contact surfaces, and the handling of ready-to-eat food. The opening to the food compartment shall be sized as appropriate to the food handling activity without compromising the intended protection from contamination, and shall be provided with tight-fitting doors that, when closed, protect interior surfaces from dust, debris, insects, and other vermin.

(p) Mobile food facilities, not under a valid public health permit as of January 1, 1997, on which nonprepackaged food is sold, or offered for sale, shall be constructed and equipped in compliance with all of the following:

(1) A minimum of a one-compartment metal sink, hand washing cleanser and single-service towels in approved dispensers shall be provided. The sink shall be furnished with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet that permits both hands to be free for washing. The sink shall be large enough to accommodate the cleaning of the largest utensils washed. The sink, hand washing cleanser, and single-service towels shall be located as to be easily accessible and unobstructed for use by the operator in the working area. The minimum water heater capacity shall be one-half gallon.

(2) The potable water tank and delivery system shall be constructed of approved materials, provide protection from contamination, and shall be of a capacity commensurate with the level of food handling activity on the mobile food facility. The capacity of the system shall be sufficient to furnish enough hot and cold water for the following: steamtable, utensil washing and sanitizing, hand washing, and equipment cleaning. At least 18 liters (5 gallons) of water shall be provided exclusively for

hand washing. Any water needed for other purposes shall be in addition to the 18 liters (5 gallons) for hand washing.

(3) (A) The wastewater tank or tanks shall have a minimum capacity that is 50 percent greater than the potable water tank or tanks supplying the hand and utensil washing sink. In no case shall this wastewater capacity be less than 28 liters (7.5 gallons).

(B) Mobile food facilities utilizing ice in the storage, display, or service of food or beverages shall provide an additional minimum wastewater holding tank capacity equal to one-third of the volume of the ice cabinet to accommodate the drainage of ice melt.

(C) Mobile food facilities equipped with a tank supplying product water for the preparation of a food or beverage shall provide an additional wastewater tank capacity equal to at least 15 percent of this water supply.

(D) Additional wastewater tank capacity may be required where wastewater production or spillage is likely to occur.

(E) Any connection to a wastewater tank shall preclude the possibility of contaminating any food, food-contact surface, or utensil.

(4) A mobile food facility's potable water tank inlet shall be provided with a connection of a size and type that will prevent its use for any other service and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

(5) (A) Mobile food facilities operating in accordance with subdivision (e) of Section 114260, shall meet the applicable requirements of Section 114090.

(B) The dimensions of each compartment of the utensil washing sink shall be at least 12 inches wide, 12 inches long, 10 inches deep, or large enough to accommodate the cleaning of the largest utensil. The drainboards shall be installed with at least one-eighth inch per foot slope toward the sink compartment, and fabricated with a minimum one-half inch lip or rim to prevent the draining liquid from spilling onto the floor.

(C) Hand washing facilities and utensil washing sinks shall be an integral part of the primary unit or on an approved auxiliary conveyance that is used in conjunction with and maintained immediately adjacent to the primary unit of the mobile food facility. When used in conjunction with a mobile food facility, an auxiliary conveyance shall contain all of the utility connections.

(D) Mobile food facilities operating at community events may satisfy the requirements of subparagraph (C) by operating in compliance with subdivision (f) of Section 114330, provided the utensil washing sink meets the requirements of subparagraph (B).

(E) Ground or floor surfaces where cooking processes occur, in accordance with Section 114260, shall be impervious, smooth, easily cleanable, and shall provide employee safety from slipping. Ground or floor surfaces in compliance with this section shall extend from beneath the mobile food facility a minimum of two feet on the open side or sides of where cooking processes are conducted.

(F) Mobile food facilities operating pursuant to subdivision (e) of Section 114260 shall be equipped with safety equipment as described in Section 114297 and mechanical exhaust ventilation as described in Section 114296.

(q) Mobile food facilities selling unpackaged frozen ice cream bars or holding cream, milk, or similar dairy products pursuant to Section 114270 shall be equipped with refrigeration units as described in Section 113860.

(r) Operators of mobile food facilities handling nonprepackaged food shall develop and follow written operational procedures for food handling and the cleaning and sanitizing of food-contact surfaces and utensils. The enforcement agency shall review and approve the procedures prior to implementation and an approved copy shall be kept on the mobile food facility during periods of operation.

(s) All potentially hazardous food shall be prepackaged in an approved food facility except as provided in Sections 114260 and 114270.

(t) Except to the extent that an alternative construction standard is explicitly prescribed by this section, construction standards for mobile food preparation units and stationary mobile food preparation units which are subject to Part 2 (commencing with Section 18000) of Division 13 shall be governed by the provisions of that part.

(u) Notwithstanding paragraph (2) of subdivision (a) of Section 114297, portable fire protection equipment shall be provided whenever mobile food facilities are in use. A minimum of two approved rated 40 K class portable fire extinguishers shall be onsite whenever cooking processes are conducted within a mobile food facility. One approved fire extinguisher shall be mounted to the mobile food facility and one approved fire extinguisher shall be located no more than 30 feet from the mobile food facility unit.

(v) Mobile food facilities shall comply with all local fire codes, standards, and ordinances.

SEC. 4. Section 3 of this bill incorporates amendments to Section 114265 of the Health and Safety Code proposed by both this bill and AB 1738. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 114265 of the Health and Safety Code, and (3) this bill is enacted

after AB 1738, in which case Section 2 of this bill shall not become operative.

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 455

An act to amend Sections 18621.9, 19104, 19120, 19368, 19411, and 23114 of, to amend and renumber Section 24328 of, and to add Section 19520 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 18621.9 of the Revenue and Taxation Code, as added by Chapter 228 of the Statutes of 2003, is amended to read:

18621.9. (a) If an income tax return preparer prepared more than 100 timely original individual income tax returns that were filed during any calendar year that began on and after January 1, 2003, and if in the current calendar year that income tax preparer prepares one or more acceptable individual income tax returns using tax preparation software, then, for that calendar year and for each subsequent calendar year thereafter, all acceptable individual income tax returns prepared by that income tax preparer shall be filed using electronic technology, as defined in Section 18621.5.

(b) For purposes of this section:

(1) ''Income tax preparer'' means a person that meets both of the following:

(A) Any person that prepares, in exchange for compensation, or who employs another person to prepare, in exchange for compensation, any return for the tax imposed by Part 10 (commencing with Section 17001) (hereafter Part 10). A person that only performs those acts described in clauses (i) through (iv) of Section 7701(a)(36)(B) of the Internal Revenue Code, with respect to the preparation of a return for the tax

imposed by Part 10, is not an income tax preparer for purposes of this section or for purposes of Section 19170.

(B) Any person that prepares returns for the tax imposed by Part 10 that is also required, by this article, to include an identification number on any return prepared by that tax preparer for the tax imposed by Part 10.

(2) ''Original individual income tax return'' means any return that is required, by Section 18501, to be made with respect to the tax imposed by Part 10. For purposes of subdivision (a), a ''timely'' original individual tax return means any original individual tax return that is filed, without regard to extensions, during the calendar year for which that tax return is required to be filed.

(3) ''Acceptable individual income tax return'' means any original individual tax return that is authorized by the Franchise Tax Board to be filed using electronic technology, as defined in Section 18621.5. For purposes of this section, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any rule, notice, or guideline issued by the Franchise Tax Board that identifies a tax return as an acceptable individual income tax return.

(4) ''Tax preparation software'' means any computer software program intended for accounting, tax return preparation, or tax compliance.

(c) Subdivision (a) shall cease to apply to an income tax preparer if, during the previous calendar year, that income tax preparer prepared no more than 25 original individual income tax returns.

(d) (1) This section applies to acceptable individual income tax returns required to be filed on and after January 1, 2004.

(2) This section may not be interpreted to require electronic filing of acceptable individual income tax returns that are required to be filed before January 1, 2004.

SEC. 2. Section 19104 of the Revenue and Taxation Code is amended to read:

19104. (a) The Franchise Tax Board may abate all or any part of any of the following:

(1) Any interest on a deficiency or related to a proposed deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(2) Any interest on a payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to an officer or employee of the Franchise Tax Board (acting in his or her official capacity) being dilatory in performing a ministerial or managerial act.

(3) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(b) For purposes of subdivision (a):

(1) Except as provided in paragraph (3), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(2) (A) Except as provided in paragraph (4), after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization within the following periods:

(i) Thirty days in the case of any unpaid interest described under subdivision (a).

(ii) Ninety days in the case of any paid interest described under subdivision (a).

(B) The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(C) Except for clauses (i) and (ii) of subparagraph (A), the provisions of this paragraph are operative for requests for abatement of interest made on or after January 1, 1998. The provisions of clauses (i) and (ii) of subparagraph (A) shall apply to requests for abatement of interest made on or after January 1, 2001, in accordance with subdivision (d).

(3) If the Franchise Tax Board fails to mail its notice of determination on a request to abate interest within six months after the request is filed, the taxpayer may consider that the Franchise Tax Board has determined not to abate interest and appeal that determination to the board. This paragraph shall not apply to requests for abatement of interest made pursuant to paragraph (4).

(4) A request for abatement of interest related to a proposed deficiency may be made with the written protest of the underlying proposed deficiency filed pursuant to Section 19041 or with an appeal to the board under Section 19045 in the form and manner required by the Franchise Tax Board. The action of the Franchise Tax Board denying any portion of the request for abatement of interest relating to the proposed

deficiency shall be considered as part of the appeal of the action of the Franchise Tax Board on the protest of the proposed deficiency. If the taxpayer filed an appeal from the Franchise Tax Board's action on the protest of a proposed deficiency and the deficiency is final pursuant to Section 19048, the taxpayer may not thereafter request an abatement of interest accruing prior to the time the deficiency is final. However, the taxpayer may thereafter request an abatement pursuant to this section limited to interest accruing after the deficiency is final.

(c) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless the taxpayer (or a related party) has in any way caused that erroneous refund.

(d) The amendments made to this section by Chapter 863 of the Statutes of 2000 shall apply to requests for abatement of interest and appeals made on or after January 1, 2001.

(e) Except as provided in subparagraph (C) of paragraph (2) of subdivision (b), the amendments made by Chapter 600 of the Statutes of 1997 are operative with respect to taxable years beginning on or after January 1, 1998.

SEC. 3. Section 19120 of the Revenue and Taxation Code is amended to read:

19120. Any portion of any amount that has been erroneously refunded and that is recoverable by suit pursuant to Section 19411 shall bear interest at the adjusted annual rate established pursuant to Section 19521 from the date of the payment of the refund. Abatement of interest under this section is governed by subdivision (c) of Section 19104.

SEC. 4. Section 19368 of the Revenue and Taxation Code is amended to read:

19368. If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Abatement of interest on an amount due under this section is governed by subdivision (c) of Section 19104.

SEC. 5. Section 19411 of the Revenue and Taxation Code is amended to read:

19411. (a) The Franchise Tax Board may recover any refund or credit or any portion thereof that is erroneously made or allowed, together with interest at the adjusted annual rate established pursuant to Section 19521, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California within whichever of the following periods expires the later:

(1) Two years after the refund or credit was made.

(2) During the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment.

(b) Abatement of interest under this section is governed by subdivision (c) of Section 19104.

SEC. 6. Section 19520 is added to the Revenue and Taxation Code, to read:

19520. Unless otherwise specifically provided, if a provision of law, including Section 1088.5 and Section 1088.8 of the Unemployment Insurance Code, authorizes the use of information for tax enforcement purposes, the term ''tax enforcement'' includes the collection of any amount referred to the Franchise Tax Board for collection under a provision of law that authorizes the Franchise Tax Board to collect that amount in the same manner as an unpaid tax liability is collected by the Franchise Tax Board.

SEC. 7. Section 23114 of the Revenue and Taxation Code is amended to read:

23114. (a) A corporation shall not be subject to the taxes imposed by this chapter if the corporation did no business in this state during the taxable year and the taxable year was 15 days or less.

(b) The period of time for which a corporation is not subject to taxes imposed by this chapter as provided in subdivision (a) may not be considered a taxable year for purposes of subdivision (e) or paragraph (1) of subdivision (f) of Section 23153.

SEC. 8. Section 24328 of the Revenue and Taxation Code is amended and renumbered to read:

23711.5. The Golden State Scholarshare Trust, established pursuant to Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code, is an instrumentality of this state and the income of the Scholarshare trust shall be exempt from taxes imposed under this part. The Scholarshare trust is established and shall be maintained as a qualified state tuition program as defined in Section 529 of the Internal Revenue Code.

CHAPTER 456

An act to amend Section 1814 of the Financial Code, relating to money transmitters.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 1814 of the Financial Code is amended to read:

1814. (a) Each licensee shall at all times maintain tangible shareholders' equity determined to be adequate by the commissioner of at least five hundred thousand dollars ($500,000). However, with respect to any licensee licensed as of January 1, 2002, the commissioner may, for good cause and to avoid undue hardship, extend the time within which the licensee is required to satisfy this subdivision.

(b) ''Tangible shareholders' equity'' means shareholders' equity minus intangible assets as determined in accordance with generally accepted accounting principles.

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 457

An act to amend Section 66753 of, and to repeal Section 66756 of, the Education Code, relating to public postsecondary education.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 66753 of the Education Code is amended to read:

66753. (a) (1) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the

President of the University of California shall establish procedures so that a student meeting the requirements of Section 66752 may be certified by the home campus as to eligibility, residence, fee, financial aid, and health status.

(2) The host campus may require the applicant to submit additional information as needed. The host campus may charge participating students an administration fee, not to exceed an amount sufficient for the campus to recover the full amount of the administrative costs it incurs under this chapter.

(b) A student enrolled pursuant to this chapter shall be exempt from participation in the matriculation services described in Article 1 (commencing with Section 78210) of Chapter 2 of Part 48.

SEC. 2. Section 66756 of the Education Code is repealed.

CHAPTER 458

An act to amend Section 35182.5 of the Education Code, relating to school district governing boards.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 35182.5 of the Education Code is amended to read:

35182.5. (a) The Legislature finds and declares all of the following:

(1) State and federal laws require all schools participating in meal programs to provide nutritious food and beverages to pupils.

(2) State and federal laws restrict the sale of food and beverages in competition with meal programs to enhance the nutritional goals for pupils, and to protect the fiscal and nutritional integrity of the school food service programs.

(3) Parents, pupils, and community members should have the opportunity to ensure, through the review of food and beverage contracts, that food and beverages sold on school campuses provide nutritious sustenance to pupils, promote good health, help pupils learn, provide energy, and model fit living for life.

(b) For the purposes of this section, the following terms have the following meanings:

(1) ''Nonnutritious beverages'' means any beverage that is not any of the following:

(A) Drinking water.

(B) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(C) An electrolyte replacement beverage that contains 42 grams or less of added sweetener per 20 ounce serving.

(D) A 100 percent fruit juice, or fruit-based drink that is composed of 50 percent or more fruit juice and that has no added sweeteners.

(2) ''Added sweetener'' means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within any fruit juice that is a component of the beverage.

(3) ''Nonnutritious food'' means food that is not sold as part of the school breakfast or lunch program as a full meal, and that meets any of the following standards:

(A) More than 35 percent of its total calories are from fat.

(B) More than 10 percent of its total calories are from saturated fat.

(C) More than 35 percent of its total weight is composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(c) The governing board of a school district may not do any of the following:

(1) Enter into or renew a contract or permit a school within the district to enter into or renew a contract that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district to a person, business, or corporation, unless the governing board of the school district does all of the following:

(A) Adopts a policy after a public hearing of the governing board to ensure that the district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis pursuant to procedures contained in Section 20111 of the Public Contract Code or through the issuance of a Request for Proposal.

(B) Provides to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled board meeting. The governing board shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting.

(2) Enter into a contract that prohibits a school district employee from disparaging the goods or services of the party contracting with the school board.

(3) Enter into a contract or permit a school within the district to enter into a contract for electronic products or services that requires the dissemination of advertising to pupils, unless the governing board of the school district does all of the following:

(A) Enters into the contract at a noticed public hearing of the governing board.

(B) Makes a finding that the electronic product or service in question is or would be an integral component of the education of pupils.

(C) Makes a finding that the school district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to pupils.

(D) Provides written notice to the parents or guardians of pupils that the advertising will be used in the classroom or other learning centers. This notice shall be part of the district's normal ongoing communication to parents or guardians.

(E) Offers the parents the opportunity to request in writing that the pupil not be exposed to the program that contains the advertising. Any request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents or guardians at any time.

(d) A governing board may meet the public hearing requirement set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts that grant the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district, by either of the following:

(1) Review of the contract at a public hearing by a Child Nutrition and Physical Activity Advisory Committee established pursuant to Section 49433 that has contract review authority for the sale of food and beverages.

(2) (A) An annual public hearing to review and discuss existing and potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales, as fundraisers, and through vending machines.

(B) The public hearing shall include, but not be limited to, a discussion of all of the following:

(i) The nutritional value of food and beverages sold within the district.

(ii) The availability of fresh fruit, vegetables, and grains in school meals and snacks, including, but not limited to, locally grown and organic produce.

(iii) The amount of fat, sugar, and additives in the food and beverages discussed.

(iv) Barriers to pupil participation in school breakfast and lunch programs.

(C) A school district that holds an annual public hearing consistent with this paragraph is not released from the public hearing requirements set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts not discussed at the annual public hearing.

(e) The governing board of the school district shall make accessible to the public any contract entered into pursuant to paragraph (1) of subdivision (c) and may not include in that contract a confidentiality clause that would prevent a school or school district from making any part of the contract public.

(f) The governing board of a school district may sell advertising, products, or services on a nonexclusive basis.

(g) The governing board of a school district may post public signs indicating the district's appreciation for the support of a person or business for the district's education program.

(h) Contracts entered into prior to January 1, 2004, may remain in effect, but may not be renewed if they are in conflict with this section.

CHAPTER 459

An act to amend Sections 33350 and 60800 of, and to amend, repeal, and add Section 51241 of, the Education Code, relating to physical education.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 33350 of the Education Code is amended to read:

33350. The State Department of Education shall do all of the following:

(a) Adopt rules and regulations that it deems necessary and proper to secure the establishment of courses in physical education in the elementary and secondary schools.

(b) Compile or cause to be compiled and printed a manual in physical education for distribution to teachers in the public schools of the state.

(c) Encourage school districts offering instruction in kindergarten and any of grades 1 to 12, inclusive, to the extent that resources are available, to provide quality physical education that develops the knowledge, attitudes, skills, behavior, and motivation needed to be physically active and fit for life; to provide daily recess periods for elementary school pupils, featuring time for unstructured but supervised play; to provide extracurricular physical activity and fitness programs and physical activity and fitness clubs; and to encourage the use of school facilities for physical activity and fitness programs offered by the

school, public park and recreation districts, or community-based organizations outside of school hours.

SEC. 2. Section 51241 of the Education Code is amended to read:

51241. (a) The governing board of a school district or the office of the county superintendent of schools of a county may grant temporary exemption to a pupil from courses in physical education, if the pupil is one of the following:

(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.

(2) Enrolled for one-half, or less, of the work normally required of full-time pupils.

(b) The governing board of a school district or the office of the county superintendent of schools of a county may, with the consent of a pupil, grant the pupil exemption from courses in physical education for two years any time during grades 10 to 12, inclusive.

(c) The governing board of a school district or the office of the county superintendent of a county may grant permanent exemption from courses in physical education if the pupil complies with any one of the following:

(1) Is 16 years of age or older and has been enrolled in the 10th grade for one academic year or longer.

(2) Is enrolled as a postgraduate pupil.

(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of Section 4346 of Title 15 of the California Code of Regulations.

(d) A pupil exempted under subdivision (b) or paragraph (1) of subdivision (c) may not be permitted to attend fewer total hours of courses and classes if he or she elects not to enroll in a physical education course than he or she would have attended if he or she had elected to enroll in a physical education course.

(e) Notwithstanding any other law, the governing board of a school district may administer to pupils in grades 10 to 12, inclusive, the physical performance test required in 9th grade pursuant to Section 60800.

(f) This section shall remain in effect only until June 30, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2007, deletes or extends that date.

SEC. 3. Section 51241 is added to the Education Code, to read:

51241. (a) The governing board of a school district or the office of the county superintendent of schools of a county may grant temporary exemption to a pupil from courses in physical education, if the pupil is one of the following:

(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.

(2) Enrolled for one-half, or less, of the work normally required of full-time pupils.

(b) (1) The governing board of a school district or the office of the county superintendent of schools of a county may, with the consent of a pupil, if the pupil has passed the physical performance test administered in the 9th grade pursuant to Section 60800, grant the pupil exemption from courses in physical education for two years any time during grades 10 to 12, inclusive.

(2) Pursuant to Sections 51210, 51220, and 51222, physical education is required to be offered to all pupils, and schools are, therefore, required to provide adequate facilities and instructional resources for that instruction. In this regard, paragraph (1) shall be implemented in a manner that does not create a new program or impose a higher level of service on a local educational agency. Paragraph (1) does not mandate any overall increase in staffing or instructional time because, pursuant to subdivision (d), pupils are not permitted to attend fewer total hours of class if they do not enroll in physical education. Paragraph (1) does not mandate any new costs because any additional physical education instruction that a local educational agency provides may be accomplished during the existing instructional day, with existing facilities. Paragraph (1) does not prevent a local educational agency from implementing any other temporary or permanent exemption authorized by this section.

(c) The governing board of a school district or the office of the county superintendent of a county may grant permanent exemption from courses in physical education if the pupil complies with any one of the following:

(1) Is 16 years of age or older and has been enrolled in the 10th grade for one academic year or longer.

(2) Is enrolled as a postgraduate pupil.

(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of Section 4346 of Title 15 of the California Code of Regulations.

(d) A pupil exempted under paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) may not attend fewer total hours of courses and classes if he or she elects not to enroll in a physical education course than he or she would have attended if he or she had elected to enroll in a physical education course.

(e) Notwithstanding any other law, the governing board of a school district may also administer to pupils in grades 10 to 12, inclusive, the physical performance test required in 9th grade pursuant to Section

60800. A pupil who passes this physical performance test in any of grades 10 to 12, inclusive, is eligible for an exemption pursuant to subdivision (b).

(f) This section shall become operative on July 1, 2007.

SEC. 4. Section 60800 of the Education Code is amended to read:

60800. (a) During the month of February, March, April, or May, the governing board of each school district maintaining any of grades 5, 7, and 9 shall administer to each pupil in those grades the physical performance test designated by the State Board of Education. Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his or her condition will permit.

(b) Upon request of the State Department of Education, a school district shall submit to the department, at least once every two years, the results of its physical performance testing.

(c) The State Department of Education shall compile the results of the physical performance test and submit a report every two years, by December 31, to the Legislature and Governor that standardizes the data, tracks the development of high-quality fitness programs, and compares the performance of California's pupils with national performance, to the extent that funding is available.

(d) Pupils shall be provided with their individual results after completing the physical performance testing. The test results may be provided orally as the pupil completes the testing.

(e) The governing board of a school district shall report the aggregate results of its physical performance testing administered pursuant to this section in their annual school accountability report card required by Sections 33126 and 35256.

SEC. 5. The Legislature finds and declares all of the following:

(a) Physical education has been a required course of study for pupils for many years. Since at least 1968, pupils in grades 1 to 6, inclusive, have been required to participate in physical education for a period of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period, and pupils in grades 7 to 12, inclusive, have been required to participate in physical education for a period of not less than 400 minutes each 10 schooldays.

(b) These physical education requirements were in place long before state reimbursement was required to be provided to local agencies and school districts for state-mandated activities.

(c) The concept of subvention of funds was first introduced in 1972 as part of the Property Tax Relief Act of 1972, known as Senate Bill 90. This act was superseded by Article XIII B which was added to the California Constitution by the voters in 1979. Section 6 of Article XIII B requires that whenever the Legislature mandates any new program or

higher level of service on local governments, the state shall provide a subvention of funds for the associated costs. Section 6 further provides, however, that the Legislature need not provide a subvention of funds for legislative mandates enacted prior to January 1, 1975.

(d) Since the minimum time requirements for physical education were mandated prior to 1975, the provision of physical education by school districts does not constitute a reimbursable state mandate. For this reason, Senate Bill 1868 of the 2001–02 Regular Session (Ch. 1166, Stats. 2002), which amended the exemption provision that authorizes a school district to grant a two-year exemption of physical education to pupils in grades 10 to 12, inclusive, to require passage of the physical performance test, known as the Fitnessgram, was not intended by the Legislature to create a reimbursable state mandate.

CHAPTER 460

An act to add and repeal Article 13 (commencing with Section 18841) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Article 13 (commencing with Section 18841) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 13. California Missions Foundation Fund

18841. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Missions Foundation Fund established by Section 18842. That designation is to be used as a voluntary contribution on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General

Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the ''California Missions Foundation Fund'' to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to restore and repair the Spanish colonial and mission era missions in this state and to preserve the artworks and artifacts of these missions.

(f) Notwithstanding any other provision, a voluntary contribution designation for the California Missions Foundation Fund shall not be added on the tax return until another voluntary contribution designation is removed.

(g) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18842. There is in the State Treasury the California Missions Foundation Fund to receive contributions made pursuant to Section 18841. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18841 to be transferred to the California Missions Foundation Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Missions Foundation Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18841 for payment into that fund.

18843. All moneys transferred to the California Missions Foundation Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Parks and Recreation for allocation to the California Missions Foundation, a charitable corporation established in 1998 and organized and operated exclusively for charitable purposes under Section 501(c)(3) of the Internal Revenue Code, to restore and repair the Spanish colonial and mission era missions in this state and to preserve the artworks and artifacts of these missions.

18844. (a) This article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the California

Missions Foundation Fund on the tax return, and as of that date is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) If, in the second calendar year after the first taxable year the California Missions Foundation Fund appears on the tax return, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contribution.

(c) For each calendar year, beginning with the third calendar year that the California Missions Foundation Fund appears on the tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 461

An act to amend Sections 44279.2, 44325, 44326, 44328, 44386, and 44830.3 of the Education Code, relating to district interns.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 44279.2 of the Education Code is amended to read:

44279.2. (a) The superintendent and the commission shall jointly administer the Beginning Teacher Support and Assessment System pursuant to this chapter. In administering this section, the superintendent and the commission shall provide or contract for the provision of all of the following:

(1) Establishment of requirements for reviewing and approving teacher induction programs.

(2) Development and administration of a system for ensuring teacher induction program quality and effectiveness. For the purposes of this section, ''program effectiveness'' means producing excellent program outcomes in relation to the purposes defined in subdivision (b) of Section 44279.1. For the purposes of this section, ''program quality'' means excellence with respect to program factors, including, but not limited to, all of the following:

(A) Program goals.

(B) Design resources.

(C) Management, evaluation, and improvement of the program.

(D) School context and working conditions.

(E) Support and assessment services to each beginning teacher.

(3) Developing purposes and functions for reviewing and approving supplemental grants and standards for program clusters and program consultants, as defined pursuant to Section 44279.7.

(4) Improving and refining the formative assessment system.

(5) Improving and refining professional development materials and strategies for all personnel involved in implementing induction programs.

(6) Conducting and tracking research related to beginning teacher induction.

(7) Periodically evaluating the validity of the California Standards for the Teaching Profession adopted by the commission in January 1997 and the Standards of Quality and Effectiveness for Beginning Teacher Support and Assessment Program adopted by the commission in 1997 and making changes to those documents, as necessary.

(b) As part of the Beginning Teacher Support and Assessment System, the commission and the superintendent shall establish requirements for local teacher induction programs.

(c) A school district or consortium of school districts may apply to the superintendent for funding to establish a local teacher induction program pursuant to this section. From amounts appropriated for the purposes of this section, the superintendent shall allocate three thousand dollars

($3,000) for each beginning teacher participating in the program. That amount shall be adjusted each fiscal year by the inflation factor set forth in Section 42238.1. To be eligible to receive funding, a school district or consortium of school districts shall, at a minimum, meet all of the following requirements:

(1) Develop, implement, and evaluate teacher induction programs that meet the Quality and Effectiveness for Beginning Teacher Induction Program Standards adopted by the commission in 1997.

(2) Support beginning teachers in meeting the competencies described in the California Standards for the Teaching Profession adopted by the commission in January 1997.

(3) Meet criteria for the cost-effective delivery of program services.

(4) From amounts received from local, state, or resources available for the purposes of teacher induction programs, contribute not less than two thousand dollars ($2,000) for the costs of each beginning teacher served in the induction program.

(d) Teachers who have received their preliminary credential in a district intern program pursuant to Article 7.5 (commencing with Section 44325) or an intern program pursuant to Article 3 (commencing with Section 44450) of Chapter 3 and who are participating in an induction program pursuant to this section are not eligible for funding pursuant to Article 11 (commencing with Section 44380) of Chapter 2.

SEC. 2. Section 44325 of the Education Code is amended to read:

44325. (a) The Commission on Teacher Credentialing shall issue district intern credentials authorizing persons employed by a school district that maintains kindergarten and grades 1 to 12, inclusive, or that maintains classes in bilingual education to provide classroom instruction to pupils in those grades and classes in accordance with the requirements of Section 44830.3. The commission, until January 1, 2008, also shall issue district intern credentials authorizing persons employed by a school district to provide classroom instruction to pupils with mild and moderate disabilities in special education classes, in accordance with the requirements of Section 44830.3.

(b) Each district intern credential is valid for a period of two years. However, a credential may be valid for three years if the intern is participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities. Upon the recommendation of the school district, the commission may grant a one-year extension of the district intern credential.

(c) The commission shall require each applicant for a district intern credential to demonstrate that he or she meets all of the following minimum qualifications for that credential:

(1) The possession of a baccalaureate degree conferred by a regionally accredited institution of postsecondary education.

(2) The successful passage of the state basic skills proficiency test administered under Sections 44252 and 44252.5.

(3) The successful completion of the appropriate subject matter examination administered by the commission, or a commission-approved subject matter preparation program for the subject areas in which the district intern is authorized to teach.

(4) The oral language component of the assessment program leading to the bilingual-crosscultural language and academic development certificate for persons seeking a district intern credential to teach bilingual education classes.

(d) The commission shall apply the requirements of Sections 44339, 44340, and 44341 to each applicant for a district intern credential.

SEC. 3. Section 44326 of the Education Code is amended to read:

44326. (a) Persons holding district intern credentials issued by the commission under Section 44325 to teach in grades 9 to 12, inclusive, or in grades 6 to 8, inclusive, in a departmentalized program, or in departmentalized bilingual classes, shall be authorized to teach in the subject area in which they have met the subject matter requirement.

(b) Persons holding district intern credentials issued by the commission under Section 44325 to teach in kindergarten and grades 1 to 8, inclusive, in a self-contained program or in self-contained bilingual classes who have completed a commission approved academic diversified or liberal arts subject matter program that includes the subject matter coursework prescribed in Section 44314 or who have met the subject matter requirements by passing the subject matter examination approved by the commission for this purpose, shall be authorized to teach in those grades or classes.

(c) Before being assigned to teach pupils with mild and moderate disabilities, persons holding district intern credentials issued by the commission under Section 44325 to teach those pupils shall meet the requirements of subdivision (b).

(d) Each district intern is required to teach with the assistance and guidance of certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers.

(e) A certificated employee who assists the district intern shall possess valid certification at the same level or of the same type of credential as the district interns they serve.

SEC. 4. Section 44328 of the Education Code is amended to read:

44328. (a) Unless the commission determines that substantial evidence exists that a person is unqualified to teach, upon the completion of successful service as a district intern pursuant to subdivision (b) of Section 44325, and upon the recommendation of the school district governing board, the commission shall award professional credentials to district interns in the same manner as applicants recommended for credentials by institutions that operate approved programs of professional preparation.

(b) Notwithstanding paragraphs (1) and (2) of subdivision (a) of Section 44225, paragraphs (3), (4), (5), and (6) of subdivision (b) of Section 44259, paragraphs (1), (2), (3), and (4) of subdivision (c) of Section 44259, and Sections 44261, 44265, and 44335, it is the intent of the Legislature that upon recommendation by the governing board, district interns shall be issued professional credentials, rather than preliminary credentials, upon the completion of successful service as a teacher pursuant to subdivision (b) of Section 44325 unless the governing board recommends, and the commission finds substantial evidence that the person is not qualified to teach. A school district may require a district intern who is pursuing a professional credential to complete an approved induction program if funds are available, or approved coursework in accordance with paragraph (5) of subdivision (c) of Section 44259. Pursuant to Article 11 (commencing with Section 44380), teachers participating in an induction program pursuant to Article 4.5 (commencing with Section 44279.1) are no longer eligible for funding under the district intern program.

(c) Notwithstanding subdivisions (a) and (b), the governing board of a school district may request the commission to issue a preliminary teaching credential to an intern who has met the requirements for a preliminary teaching credential, as specified in subdivision (b) of Section 44259, but who has not successfully completed the requirements for a professional clear credential pursuant to subdivision (c) of Section 44259.

(d) Notwithstanding Section 44261, the preliminary credential awarded to any district intern holding a district intern credential to teach bilingual education classes shall be a basic teaching credential with a bilingual-crosscultural language and academic development emphasis. Notwithstanding Section 44265, the preliminary credential awarded to any district intern who holds a district intern credential to teach special education pupils with mild and moderate disabilities shall be a special education specialist instruction credential that authorizes the holder to teach special education pupils with mild and moderate disabilities.

(e) It is the intent of the Legislature that institutions of higher education that operate approved programs of professional preparation

work cooperatively with school districts that offer district intern programs for a special education specialist credential to apply the regular education coursework and fieldwork from the special education district intern program toward earning a multiple or single subject teaching credential through the institution.

SEC. 5. Section 44386 of the Education Code is amended to read:

44386. (a) From funds appropriated for the purposes of this article, the Commission on Teacher Credentialing shall award incentive grants to qualifying school districts or county offices of education. Each school district or county office of education that receives a grant shall provide matching funds from any available source in an amount equal to 50 percent of the cost of the alternative certification program. Grants shall be awarded by the commission for the remaining 50 percent of the cost of the alternative certification program, but in no event shall the grant amount awarded to any school district or county office of education exceed two thousand five hundred dollars ($2,500) per intern per year, except that the commission may require a lesser local contribution, or provide a larger grant per intern per year, in hardship cases.

(b) Participants in a district intern program conducted pursuant to Article 7.5 (commencing with Section 44325) or in an intern program conducted pursuant to Article 3 (commencing with Section 44450) of Chapter 3, who have received a preliminary credential and who are receiving funding for participating in an induction program pursuant to Article 4.5 (commencing with Section 44279.1) are not eligible for funding under this section.

(c) As determined by the Commission on Teacher Credentialing, funds appropriated in the annual Budget Act for the alternative certification program may also be made available for expenditure on the Pre-Internship Teaching Program authorized pursuant to Article 5.6 (commencing with Section 44305).

SEC. 6. Section 44830.3 of the Education Code is amended to read:

44830.3. (a) The governing board of any school district that maintains kindergarten or grades 1 to 12, inclusive, or that maintains classes in bilingual education or special education programs for pupils with mild and moderate disabilities, may in consultation with an accredited institution of higher education offering an approved program of pedagogical teacher preparation employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. The governing board shall require that each district intern be assisted and guided by a certificated employee selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers. These

certificated employees shall possess valid certification at the same level, or of the same type, of credential as the district interns they serve.

(b) The governing board of each school district employing district interns shall develop and implement a professional development plan for district interns in consultation with an accredited institution of higher education offering an approved program of pedagogical preparation. The professional development plan shall include all of the following:

(1) Provisions for an annual evaluation of the district intern.

(2) As the governing board determines necessary, a description of courses to be completed by the district intern, if any, and a plan for the completion of preservice or other clinical training, if any, including student teaching.

(3) Mandatory preservice training for district interns tailored to the grade level or class to be taught, through either of the following options:

(A) One hundred twenty clock hours of preservice training and orientation in the aspects of child development, classroom organization and management, pedagogy, and methods of teaching the subject field or fields in which the district intern will be assigned, which training and orientation period shall be under the direct supervision of an experienced permanent teacher. In addition, persons holding district intern certificates issued by the commission pursuant to Section 44325 shall receive orientation in methods of teaching pupils with mild and moderate disabilities. At the conclusion of the preservice training period, the permanent teacher shall provide the district with information regarding the area that should be emphasized in the future training of the district intern.

(B) The successful completion, prior to service by the intern in any classroom, of six semester units of coursework from a regionally accredited college or university, designed in cooperation with the school district to provide instruction and orientation in the aspects of child development and the methods of teaching the subject matter or matters in which the district intern will be assigned.

(4) Instruction in child development and the methods of teaching during the first semester of service for district interns teaching in kindergarten or grades 1 to 6, inclusive, including bilingual education classes and, for persons holding district intern certificates issued by the commission pursuant to Section 44325, special education programs for pupils with mild and moderate disabilities at those levels.

(5) Instruction in the culture and methods of teaching bilingual children during the first year of service for district interns teaching children in bilingual classes and, for persons holding district intern certificates issued by the commission pursuant to Section 44325, instruction in the etiology and methods of teaching children with mild and moderate disabilities.

(6) Any other criteria that may be required by the governing board.

(7) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities also shall include 120 clock hours of mandatory training and supervised fieldwork that shall include, but not be limited to, instructional practices, and the procedures and pedagogy of both general education programs and special education programs that teach pupils with disabilities.

(8) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching bilingual classes shall also include 120 clock hours of mandatory training and orientation, which shall include, but not be limited to, instruction in subject matter relating to bilingual-crosscultural language and academic development.

(9) The professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities shall be based on the standards adopted by the commission as provided in subdivision (a) of Section 44327.

(c) Each district intern and each district teacher assigned to supervise the district intern during the preservice period shall be compensated for the preservice period required pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (b). The compensation shall be that which is normally provided by each district for staff development or in-service activity.

(d) Upon completion of service sufficient to meet program standards and performance assessments, the governing board may recommend to the Commission on Teacher Credentialing that the district intern be credentialed in the manner prescribed by Section 44328.

CHAPTER 462

An act to amend Sections 20572, 20574, 20576, 20577, 20578, and 20581 of, and to add Section 20577.5 to, the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 20572 of the Government Code is amended to read:

20572. (a) If a contracting agency fails for 30 days after demand by the board to pay any installment of contributions required by its contract, or fails for three months after demand by the board therefor to file any information required in the administration of this system with respect to that agency's employees, or if the board determines that the agency is no longer in existence, the board may terminate that contract by resolution adopted by a majority vote of its members effective 60 days after notice of its adoption has been mailed by registered mail to the governing body of the contracting agency.

(b) Notwithstanding Section 20537, 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.

SEC. 2. Section 20574 of the Government Code is amended to read:

20574. A terminated agency shall be liable to the system for any deficit in funding for earned benefits, as determined pursuant to Section 20577, interest at the actuarial rate from the date of termination to the date the agency pays the system, and for reasonable and necessary costs of collection, including attorney's fees. The board shall have a lien on the assets of a terminated contracting agency, subject only to a prior lien for wages, in an amount equal to the actuarially determined deficit in funding for earned benefits of the employee members of the agency, interest, and collection costs. The assets shall also be available to pay actual costs, including attorneys' fees, necessarily expended for collection of the lien.

SEC. 3. Section 20576 of the Government Code is amended to read:

20576. (a) Upon the termination of a contract, the board shall hold for the benefit of the members of this system who are credited with service rendered as employees of the contracting agency and for the benefit of beneficiaries of this system who are entitled to receive benefits on account of that service, the portion of the accumulated contributions then held by this system and credited to or as having been made by the agency that does not exceed the difference between (1) an amount actuarially equivalent, including contingencies for mortality fluctuations, as determined by the actuary and approved by the board, the amount this system is obligated to pay after the effective date of termination to or on account of persons who are or have been employed by, and on account of service rendered by them to, the agency, and (2) the contributions, with credited interest thereon, then held by this system as having been made by those persons as employees of the agency.

(b) All plan assets and liabilities of agencies whose contracts have been terminated shall be merged into a single pooled account to provide exclusively for the payment of benefits to members of these plans. Recoveries from terminated agencies for any deficit in funding for earned benefits for members of plans of terminated agencies, and interest thereon, shall also be deposited to the credit of the terminated agency pool.

SEC. 4. Section 20577 of the Government Code is amended to read:

20577. If, at the date of termination, the sum of the accumulated contributions credited to, or held as having been made by, the contracting agency and the accumulated contributions credited to or held as having been made by persons who are or have been employed by the agency, as employees of the agency, is less than the actuarial equivalent specified in clause (1) of subdivision (a) of Section 20576, the agency shall contribute to this system under terms fixed by the board, an amount equal to the difference between the amount specified in clause (1) of subdivision (a) of Section 20576 and the accumulated contributions. The amount of the difference shall be subject to interest at the actuarial rate from the date of contract termination to the date the agency pays this system. If the agency fails to pay to the board the amount of the difference, all benefits under the contract, payable after the board declares the agency in default therefor, shall be reduced by the percentage that the sum is less than the amount in clause (1) of subdivision (a) of Section 20576 as of the date the board declared the default. If the sum of the accumulated contributions is greater than the amount in clause (1) of subdivision (a) of Section 20576, an amount equal to the excess shall be paid by this system to the contracting agency, including interest at the actuarial rate from the date of contract termination to the date this system makes payment. The market value used shall be the value calculated in the most recent annual closing.

The right of an employee of a contracting agency, or his or her beneficiary, to a benefit under this system, whether before or after retirement or death, is subject to the reduction.

SEC. 5. Section 20577.5 is added to the Government Code, to read:

20577.5. Notwithstanding Section 20577, the board may merge a plan that has been terminated pursuant to Section 20572 into the terminated agency pool without benefit reduction, or with a lesser reduction, if (a) the board has made all reasonable efforts to collect the amount necessary to fully fund the liabilities of the plan, and (b) the board finds that the merger of the plan into the terminated agency pool without benefit reduction will not impact the actuarial soundness of the terminated agency pool.

SEC. 6. Section 20578 of the Government Code is amended to read:

20578. (a) Except as provided in subdivision (b), on and after January 1, 1991, the rights and benefits of a former employee of a contracting agency which terminated on or before January 1, 1991, or of his or her beneficiary, shall be the same as if the agency had continued as a contracting agency. Any monthly allowance of that individual, or of his or her beneficiary, that was reduced pursuant to Section 20577 because the contracting agency failed to pay the board the amount of the difference shall not be subject to continued reduction on or after January 1, 1991. As of January 1, 1991, benefits shall be paid at the level provided in the contract prior to that reduction. However, if a former employee of a contracting agency that terminated on or before January 1, 1991, becomes employed by another covered employer after the date of termination, including an employer subject to reciprocity, the benefits shall be calculated by using the highest compensation earned by the individual.

In accordance with Section 20580, an individual who has withdrawn his or her accumulated contributions from the terminated agency shall not be permitted to redeposit any withdrawn contributions upon again becoming a member of this system.

Except as provided in Section 20577.5, benefits shall be reduced proportionally pursuant to Section 20577 prior to the transfer of assets to the pool if the amount of the terminating agency's assets are less than the actuarial equivalent described in clause (1) of subdivision (a) of Section 20576 and if the agency fails to pay the difference.

(b) If a contracting agency has not paid the system for any deficit in funding for earned benefits, as determined pursuant to Section 20577, members shall be entitled to the benefits to which members of the plan were entitled 36 months prior to the date the agency notified the board of its intention to terminate its contract or 36 months prior to the date the board notified the agency of its intent to terminate the contract, whichever is earlier. Entitlement to earned benefits under this subdivision shall be subject to Section 20577.5.

SEC. 7. Section 20581 of the Government Code is amended to read:

20581. If a public agency that terminated its contract enters into a contract for participation in this system, the contract may provide for increase in benefits of persons retired or members who retained rights under this system, if the benefits were reduced under this article at the time of termination, to the level provided in the contract for members, and for redeposit of any contributions for service to the agency not credited under a local system maintained by the agency after termination, withdrawn at termination by a person who becomes a member on contract date. Unless the redeposit is made, the member shall not receive credit for the service. All service rendered prior to the contract date and credited as a result of the contract shall constitute prior

service whether or not rendered during the period of the terminated contract. All liabilities for service performed under the terminated contract shall become liabilities of a plan under the new contract. The ratio of assets to liabilities that existed at the time the previous contract was terminated shall be used to calculate the amount of assets to be transferred to a plan under the new contract.

CHAPTER 463

An act to amend Sections 89260 and 89260.5 of, and to repeal Section 89260.7 of, the Education Code, relating to the California State University.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 89260 of the Education Code is amended to read:

89260. (a) The Kenneth L. Maddy Institute is hereby established as a part of California State University, Fresno, to be administered by the president of that campus, and organized as a nonprofit organization under Section 501(c)(3) of Title 26 of the United States Code. The Kenneth L. Maddy Institute shall provide training for leadership in government, and shall prepare students and elected officials for public service in the tradition established by The Honorable Kenneth L. Maddy during his more than 25 years of service to the citizens of California.

(b) The Kenneth L. Maddy Institute shall operate under the name ''Kenneth L. Maddy Institute'' or, when appropriate, under the name ''The Maddy Institute.'' The Kenneth L. Maddy Institute shall operate through, and be governed by, a board of trustees pursuant to its organization under Section 501(c)(3) of Title 26 of the United States Code. The President of California State University, Fresno, shall be a member of that board of trustees. The board of trustees may establish committees, and delegate authority to those committees, as it deems appropriate.

(c) An executive director shall be responsible for implementing the mission of the institute and supervising its daily operations.

SEC. 2. Section 89260.5 of the Education Code is amended to read:

89260.5. Instruction at the institute shall be provided primarily by the California State University, Fresno, supplemented by frequent, in-depth discussions with active and retired appointed and elected public

officials, and shall include an oral history element. It is the intent of the Legislature that the institute shall specifically seek to sponsor regular roundtable discussions among experienced elected officials on topics related to public administration, emerging public policy, and legislation in their areas of government service.

SEC. 3. Section 89260.7 of the Education Code is repealed.

CHAPTER 464

An act to amend Section 1639 of, and to add Sections 1639.35 and 7158.3 to, the Health and Safety Code, relating to anatomical gifts.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 1639 of the Health and Safety Code is amended to read:

1639. (a) The department may adopt rules and regulations governing the administration and enforcement of this chapter.

(b) Regulations adopted by the department may include minimum standards for 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) The department shall report to the Legislature by January 1, 2004, on the status of the regulations developed pursuant to this section.

SEC. 2. Section 1639.35 is added to the Health and Safety Code, to read:

1639.35. Any person, when submitting an application for a license, including the renewal thereof, pursuant to this chapter, shall also submit, with the application, a copy of the applicant's standard informed consent form required pursuant to Section 7158.3.

SEC. 3. Section 7158.3 is added to the Health and Safety Code, to read:

7158.3. (a) The following definitions shall apply for purposes of this section:

(1) ''Cosmetic surgery'' means surgery that is performed to alter or reshape normal structures of the body in order to improve appearance.

(2) ''Donee'' means a hospital, as defined in subdivision (f) of Section 7150.1, or an organ procurement organization, as defined in subdivision (j) of Section 7150.1, or a tissue bank licensed pursuant to Chapter 4.1 (commencing with Section 1635) of Division 2.

(3) ''Reconstructive surgery'' means surgery performed to correct or repair abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease to do either of the following:

(A) To improve function.

(B) To create a normal appearance, to the extent possible.

(b) For purposes of accepting anatomical gifts, as defined in subdivision (a) of Section 7150.1, a donee shall do all of the following:

(1) Revise existing informed consent forms and procedures to advise a donor or, if the donor is deceased, the donor's representative, that tissue banks work with both nonprofit and for-profit tissue processors and distributors, that it is possible that donated skin may be used for cosmetic or reconstructive surgery purposes, and that donated tissue may be used for transplants outside of the United States.

(2) The revised consent form or procedure shall separately allow the donor or donor's representative to withhold consent for any of the following:

(A) Donated skin to be used for cosmetic surgery purposes.

(B) Donated tissue to be used for applications outside of the United States.

(C) Donated tissue to be used by for-profit tissue processors and distributors.

(3) A donee shall be deemed to have complied with paragraph (2) by designating tissue that has been donated with specific restrictions on its use. Once the donee transfers the tissue to a separate entity, the donee's responsibility for compliance with any restrictions on the tissue ceases.

(4) The donor may recover, in a civil action against any individual or entity that fails to comply with this subdivision, civil penalties to be assessed in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000), plus court costs, as determined by the court. A separate penalty shall be assessed for each individual or entity that fails to comply with this subdivision. Any civil penalty provided under this paragraph shall be in addition to any license

revocation or suspension, if appropriate, authorized under subdivision (c).

(5) If the consent of the donor or donor's representative is obtained in writing, the donee shall offer to provide the donor or donor's representative with a copy of the completed consent form. If consent is obtained by telephone, the donee shall advise the donor or donor's representative that the conversation will be tape recorded for verification and enforcement purposes, and shall offer to provide the donor or donor's representative with a written copy of the recorded telephonic consent form.

(c) Violation of this section by a licensed health care provider constitutes unprofessional conduct.

(d) This section shall not apply to the removal of sperm or ova pursuant to Section 2260 of the Business and Professions Code.

SEC. 4. (a) It is the intent of the Legislature that this act shall not increase the number of inspections of tissue banks made by the State Department of Health Services, and that existing initial and routine inspections incorporate a review of informed consent procedures within the policies and procedures already required for licensure under Section 1639.1 of the Health and Safety Code.

(b) The implementation of this act shall be made through the existing resources of the State Department of Health Services.

CHAPTER 465

An act to amend Section 19826 of, and to repeal Sections 19994.20 and 19996.40 of, the Government Code, relating to state personnel administration.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 19826 of the Government Code is amended to read:

19826. (a) The department shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business.

The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range retroactive to the date of application for these change.

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(c) At least six months before the end of the term of an existing memorandum of understanding or immediately upon the reopening of negotiations under an existing memorandum of understanding, the department shall submit to the parties meeting and conferring pursuant to Section 3517 and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 19994.20 of the Government Code is repealed.

SEC. 3. Section 19996.40 of the Government Code is repealed.

CHAPTER 466

An act to add and repeal Chapter 11 (commencing with Section 1500) of Division 6 of the Military and Veterans Code, relating to veterans.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Chapter 11 (commencing with Section 1500) is added to Division 6 of the Military and Veterans Code, to read:

CHAPTER 11. COMMISSION ON STATE VETERANS CEMETERIES

1500. There is hereby created within the Department of Veterans Affairs the Governor's Commission on State Veterans Cemeteries.

1501. The commission shall consist of seven members, as follows:

(a) There shall be five voting members, as follows:

(1) Two veterans, as defined in Section 980, appointed by the Governor.

(2) A veteran, as defined in Section 980, appointed by the Speaker of the Assembly.

(3) A veteran, as defined in Section 980, appointed by the Senate Committee on Rules.

(4) The Secretary of Veterans Affairs or the secretary's authorized representative.

(b) There shall be two nonvoting ex officio members, as follows:

(1) The Chairperson of the Assembly Committee on Veterans Affairs.

(2) The Chairperson of the Senate Committee on Veterans Affairs.

1502. The commission shall have all of the following duties:

(a) Establish the need for the creation of state veterans' cemeteries and locate and prioritize sites for the future construction of those cemeteries, in accordance with that need.

(b) Give priority to cemetery sites that meet one or more of the following criteria:

(1) The site is available at no cost to the state.

(2) The department has previously studied or prepared budget packages, working drawings, or project cost summaries for the site.

(3) The parcel size is large enough to support expected interments for at least 20 years.

(4) The site has unique patriotic or military significance.

(5) There is a high concentration of veterans within the service area of the site.

(6) The site is uncompromised by nearby incompatible land uses.

(c) Report its findings to the Governor and the Legislature not later than May 31, 2005.

1503. The department may not implement any recommendation made pursuant to Section 1502 without statutory authorization, and unless the United States Department of Veterans Affairs State Cemetery Grants Program, as described in Section 2408 of Title 38 of the United States Code, provides 100 percent of the project construction costs associated with the implementation of the commission's recommendation.

1504. 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 467

An act to amend Sections 853.5 and 853.6 of the Penal Code, and to amend Sections 40303, 40305, 40305.5, 40500, and 40504 of the Vehicle Code, relating to identification.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

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

It is the intent of the Legislature to provide a method for victims of identity theft to quickly clear their names when an arrestee uses a false name.

Police officers should endeavor to obtain satisfactory identification from those arrested who cannot show proper identification, including a thumbprint or a photograph, unless the officer is called away on an emergency or the officer deems it unsafe or otherwise impractical to obtain a thumbprint. In cases where no thumbprint is obtained, officers should explain the circumstances that made obtaining a thumbprint unsafe or impractical.

If a police officer does not obtain a thumbprint from those arrested who cannot show proper identification, and if the person contesting the charge claims under penalty of perjury not to be the person issued the notice to appear, the courts should refer these cases back to local law enforcement for further investigation.

Law enforcement agencies and the courts are encouraged to track their expenses relating to notices to appear closely, in order to determine whether obtaining thumbprints on those notices to appear where arrestees cannot show proper identification is in fact more cost effective than researching the cases that are referred back to law enforcement for further investigation.

SEC. 2. Section 853.5 of the Penal Code is amended to read:

853.5. (a) Except as otherwise provided by law, in any case in which a person is arrested for an offense declared to be an infraction, the person may be released according to the procedures set forth by this chapter for the release of persons arrested for an offense declared to be a misdemeanor. In all cases, except as specified in Sections 40302, 40303, 40305, and 40305.5 of the Vehicle Code, in which a person is arrested for an infraction, a peace officer shall only require the arrestee to present his or her driver's license or other satisfactory evidence of his or her identity for examination and to sign a written promise to appear contained in a notice to appear. If the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession,

the officer may require the arrestee to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Only if the arrestee refuses to sign a written promise, has no satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody.

(b) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(c) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(d) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(e) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

SEC. 3. Section 853.6 of the Penal Code is amended to read:

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the person is released, the officer or his or her superior shall prepare in duplicate a

written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.

In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database

with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing

or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(*l*) For purposes of this section, the term ''arresting agency'' includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

SEC. 4. Section 40303 of the Vehicle Code is amended to read:

40303. (a) Whenever any person is arrested for any of the offenses listed in subdivision (b) and the arresting officer is not required to take the person without unnecessary delay before a magistrate, the arrested person shall, in the judgment of the arresting officer, either be given a 10 days' notice to appear, or be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made. The officer may require that the arrested person, if he or she has no satisfactory identification, place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right

thumb, on the 10 days' notice to appear when a 10 days' notice is provided. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) Subdivision (a) applies to the following offenses:

(1) Section 10852 or 10853, relating to injuring or tampering with a vehicle.

(2) Section 23103 or 23104, relating to reckless driving.

(3) Subdivision (a) of Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to an inspection or test of the lights upon the vehicle under Section 2804 hereof, which is punishable as a misdemeanor.

(4) Subdivision (a) of Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to a brake test which is punishable as a misdemeanor.

(5) Subdivision (a) of Section 2800, relating to the refusal to submit vehicle and load to an inspection, measurement, or weighing as prescribed in Section 2802 or a refusal to adjust the load or obtain a permit as prescribed in Section 2803.

(6) Subdivision (a) of Section 2800, insofar as it relates to any driver who continues to drive after being lawfully ordered not to drive by a member of the California Highway Patrol for violating the driver's hours of service or driver's log regulations adopted pursuant to subdivision (a) of Section 34501.

(7) Subdivision (b) of Section 2800, relating to a failure or refusal to comply with any lawful out-of-service order.

(8) Section 20002 or 20003, relating to duties in the event of an accident.

(9) Section 23109, relating to participating in speed contests or exhibition of speed.

(10) Section 14601, 14601.1, 14601.2, or 14601.5, relating to driving while license is suspended or revoked.

(11) When the person arrested has attempted to evade arrest.

(12) Section 23332, relating to persons upon vehicular crossings.

(13) Section 2813, relating to the refusal to stop and submit a vehicle to an inspection of its size, weight, and equipment.

(14) Section 21461.5, insofar as it relates to a pedestrian who, after being cited for a violation of Section 21461.5, is, within 24 hours, again found upon the freeway in violation of Section 21461.5 and thereafter refuses to leave the freeway after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.

(15) Subdivision (a) of Section 2800, insofar as it relates to a pedestrian who, after having been cited for a violation of subdivision (a)

of Section 2800 for failure to obey a lawful order of a peace officer issued pursuant to Section 21962, is within 24 hours again found upon the bridge or overpass and thereafter refuses to leave after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.

(16) Section 21200.5, relating to riding a bicycle while under the influence of an alcoholic beverage or any drug.

(17) Section 21221.5, relating to operating a motorized scooter while under the influence of an alcoholic beverage or any drug.

(c) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

SEC. 5. Section 40305 of the Vehicle Code is amended to read:

40305. (a) Whenever a nonresident is arrested for violating any section of this code while driving a motor vehicle and does not furnish satisfactory evidence of identity and an address within this state at which he or she can be located, he or she may, in the discretion of the arresting officer, be taken immediately before a magistrate within the county where the offense charged is alleged to have been committed, and who has jurisdiction over the offense and is nearest or most accessible with reference to the place where the arrest is made. If the magistrate is not available at the time of the arrest and the arrested person is not taken before any other person authorized to receive a deposit of bail, and if the arresting officer does not have the authority or is not required to take the arrested person before a magistrate or other person authorized to receive a deposit of bail by some other provision of law, the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear as provided in Article 2 (commencing with Section 40500).

Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or

revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court determines that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

SEC. 6. Section 40305.5 of the Vehicle Code is amended to read:

40305.5. (a) Whenever a nonresident is arrested for violating any section of this code while driving a commercially registered motor vehicle, excluding house cars, with an unladen weight of 7,000 pounds or more, and does not furnish satisfactory evidence of identity and an address within this state at which he or she can be located, the arresting officer may, in lieu of the procedures set forth in Section 40305, accept a guaranteed traffic arrest bail bond certificate, and the nonresident shall be released from custody upon giving a written promise to appear as provided in Article 2 (commencing with Section 40500). The officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear as provided in Article 2 (commending with Section 45000). Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) Every guaranteed traffic arrest bail bond certificate shall contain all of the following information:

(1) The name and address of the surety and of the issuer, if other than the surety.

(2) The name, address, driver's license number and signature of the individual covered by the certificate.

(3) The maximum amount guaranteed.

(4) Exclusions from coverage.

(5) A statement that the issuing company guarantees the appearance of a person to whom a guaranteed traffic arrest bail bond certificate is issued and, in the event of failure of the person to appear in court at the time of trial, the issuing company shall pay any fine or forfeiture imposed on the person, not to exceed the amount stated on the certificate.

(6) The expiration date of the certificate.

(c) A guaranteed traffic arrest bail bond certificate may be issued by a surety admitted in this state. The certificate may also be issued by an association of motor carriers if all of the following conditions are met:

(1) The association is incorporated, or authorized to do business, in this state.

(2) The association is covered by a guaranteed traffic arrest bail bond issued by a surety admitted in this state.

(3) The association agrees to pay fines or bail assessed against the guaranteed traffic arrest bail bond certificate.

(4) The surety guarantees payment of fines or bail assessed against the guaranteed traffic arrest bail bond certificates issued by the association.

(d) The arresting officer shall file the guaranteed traffic arrest bail bond certificate with the notice to appear required to be filed by Section 40506.

(e) A ''guaranteed traffic arrest bail bond certificate'' is a document which guarantees the payment of fines or bail assessed against an individual for violation of this code, except driving while under the influence of alcohol or drugs, driving without a license or driving with a suspended or revoked license, operating a motor vehicle without the permission of the owner, or any violation punishable as a felony.

(f) A ''guaranteed traffic arrest bail bond'' is a bond issued by a surety guaranteeing the obligations of the issuer of guaranteed traffic arrest bail bond certificates. The bond shall be in the amount of fifty thousand dollars ($50,000) and shall be filed with the Secretary of State. Any court in this state may assess against the surety the amount of covered fines or bail which the issuer of a guaranteed traffic arrest bail bond certificate fails to pay.

(g) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to

Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court determines that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

SEC. 7. Section 40500 of the Vehicle Code is amended to read:

40500. (a) Whenever a person is arrested for any violation of this code not declared to be a felony, or for a violation of an ordinance of a city or county relating to traffic offenses and he or she is not immediately taken before a magistrate, as provided in this chapter, the arresting officer shall prepare in triplicate a written notice to appear in court or before a person authorized to receive a deposit of bail, containing the name and address of the person, the license number of his or her vehicle, if any, the name and address, when available, of the registered owner or lessee of the vehicle, the offense charged and the time and place when and where he or she shall appear. If the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the arrestee to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) The Judicial Council shall prescribe the form of the notice to appear.

(c) Nothing in this section requires the law enforcement agency or the arresting officer issuing the notice to appear to inform any person arrested pursuant to this section of the amount of bail required to be deposited for the offense charged.

(d) Once the arresting officer has prepared the written notice to appear, and has delivered a copy to the arrested person, the officer shall deliver the remaining original and all copies of the notice to appear as provided by Section 40506.

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate or judge to receive a deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer or other officer of the issuing agency, determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate or judge that the case be dismissed. The recommendation shall cite the reasons for the recommendation and be filed with the court.

If the magistrate or judge makes a finding that there are grounds for dismissal, the finding shall be entered on the record and the infraction or misdemeanor dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(e) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court determines that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or

revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court determines that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

SEC. 8. Section 40504 of the Vehicle Code is amended to read:

40504. (a) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give his or her written promise to appear in court or before a person authorized to receive a deposit of bail by signing two copies of the notice which shall be retained by the officer, and the officer may require the arrested person, if this person has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Thereupon, the arresting officer shall forthwith release the person arrested from custody. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) Any person who signs a written promise to appear with a false or fictitious name is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(c) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

SEC. 9. 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.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for the other mandates in this bill 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 468

An act to amend Section 44010 of the Education Code, to amend Section 917 of the Evidence Code, to amend Section 6250 of the Family Code, to amend Section 6254.24 of the Government Code, to amend Sections 11561 and 121070 of the Health and Safety Code, to amend Sections 171.5, 629.62, 633, 803, 830.31, 836, 847, 981, 1170.11, 1202.1, 1203.1abc, 1203.3, 3520, 11171, 12022.5, 12022.53, 13864, and 14309 of, to add Section 803.5 to, and to repeal Section 13864 of, the Penal Code, to amend Sections 14601, 23109.2, and 35400 of, to amend and repeal Section 23249 of, and to repeal Section 23249.1 of,

the Vehicle Code, and to amend Sections 355, 387, and 15763 of the Welfare and Institutions Code, relating to public safety.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 44010 of the Education Code is amended to read:

44010. "Sex offense," as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the offenses specified in this section.

(i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

SEC. 2. Section 917 of the Evidence Code is amended to read:

917. (a) Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergyman-penitent, husband-wife, sexual assault victim-counselor, or domestic violence victim-counselor relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

(c) For purposes of this section, ''electronic'' has the same meaning provided in Section 1633.2 of the Civil Code.

SEC. 3. Section 6250 of the Family Code is amended to read:

6250. A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.

(d) That an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.

SEC. 4. Section 6254.24 of the Government Code is amended to read:

6254.24. As used in this chapter, ''public safety official'' means the following:

(a) An active or retired peace officer as defined in Sections 830 and 830.1 of the Penal Code.

(b) An active or retired public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.

(c) An ''elected or appointed official'' as defined in subdivision (c) of Section 6254.21.

(d) Attorneys employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender.

(e) City attorneys and attorneys who represent cities in criminal matters.

(f) Specified employees of the Department of Corrections, the California Youth Authority, and the Prison Industry Authority who supervise inmates or are required to have a prisoner in their care or custody.

(g) Nonsworn employees who supervise inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities, and local juvenile halls, camps, ranches, and homes.

(h) Federal prosecutors and criminal investigators and National Park Service Rangers working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

SEC. 5. Section 11561 of the Health and Safety Code is amended to read:

11561. When the parole authority concludes that there are reasonable grounds for believing that a person on parole is addicted or habituated to, or is in imminent danger of addiction or habituation to, controlled substances or alcohol, it may, in accordance with procedures used to revoke parole, issue an order to detain or place the person in a substance abuse treatment control unit for a period not to exceed 90 days. The order shall be a sufficient warrant for any peace officer or employee of the Department of Corrections to return the person to physical custody. Detention pursuant to the order shall not be deemed a

suspension, cancellation, or revocation of parole until the parole authority so orders pursuant to Section 3060 of the Penal Code. A parolee taken into physical custody pursuant to Section 3060 of the Penal Code may be detained in a substance abuse treatment control unit established pursuant to this article.

No person on parole shall be placed in a substance abuse treatment control unit against his or her will.

SEC. 6. Section 121070 of the Health and Safety Code is amended to read:

121070. (a) Any medical personnel employed by, under contract to, or receiving payment from the State of California, any agency thereof, or any county, city, or city and county to provide service at any state prison, the Medical Facility, any Youth Authority institution, any county jail, city jail, hospital jail ward, juvenile hall, juvenile detention facility, or any other facility where adults are held in custody or minors are detained, or any medical personnel employed, under contract, or receiving payment to provide services to persons in custody or detained at any of the foregoing facilities, who receives information as specified herein that an inmate or minor at the facility has been exposed to or infected by the AIDS virus or has an AIDS-related condition or any communicable disease, shall communicate the information to the officer in charge of the facility where the inmate or minor is in custody or detained.

(b) Information subject to disclosure under subdivision (a) shall include the following: any laboratory test that indicates exposure to or infection by the AIDS virus, AIDS-related condition, or other communicable diseases; any statement by the inmate or minor to medical personnel that he or she has AIDS or an AIDS-related condition, has been exposed to the AIDS virus, or has any communicable disease; the results of any medical examination or test that indicates that the inmate or minor has tested positive for antibodies to the AIDS virus, has been exposed to the AIDS virus, has an AIDS-related condition, or is infected with AIDS or any communicable disease; provided, that information subject to disclosure shall not include information communicated to or obtained by a scientific research study pursuant to prior written approval expressly waiving disclosure under this section by the officer in charge of the facility.

(c) The officer in charge of the facility shall notify all employees, medical personnel, contract personnel, and volunteers providing services at the facility who have or may have direct contact with the inmate or minor in question, or with bodily fluids from the inmate or minor, of the substance of the information received under subdivisions (a) and (b) so that those persons can take appropriate action to provide

for the care of the inmate or minor, the safety of other inmates or minors, and their own safety.

(d) The officer in charge and all persons to whom information is disclosed pursuant to this section shall maintain the confidentiality of personal identifying data regarding the information, except for disclosure authorized hereunder or as may be necessary to obtain medical or psychological care or advice.

(e) Any person who wilfully discloses personal identifying data regarding information obtained under this section to any person who is not a peace officer or an employee of a federal, state, or local public health agency, except as authorized hereunder, by court order, with the written consent of the patient or as otherwise authorized by law, is guilty of a misdemeanor.

SEC. 7. Section 171.5 of the Penal Code is amended to read:

171.5. (a) For purposes of this section:

(1) ''Airport'' means an airport, with a secured area, that regularly serves an air carrier holding a certificate issued by the United States Secretary of Transportation.

(2) ''Sterile area'' means a portion of an airport defined in the airport security program to which access generally is controlled through the screening of persons and property, as specified in Section 1540.5 of Title 49 of the Code of Federal Regulations.

(b) It is unlawful for any person to knowingly possess within any sterile area of an airport, any of the items listed in subdivision (c).

(c) The following items are unlawful to possess as provided in subdivision (b):

(1) Any firearm.

(2) Any knife with a blade length in excess of four inches, the blade of which is fixed, or is capable of being fixed, in an unguarded position by the use of one or two hands.

(3) Any box cutter or straight razor.

(4) Any metal military practice hand grenade.

(5) Any metal replica hand grenade.

(6) Any plastic replica hand grenade.

(7) Any imitation firearm as defined in Section 417.4.

(8) Any frame, receiver, barrel, or magazine of a firearm.

(9) Any unauthorized tear gas weapon.

(10) Any taser or stun gun, as defined in Section 244.5.

(11) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun or paint gun.

(12) Any ammunition as defined in Section 12316.

(d) Subdivision (b) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(2) A person who has authorization to possess a weapon specified in subdivision (c), granted in writing by an airport security coordinator who is designated as specified in Section 1542.3 of Title 49 of the Code of Federal Regulations, and who is responsible for the security of the airport.

(e) A violation of this section is punishable by imprisonment in a county jail for a period not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission that is punishable in different ways by this and any other provision of law shall not be punished under more than one provision.

(g) Nothing in this section is intended to affect existing state or federal law regarding the transportation of firearms on airplanes in checked luggage, or the possession of the items listed in subdivision (c) in areas that are not ''sterile areas.''

SEC. 8. Section 629.62 of the Penal Code is amended to read:

629.62. (a) The Attorney General shall prepare and submit an annual report to the Legislature, the Judicial Council, and the Director of the Administrative Office of the United States Court on interceptions conducted under the authority of this chapter during the preceding year. Information for this report shall be provided to the Attorney General by any prosecutorial agency seeking an order pursuant to this chapter.

(b) The report shall include all of the following data:

(1) The number of orders or extensions applied for.

(2) The kinds of orders or extensions applied for.

(3) The fact that the order or extension was granted as applied for, was modified, or was denied.

(4) The number of wire, electronic pager, and electronic cellular telephone devices that are the subject of each order granted.

(5) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

(6) The offense specified in the order or application, or extension of an order.

(7) The identity of the applying law enforcement officer and agency making the application and the person authorizing the application.

(8) The nature of the facilities from which or the place where communications were to be intercepted.

(9) A general description of the interceptions made under the order or extension, including (A) the approximate nature and frequency of incriminating communications intercepted, (B) the approximate nature and frequency of other communications intercepted, (C) the approximate number of persons whose communications were intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

(10) The number of arrests resulting from interceptions made under the order or extension, and the offenses for which arrests were made.

(11) The number of trials resulting from the interceptions.

(12) The number of motions to suppress made with respect to the interceptions, and the number granted or denied.

(13) The number of convictions resulting from the interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

(14) Except with regard to the initial report required by this section, the information required by paragraphs (9) to (13), inclusive, with respect to orders or extensions obtained in a preceding calendar year.

(15) The date of the order for service of inventory made pursuant to Section 629.68, confirmation of compliance with the order, and the number of notices sent.

(16) Other data that the Legislature, the Judicial Council, or the Director of the Administrative Office shall require.

(c) The annual report shall be filed no later than April of each year, and shall also include a summary analysis of the data reported pursuant to subdivision (b). The Attorney General may issue regulations prescribing the content and form of the reports required to be filed pursuant to this section by any prosecutorial agency seeking an order to intercept wire, electronic pager, or electronic cellular telephone communications.

(d) The Attorney General shall, upon the request of an individual making an application, provide any information known to him or her as a result of these reporting requirements that would enable the individual making an application to comply with paragraph (6) of subdivision (a) of Section 629.50.

SEC. 9. Section 633 of the Penal Code is amended to read:

633. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of

police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.

Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any communication that they could lawfully overhear or record prior to the effective date of this chapter.

SEC. 10. 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, or the basis of which is misconduct in office by a public officer, employee, or appointee, or to theft or embezzlement from an elder or dependent adult punishable by imprisonment in the state prison, 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) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(k) (1) In a criminal investigation involving child sexual abuse as described in subdivision (g) or (h), when the limitations period set forth therein has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of that litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(2) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(3) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(*l*) As used in subdivisions (f), (g), and (h), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

SEC. 10.5. Section 803.5 is added to the Penal Code, to read:

803.5. With respect to a violation of Section 115 or 530.5, a limitation of time prescribed in this chapter does not commence to run until the discovery of the offense.

SEC. 11. Section 830.31 of the Penal Code is amended to read:

830.31. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized, and under the terms and conditions specified, by their employing agency.

(a) A police officer of the County of Los Angeles, if the primary duty of the officer is the enforcement of the law in or about properties owned, operated, or administered by his or her employing agency or when performing necessary duties with respect to patrons, employees, and properties of his or her employing agency.

(b) A person designated by a local agency as a park ranger and regularly employed and paid in that capacity, if the primary duty of the officer is the protection of park and other property of the agency and the preservation of the peace therein.

(c) (1) A peace officer of the Department of General Services of the City of Los Angeles designated by the general manager of the department, if the primary duty of the officer is the enforcement of the law in or about properties owned, operated, or administered by his or her employing agency or when performing necessary duties with respect to patrons, employees, and properties of his or her employing agency.

(2) A peace officer designated pursuant to this subdivision, and authorized to carry firearms by his or her employing agency, shall satisfactorily complete the introductory course of firearm training required by Section 832 and shall requalify in the use of firearms every six months.

(3) Notwithstanding any other provision of law, a peace officer designated pursuant to this subdivision who is authorized to carry a firearm by his or her employing agency while on duty shall not be authorized to carry a firearm when he or she is not on duty.

(d) A housing authority patrol officer employed by the housing authority of a city, district, county, or city and county or employed by the police department of a city and county, if the primary duty of the officer is the enforcement of the law in or about properties owned, operated, or administered by his or her employing agency or when performing necessary duties with respect to patrons, employees, and properties of his or her employing agency.

SEC. 12. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a

warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the

person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 13. Section 847 of the Penal Code is amended to read:

847. (a) A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take

the person arrested before a magistrate, or deliver him or her to a peace officer.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest under any of the following circumstances:

(1) The arrest was lawful, or the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful.

(2) The arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested.

(3) The arrest was made pursuant to the requirements of Section 142, 837, 838, or 839.

SEC. 14. Section 981 of the Penal Code is amended to read:

981. The bench warrant must be substantially in the following form:

County of ____. The People of the State of California to any Sheriff, Marshal, or Policeman in this State: An accusatory pleading having been filed on the ____ day of ____, A.D. ____, in the Superior Court of the County of ____, charging C. D. with the crime of ____ (designating it generally); you are, therefore, commanded forthwith to arrest the above named C. D., and bring him or her before that Court (or if the accusatory pleading has been sent to another Court, then before that Court, naming it), to answer said accusatory pleading, or if the Court is not in session, that you deliver him or her into the custody of the Sheriff of the County of ____.

Given under my hand, with the seal of said Court affixed, this ____ day of ____, A.D. ____.

By order of said Court.

[SEAL.] E. F., Clerk.

SEC. 15. Section 1170.11 of the Penal Code is amended to read:

1170.11. As used in Section 1170.1, the term ''specific enhancement'' means enhancements that relate to the circumstances of the crime. It includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 186.26, 186.33, 273.4, 289.5, 290, 290.4, 347, and 368, subdivisions (a), (b), and (c) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1, subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10, 667.15, 667.16, 667.17, 674, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and 12280 of this code, and in Sections 1522.01 and 11353.1, subdivision (b) of

Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 25189.5, and 25189.7 of the Health and Safety Code, and in Sections 20001 and 23558 of the Vehicle Code, and in Sections 10980 and 14107 of the Welfare and Institutions Code.

SEC. 16. 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 the 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 assault 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. 17. Section 1203.1abc of the Penal Code is amended to read:

1203.1abc. (a) In addition to any other terms of imprisonment, fine, and conditions of probation, the court may require any adult convicted of an offense which is not a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, to participate in a program that is designed to assist the person in obtaining the equivalent of a 12th grade education. In the case of a probationer, the court may require participation in either a literacy program or a General Education Development (GED) program.

(b) A probation officer may utilize volunteers from the community to provide assistance to probationers under this section.

(c) This section shall be operable in Los Angeles County as a pilot project upon approval by a majority vote of the county's board of supervisors to be conducted in two courts within the County of Los Angeles. It shall be operable in other counties only upon approval by a majority vote of a county's board of supervisors.

(d) A county probation department may utilize the volunteer services of a local college or university in evaluating the effectiveness of this program. In the County of Los Angeles, the California State University at Los Angeles (CSULA) shall evaluate the program and submit a report to the Legislature regarding the success or failure of the program. CSULA shall bear the costs of the evaluation and report.

(e) This section shall not apply to any person who is mentally or developmentally incapable of attaining the equivalent of a 12th grade education.

(f) Failure to make progress in a program under subdivision (a) is not a basis for revocation of probation.

(g) This pilot program shall be deemed successful if at least 10 percent of the persons participating in the pilot projects obtain the equivalent of a 12th grade education within three years.

(h) It is the intent of the Legislature that any increases in adult enrollment resulting from the implementation of subdivision (a) shall not be included in the apportionment of funds for adult education pursuant to Sections 52616.17 to 52616.20, inclusive, of the Education Code.

(i) This section is repealed effective January 1, 2008, unless it is extended or made permanent by subsequent legislation.

SEC. 18. Section 1203.3 of the Penal Code is amended to read:

1203.3. (a) The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held.

(b) The exercise of the court's authority in subdivision (a) to revoke, modify, change, or terminate probation is subject to the following:

(1) Before any sentence or term or condition of probation is modified, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two-day written notice and an opportunity to be heard on the matter, except that, as to modifying or terminating a protective order in a case involving domestic violence, as defined in Section 6211 of the Family Code, the prosecuting attorney shall be given a five-day written notice and an opportunity to be heard.

(A) If the sentence or term or condition of probation is modified pursuant to this section, the judge shall state the reasons for that modification on the record.

(B) As used in this section, modification of sentence shall include reducing a felony to a misdemeanor.

(2) No order shall be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke, modify, or change its order.

(3) In all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be by the court discharged subject to the provisions of these sections.

(4) The court may modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations or the good conduct and reform of the defendant while on probation. The court shall not modify the dollar amount of the restitution obligations due to the good conduct and reform of the defendant, absent compelling and extraordinary reasons, nor shall the court limit the ability of payees to enforce the obligations in the manner of judgments in civil actions.

(5) Nothing in this section shall be construed to prohibit the court from modifying the dollar amount of a restitution order pursuant to subdivision (f) of Section 1202.4 at any time during the term of the probation.

(6) The court may limit or terminate a protective order that is a condition of probation in a case involving domestic violence, as defined in Section 6211 of the Family Code. In determining whether to limit or terminate the protective order, the court shall consider if there has been any material change in circumstances since the crime for which the order was issued, and any issue that relates to whether there exists good cause for the change, including, but not limited to, consideration of all of the following:

(A) Whether the probationer has accepted responsibility for the abusive behavior perpetrated against the victim.

(B) Whether the probationer is currently attending and actively participating in counseling sessions.

(C) Whether the probationer has completed parenting counseling, or attended alcoholics or narcotics counseling.

(D) Whether the probationer has moved from the state, or is incarcerated.

(E) Whether the probationer is still cohabiting, or intends to cohabit, with any subject of the order.

(F) Whether the defendant has performed well on probation, including consideration of any progress reports.

(G) Whether the victim desires the change, and if so, the victim's reasons, whether the victim has consulted a victim advocate, and whether the victim has prepared a safety plan and has access to local resources.

(H) Whether the change will impact any children involved, including consideration of any child protective services information.

(I) Whether the ends of justice would be served by limiting or terminating the order.

(c) If a probationer is ordered to serve time in jail, and the probationer escapes while serving that time, the probation is revoked as a matter of law on the day of the escape.

(d) If probation is revoked pursuant to subdivision (c), upon taking the probationer into custody, the probationer shall be accorded a hearing or hearings consistent with the holding in the case of People v. Vickers (1972) 8 Cal.3d 451. The purpose of that hearing or hearings is not to revoke probation, as the revocation has occurred as a matter of law in accordance with subdivision (c), but rather to afford the defendant an opportunity to require the prosecution to establish that the alleged violation did in fact occur and to justify the revocation.

(e) This section does not apply to cases covered by Section 1203.2.

SEC. 19. Section 3520 of the Penal Code is amended to read:

3520. The department shall make a report due on or before January 1 of each odd-numbered year containing a review of each research program which has been approved and conducted. The report shall be transmitted to the Legislature and shall be made available to the public.

SEC. 20. Section 11171 of the Penal Code is amended to read:

11171. (a) (1) The Legislature hereby finds and declares that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) On or before January 1, 2004, the Office of Criminal Justice Planning shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriffs' Association, the California Peace Officers' Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocols for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 13823.5.

(c) The form shall include, but not be limited to, a place for notation concerning each of the following:

(1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.

(2) Addressing relevant consent issues, if indicated.

(3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.

(4) The performance of a physical examination for evidence of child physical abuse or neglect.

(5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.

(6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.

(7) Procedures for the preservation and disposition of evidence.

(8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.

(9) An assessment as to whether there are findings that indicate physical abuse or neglect.

(d) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the Office of Criminal Justice Planning and subject to the confidentiality laws pertaining to the release of medical forensic examination records.

(e) The forms shall be made accessible for use on the Internet.

SEC. 21. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

(b) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years.

(c) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(d) Notwithstanding the limitation in subdivision (a) relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of Section 245 if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 22. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).

(2) Section 203 or 205 (mayhem).

(3) Section 207, 209, or 209.5 (kidnapping).

(4) Section 211 (robbery).

(5) Section 215 (carjacking).

(6) Section 220 (assault with intent to commit a specified felony).

(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).

(8) Section 261 or 262 (rape).

(9) Section 264.1 (rape or sexual penetration in concert).

(10) Section 286 (sodomy).

(11) Section 288 or 288.5 (lewd act on a child).

(12) Section 288a (oral copulation).

(13) Section 289 (sexual penetration).

(14) Section 4500 (assault by a life prisoner).

(15) Section 4501 (assault by a prisoner).

(16) Section 4503 (holding a hostage by a prisoner).

(17) Any felony punishable by death or imprisonment in the state prison for life.

(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 10 years. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years.

(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life.

(e) (1) The enhancements provided in this section shall apply to any person who is a principal in the commission of an offense if both of the following are pled and proved:

(A) The person violated subdivision (b) of Section 186.22.

(B) Any principal in the offense committed any act specified in subdivision (b), (c), or (d).

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per

person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 23. Section 13864 of the Penal Code, as amended by Chapter 711 of the Statutes of 1992, is amended to read:

13864. There is hereby created, in the Office of Criminal Justice Planning, the Comprehensive Alcohol and Drug Prevention Education component of the Suppression of Drug Abuse in Schools Program in

public elementary schools in grades 4 to 6, inclusive. Notwithstanding Section 13861 or any other provision in this code, all Comprehensive Alcohol and Drug Prevention Education component funds made available to the Office of Criminal Justice Planning in accordance with the Classroom Instructional Improvement and Accountability Act shall be administered by and disbursed to county superintendents of schools in this state by the Executive Director of the Office of Criminal Justice Planning. All applications for that funding shall be reviewed and evaluated by the Office of Criminal Justice Planning, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education.

(a) The executive director is authorized to allocate and award funds to county department superintendents of schools for allocation to individual school districts or to a consortium of two or more school districts. Applications funded under this section shall comply with the criteria, policies, and procedures established under subdivision (b) of this section.

(b) As a condition of eligibility for the funding described in this section, the school district or consortium of school districts shall have entered into an agreement with a local law enforcement agency to jointly implement a comprehensive alcohol and drug abuse prevention, intervention, and suppression program developed by the Office of Criminal Justice Planning, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education, containing all of the following components:

(1) A standardized age-appropriate curriculum designed for pupils in grades 4 to 6, inclusive, specifically tailored and sensitive to the socioeconomic and ethnic characteristics of the target pupil population. Although new curricula shall not be required to be developed, existing curricula may be modified and adapted to meet local needs. The elements of the standardized comprehensive alcohol and drug prevention education program curriculum shall be defined and approved by the Governor's Policy Council on Drug and Alcohol Abuse, as established by Executive Order #D-70-80.

(2) A planning process that shall include both assessment of the school district's characteristics, resources and the extent of problems related to juvenile drug abuse, and input from local law enforcement agencies.

(3) A school district governing board policy that provides for a coordinated intervention system that, at a minimum, includes procedures for identification, intervention, and referral of at-risk alcohol-and drug-involved youth, and identifies the roles and responsibilities of law enforcement, school personnel, parents, and pupils.

(4) Early intervention activities that include, but are not limited to, the identification of pupils who are high risk or have chronic drug abuse problems, assessment, and referral for appropriate services, including ongoing support services.

(5) Parent education programs to initiate and maintain parental involvement, with an emphasis for parents of at-risk pupils.

(6) Staff and in-service training programs, including both indepth training for the core team involved in providing program services and general awareness training for all school faculty and administrative, credentialed, and noncredentialed school personnel.

(7) In-service training programs for local law enforcement officers.

(8) School, law enforcement, and community involvement to ensure coordination of program services. Pursuant to that coordination, the school district or districts and other local agencies are encouraged to use a single community advisory committee or task force for drug, alcohol, and tobacco abuse prevention programs, as an alternative to the creation of a separate group for that purpose under each state or federally funded program.

(c) The application of the county superintendent of schools shall be submitted to the Office of Criminal Justice Planning. Funds made available to the Office of Criminal Justice Planning for allocation under this section are intended to enhance, but shall not supplant, local funds that would, in the absence of the Comprehensive Alcohol and Drug Prevention Education component, be made available to prevent, intervene in, or suppress drug abuse among schoolage children. For districts that are already implementing a comprehensive drug abuse prevention program for pupils in grades 4 to 6, inclusive, the county superintendent shall propose the use of the funds for drug prevention activities in school grades other than 4 to 6, inclusive, compatible with the program components of this section. The expenditure of funds for that alternative purpose shall be approved by the executive director.

(1) Unless otherwise authorized by the Office of Criminal Justice Planning, each county superintendent of schools shall be the fiscal agent for any Comprehensive Alcohol and Drug Prevention Education component award, and shall be responsible for ensuring that each school district within that county receives the allocation prescribed by the Office of Criminal Justice Planning. Each county superintendent shall develop a countywide plan that complies with program guidelines and procedures established by the Office of Criminal Justice Planning pursuant to subdivision (d). A maximum of 5 percent of the county's allocation may be used for administrative costs associated with the project.

(2) Each county superintendent of schools shall establish and chair a local coordinating committee to assist the superintendent in developing

and implementing a countywide implementation plan. This committee shall include the county drug administrator, law enforcement executives, school district governing board members and administrators, school faculty, parents, and drug prevention and intervention program executives selected by the superintendent and approved by the county board of supervisors.

(d) The Executive Director of the Office of Criminal Justice Planning, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education, shall prepare and issue guidelines and procedures for the Comprehensive Alcohol and Drug Prevention Education component consistent with this section.

(e) The Comprehensive Alcohol and Drug Prevention Education component guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to award grants of funds pursuant to this section. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(f) Funds awarded under the Comprehensive Alcohol and Drug Prevention Education Program shall not be subject to Section 10318 of the Public Contracts Code.

(g) Funds available pursuant to Item 8100-111-001 and Provision 1 of Item 8100-001-001 of the Budget Act of 1989, or the successor provision of the appropriate Budget Act, shall be allocated to implement this section.

(h) The Executive Director of the Office of Criminal Justice Planning shall collaborate, to the extent possible, with other state agencies that administer drug, alcohol, and tobacco abuse prevention education programs to streamline and simplify the process whereby local educational agencies apply for drug, alcohol, and tobacco education funding under this section and under other state and federal programs. The Office of Criminal Justice Planning, the State Department of Alcohol and Drug Programs, the State Department of Education, and other state agencies, to the extent possible, shall develop joint policies and collaborate planning in the administration of drug, alcohol, and tobacco abuse prevention education programs.

SEC. 24. Section 13864 of the Penal Code, as added by Chapter 82 of the Statutes of 1989, is repealed.

SEC. 25. Section 14309 of the Penal Code is amended to read:

14309. (a) The Environmental Circuit Prosecutor Project, a cooperative project of the California Environmental Protection Agency and the California District Attorneys Association, is hereby established.

(b) The Environmental Circuit Prosecutor Project shall have the following purposes:

(1) Discourage the commission of violations of environmental laws by demonstrating the effective response of the criminal justice system

to these violations, including, but not limited to, assisting district attorneys, particularly in rural counties, in the prosecution of criminal violations of environmental laws and regulations, where a district attorney has requested assistance.

(2) Establish model environmental crime prevention, enforcement, and prosecution techniques with statewide application for fair, uniform, and effective application.

(3) Increase the awareness and effectiveness of efforts to enforce environmental laws and to better integrate environmental prosecution into California's established criminal justice system by providing on the job education and training to local peace officers and prosecutors and to local and state environmental regulators.

(4) Promote, through uniform and effective prosecution and local assistance, the effective enforcement of environmental laws and regulations.

(c) (1) The secretary shall award project grants and administer funding from the account to the California District Attorneys Association for the purpose of providing for the day-to-day operations of the project.

(2) The award may only be used to fund the costs of prosecutors, investigators, and research attorney staff, including salary, benefits, and expenses.

(3) Circuit prosecutor project employees may be either employees of the California District Attorneys Association or employees on loan from local, state, or federal governmental agencies.

(d) (1) A district attorney may request the assistance of a circuit prosecutor from the Environmental Circuit Prosecutor Project for any of the following purposes:

(A) Assistance with the investigation and development of environmental cases.

(B) Consultation concerning whether an environmental case merits filing.

(C) Litigation support, including, but not limited to, the actual prosecution of the case. A district attorney shall, as appropriate, deputize a circuit prosecutor to prosecute cases within his or her jurisdiction.

(2) The authority of a deputized circuit prosecutor shall be consistent with and shall not exceed the authority of the elected district attorney or his or her deputies.

(3) Violations of city or county ordinances may be prosecuted by circuit prosecutors when there is an environmental nexus between the ordinance and a violation of state law, federal law, or both state and federal law.

(4) Participating district attorney offices shall provide matching funds or in-kind contributions equivalent to, but not less than, 20 percent of the expense of the deputized environmental circuit prosecutor.

SEC. 26. Section 14601 of the Vehicle Code is amended to read:

14601. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for reckless driving in violation of Section 23103 or 23104, any reason listed in subdivision (a) or (c) of Section 12806 authorizing the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810.5, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in a county jail for not less than five days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000).

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, by imprisonment in a county jail for not less than 10 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(c) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for at least 10 days.

(d) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(e) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any

vehicle that the person owns or operates for a period not to exceed three years.

SEC. 27. Section 23109.2 of the Vehicle Code, as amended by Section 2 of Chapter 411 of the Statutes of 2002, is amended to read:

23109.2. (a) (1) Whenever a peace officer determines that a person was engaged in any of the activities set forth in paragraph (2), the peace officer may immediately arrest and take into custody that person and may cause the removal and seizure of the motor vehicle used in that offense in accordance with Chapter 10 (commencing with Section 22650). A motor vehicle so seized may be impounded for not more than 30 days.

(2) (A) A motor vehicle speed contest, as described in subdivision (a) of Section 23109.

(B) Reckless driving on a highway, as described in subdivision (a) of Section 23103.

(C) Reckless driving in any offstreet parking facility, as described in subdivision (b) of Section 23103.

(D) Exhibition of speed on a highway, as described in subdivision (c) of Section 23109.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of the storage in accordance with Section 22852.

(c) (1) Notwithstanding Chapter 10 (commencing with Section 22650) or any other provision of law, an impounding agency shall release a motor vehicle to the registered owner or his or her agent prior to the conclusion of the impoundment period described in subdivision (a) under any of the following circumstances:

(A) If the vehicle is a stolen vehicle.

(B) If the person alleged to have been engaged in the motor vehicle speed contest, as described in subdivision (a), was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense.

(C) If the registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation pursuant to subdivision (a), or was unaware that the driver was using the vehicle to engage in any of the activities described in subdivision (a).

(D) If the legal owner or registered owner of the vehicle is a rental car agency.

(E) If, prior to the conclusion of the impoundment period, a citation or notice is dismissed under Section 40500, criminal charges are not filed by the district attorney because of a lack of evidence, or the charges are otherwise dismissed by the court.

(2) A vehicle shall be released pursuant to this subdivision only if the registered owner or his or her agent presents a currently valid driver's license to operate the vehicle and proof of current vehicle registration, or if ordered by a court.

(3) If, pursuant to subparagraph (E) of paragraph (1) a motor vehicle is released prior to the conclusion of the impoundment period, neither the person charged with a violation of subdivision (a) of Section 23109 nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges.

(d) A vehicle seized and removed under subdivision (a) shall be released to the legal owner of the vehicle, or the legal owner's agent, on or before the 30th day of impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the impoundment of the vehicle. No lien sale processing fees shall be charged to a legal owner who redeems the vehicle on or before the 15th day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

(e) (1) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(2) Notwithstanding paragraph (1), if the person convicted of engaging in the activities set forth in paragraph (2) of subdivision (a) was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for any towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5 incurred by the registered owner to obtain possession of the vehicle, unless the court finds that the person convicted does not have the ability to pay all or part of those charges.

(3) If the vehicle is a rental vehicle, the rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining possession of the vehicle.

(4) The owner is not liable for any towing and storage charges related to the impoundment if acquittal or dismissal occurs.

(5) The vehicle may not be sold prior to the defendant's conviction.

(6) The impounding agency is responsible for the actual costs incurred by the towing agency as a result of the impoundment should the registered owner be absolved of liability for those charges pursuant to paragraph (3) of subdivision (c) of Section 23109.2. Notwithstanding this provision, nothing shall prohibit impounding agencies from making prior payment arrangements to satisfy this requirement.

(f) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (h) of Section 23109.

(g) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

SEC. 28. Section 23249 of the Vehicle Code is amended to read:

23249. The Department of Motor Vehicles shall conduct two studies to evaluate the effectiveness of ignition interlock in California and shall report the findings to the Legislature, as specified in subdivisions (a) and (b).

(a) The department shall conduct a process study of ignition interlock in California and report the findings to the Legislature on or before July 1, 2002. This study shall examine the implementation of ignition interlock by the courts, the department and ignition interlock installers, and report the rate at which courts assign interlock to persons convicted of a violation of Section 14601.2 and the rate at which these persons install these devices.

(b) The department shall conduct an outcome study of ignition interlock in California and report the findings to the Legislature on or before July 1, 2004. This study shall examine the effectiveness of California's ignition interlock laws in reducing recidivism, moving violation convictions and crashes among drivers ordered by the court to install interlock devices, and among drivers applying to the department, and receiving from it, an ignition interlock restricted license.

(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. 29. Section 23249.1 of the Vehicle Code is repealed.

SEC. 30. Section 35400 of the Vehicle Code is amended to read:

35400. (a) No vehicle shall exceed a length of 40 feet.

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

(1) A vehicle used in a combination of vehicles when the excess length is caused by auxiliary parts, equipment, or machinery not used as space to carry any part of the load, except that the combination of vehicles shall not exceed the length provided for combination vehicles.

(2) A vehicle, when the excess length is caused by any parts necessary to comply with the fender and mudguard regulations of this code.

(3) (A) An articulated bus or articulated trolley coach that does not exceed a length of 60 feet.

(B) An articulated bus or articulated trolley coach described in subparagraph (A) may be equipped with a folding device attached to the front of the bus or trolley if the device is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus or trolley coach when fully deployed. The handlebars of a bicycle that is transported on a device described in this subparagraph shall not extend more than 42 inches from the front of the bus.

(4) A semitrailer while being towed by a motortruck or truck tractor, if the distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet for semitrailers having two or more axles, or 38 feet for semitrailers having one axle if the semitrailer does not, exclusive of attachments, extend forward of the rear of the cab of the motortruck or truck tractor.

(5) A bus or house car when the excess length is caused by the projection of a front safety bumper or a rear safety bumper, or both. The safety bumper shall not cause the length of the vehicle to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. For the purposes of this chapter, ''safety bumper'' means any device that is fitted on an existing bumper or which replaces the bumper and is constructed, treated, or manufactured to absorb energy upon impact.

(6) A schoolbus, when the excess length is caused by the projection of a crossing control arm. For the purposes of this chapter, ''crossing control arm'' means an extendable and retractable device fitted to the front of a schoolbus that is designed to impede movement of pupils exiting the schoolbus directly in front of the schoolbus so that pupils are visible to the driver while they are moving in front of the schoolbus. An operator of a schoolbus shall not extend a crossing control arm while the schoolbus is in motion. Except when activated, a crossing control arm shall not cause the maximum length of the schoolbus to be extended by more than 10 inches, inclusive of any front safety bumper. Use of a crossing control arm by the operator of a schoolbus does not, in and of itself, fulfill his or her responsibility to ensure the safety of students crossing a highway or private road pursuant to Section 22112.

(7) A bus, when the excess length is caused by a device, located in front of the front axle, for lifting wheelchairs into the bus. That device

shall not cause the length of the bus to be extended by more than 18 inches, inclusive of any front safety bumper.

(8) A bus, when the excess length is caused by a device attached to the rear of the bus designed and used exclusively for the transporting of bicycles. This device may be up to 10 feet in length, if the device, along with any other device permitted pursuant to this section, does not cause the total length of the bus, including any device or load, to exceed 50 feet.

(9) A bus operated by a public agency or a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, used in transit system service, other than a schoolbus, when the excess length is caused by a folding device attached to the front of the bus which is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus when fully deployed. The handlebars of a bicycle that is transported on a device described in this paragraph shall not extend more than 42 inches from the front of the bus. A device described in this paragraph may not be used on any bus which, exclusive of the device, exceeds 40 feet in length or on any bus having a device attached to the rear of the bus pursuant to paragraph (8).

(10) A bus of a length of up to 45 feet when operating on those highways specified in subdivision (a) of Section 35401.5. The Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, shall not deny reasonable access to a bus of a length of up to 45 feet between the highways specified in subdivision (a) of Section 35401.5 and points of loading and unloading for motor carriers of passengers as required by the federal Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240).

(11) (A) A house car of a length of up to 45 feet when operating on the National System of Interstate and Defense Highways or when using those portions of federal aid primary system highways that have been qualified by the United States Secretary of Transportation for that use, or when using routes appropriately identified by the Department of Transportation or local authorities, with respect to highways under their respective jurisdictions.

(B) A house car described in subparagraph (A) may be operated on a highway that provides reasonable access to facilities for purposes limited to fuel, food, and lodging when that access is consistent with the safe operation of the vehicle and when the facility is within one road mile of identified points of ingress and egress to or from highways specified in subparagraph (A) for use by that vehicle.

(C) As used in this paragraph and paragraph (10), ''reasonable access'' means access substantially similar to that authorized for combinations of vehicles pursuant to subdivision (c) of Section 35401.5.

(D) Any access route established by a local authority pursuant to subdivision (d) of Section 35401.5 is open for access by a house car of a length of up to 45 feet. In addition, local authorities may establish a process whereby access to services by house cars of a length of up to 45 feet may be applied for upon a route not previously established as an access route. The denial of a request for access to services shall be only on the basis of safety and an engineering analysis of the proposed access route. In lieu of processing an access application, local authorities, with respect to highways under their jurisdiction, may provide signing, mapping, or a listing of highways, as necessary, to indicate the use of these specific routes by a house car of a length of up to 45 feet.

(c) The Legislature, by increasing the maximum permissible kingpin to rearmost axle distance to 40 feet effective January 1, 1987, as provided in paragraph (4) of subdivision (b), does not intend this action to be considered a precedent for any future increases in truck size and length limitations.

(d) Any transit bus equipped with a folding device installed on or after January 1, 1999, that is permitted under subparagraph (B) of paragraph (3) of subdivision (b) or under paragraph (9) of subdivision (b) shall be additionally equipped with any of the following:

(1) An indicator light that is visible to the driver and is activated whenever the folding device is in an extended position.

(2) Any other device or mechanism that provides notice to the driver that the folding device is in an extended position.

(3) A mechanism that causes the folding device to retract automatically from an extended position.

(e) (1) No person shall improperly or unsafely mount a bicycle on a device described in subparagraph (B) of paragraph (3) of subdivision (b), or in paragraph (9) of subdivision (b).

(2) Notwithstanding subdivision (a) of Section 23114 or subdivision (a) of Section 24002 or any other provision of law, when a bicycle is improperly or unsafely loaded by a passenger onto a transit bus, the passenger, and not the driver, is liable for any violation of this code that is attributable to the improper or unlawful loading of the bicycle.

SEC. 31. Section 355 of the Welfare and Institutions Code is amended to read:

355. (a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in

evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300. Objections that could have been made to evidence introduced shall be deemed to have been made by any parent or guardian who is present at the hearing and unrepresented by counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of the right to counsel. Objections that could have been made to evidence introduced shall be deemed to have been made by any unrepresented child.

(b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).

(1) For the purposes of this section, ''social study'' means any written report furnished to the juvenile court and to all parties or their counsel by the county probation or welfare department in any matter involving the custody, status, or welfare of a minor in a dependency proceeding pursuant to Article 6 (commencing with Section 300) to 12 (commencing with Section 385), inclusive of Chapter 2 of Division 2.

(2) The preparer of the social study shall be made available for cross-examination upon a timely request by any party. The court may deem the preparer available for cross-examination if it determines that the preparer is on telephone standby and can be present in court within a reasonable time of the request.

(3) The court may grant a reasonable continuance not to exceed 10 days upon request by any party if the social study is not provided to the parties or their counsel within a reasonable time before the hearing.

(c) (1) If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions:

(A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay.

(B) The hearsay declarant is a minor under the age of 12 years who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under the age of 12 years shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

(C) The hearsay declarant is a peace officer as defined by Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, a health practitioner as defined by paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7 of the Penal Code, a social worker

licensed pursuant to Chapter 14 (commencing with Section 4996) of Division 2 of the Business and Professions Code, or a teacher who holds a credential pursuant to Chapter 2 (commencing with Section 44200) of Part 24 of Division 3 of Title 2 of the Education Code. For the purpose of this subdivision, evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court.

(D) The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.

(2) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed hearsay evidence and it gives the petitioner a reasonable period of time to meet the objection prior to a contested hearing.

(d) This section shall not be construed to limit the right of any party to the jurisdictional hearing to subpoena a witness whose statement is contained in the social study or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

SEC. 32. Section 387 of the Welfare and Institutions Code is amended to read:

387. An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(b) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the social worker shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 290.1 and 291.

(c) An order for the detention of the child pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 33. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, to new reports involving immediate life threats and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues, assessment of the person's concerns, needs, strengths, problems, and limitations, stabilization and linking with community services, and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams to develop interagency treatment strategies, to ensure maximum coordination with existing community resources, to ensure maximum access on behalf of elders and dependent adults, and to avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility, as defined in Section 9701 of the Welfare and Institutions Code, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in imminent danger and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop requirements for implementation of paragraph (2), including, but not limited to, guidelines for determining appropriate application of this section and any applicable documentation requirements.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement the requirements developed pursuant to paragraph (3) by means of all-county letters or similar instructions prior to adopting regulations for that purpose. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A county shall not be required to report or respond to a report pursuant to subdivision (b) that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections, the California Department of the Youth Authority, a county sheriff's department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

(d) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the person's concerns and needs on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for clients and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(e) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(f) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not

limited to, adult protective services, law enforcement, probation departments, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(g) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, and other household goods, advocacy with utility companies, and emergency response units.

SEC. 34. Any section of any act enacted by the Legislature during the 2003 calendar year that takes effect on or before January 1, 2004, and that amends, amends and renumbers, adds, repeals and adds, or repeals any one or more of the sections affected by this act, with the exception of Senate Bill 600, 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 2003 calendar year and takes effect on or before January 1, 2004, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 469

An act to amend Section 6086.7 of the Business and Professions Code, and to amend Sections 7810 and 7950 of, and to add Section 8620 to, the Family Code, and to amend Section 10553.1 of the Welfare and Institutions Code, relating to Native American children.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 6086.7 of the Business and Professions Code is amended to read:

6086.7. (a) A court shall notify the State Bar of any of the following:

(1) A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter. The court entering the final order shall transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.

(2) Whenever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.

(3) The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000).

(4) The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.

(b) In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.

(c) The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney.

SEC. 2. Section 7810 of the Family Code is amended to read:

7810. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of recognized Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) to the proceedings.

SEC. 3. Section 7950 of the Family Code is amended to read:

7950. (a) With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a placement in foster care is being made, the following considerations shall be used:

(1) Placement shall, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child. Diligent efforts shall be made by an agency or entity to which this

subdivision applies, to locate an appropriate relative. Before any child may be placed in long-term foster care, the court shall find that the agency or entity to which this subdivision applies has made diligent efforts to locate an appropriate relative and that each relative whose name has been submitted to the agency or entity as a possible caretaker, either by himself or herself or by other persons, has been evaluated as an appropriate placement resource.

(2) No agency or entity that receives any state assistance and is involved in foster care placements may do either of the following:

(A) Deny to any person the opportunity to become a foster parent on the basis of the race, color, or national origin of the person or the child involved.

(B) Delay or deny the placement of a child into foster care on the basis of the race, color, or national origin of the foster parent or the child involved.

(b) Subdivision (a) shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

(c) Nothing in this section precludes a search for an appropriate relative being conducted simultaneously with a search for a foster family.

SEC. 4. Section 8620 is added to the Family Code, to read:

8620. (a) (1) If a parent is seeking to relinquish a child pursuant to Section 8700 or execute an adoption placement agreement pursuant to Section 8801.3, the department, licensed adoption agency, or adoption service provider, as applicable, shall ask the child and the child's parent or custodian whether the child is, or may be, a member of, or eligible for membership in an Indian tribe or whether the child has been identified as a member of an Indian organization. The department, licensed adoption agency, or adoption service provider, as applicable, shall complete the forms provided for this purpose by the department and shall make this completed form a part of the file.

(2) If there is any oral or written information that indicates that the child is, or may be, an Indian child, the department, licensed adoption agency, or adoption service provider, as applicable, shall obtain the following information:

(A) The name of the child involved, and the actual date and place of birth of the child.

(B) The name, address, date of birth, and tribal affiliation of the birth parents, maternal and paternal grandparents, and maternal and paternal great-grandparents of the child.

(C) The name and address of extended family members of the child who have a tribal affiliation.

(D) The name and address of the Indian tribes or Indian organizations of which the child is, or may be, a member.

(E) A statement of the reasons why the child is, or may be, an Indian.

(3) (A) The department, licensed adoption agency, or adoption service provider, as applicable, shall send a notice, which shall include information obtained pursuant to paragraph (2) and a request for confirmation of the child's Indian status, to any parent and any custodian of the child, and to any Indian tribe of which the child is, or may be, a member or eligible for membership. If any of the information required under paragraph (2) cannot be obtained, the notice shall indicate that fact.

(B) The notice sent pursuant to subparagraph (A) shall describe the nature of the proceeding and advise the recipient of the Indian tribe's right to intervene in the proceeding on its own behalf or on behalf of a tribal member relative of the child.

(b) The department shall adopt regulations to ensure that if a child who is being voluntarily relinquished for adoption, pursuant to Section 8700, is an Indian child, the parent of the child shall be advised of his or her right to withdraw his or her consent and thereby rescind the relinquishment of an Indian child for any reason at any time prior to entry of a final decree of termination of parental rights or adoption, pursuant to Section 1913 of Title 25 of the United States Code.

(c) If a child who is the subject of an adoption proceeding after being relinquished for adoption pursuant to Section 8700, is an Indian child, the child's Indian tribe may intervene in that proceeding on behalf of a tribal member relative of the child.

(d) Any notice sent under this section shall, consistent with subdivision (f) of Rule 1439 of the California Rules of Court, as it read on January 1, 2003, comply with all of the following:

(1) Notice shall be sent by registered or certified mail with return receipt requested, and additional notice by first-class mail is recommended.

(2) Notice to the tribe shall be to the tribal chairman, unless the tribe has designated another agent for service.

(3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership.

(4) If the identity or location of an Indian relative or Indian custodian or the tribe cannot be determined, notice shall be sent to the office of the Secretary of the Interior, which has 15 days to provide notice as required.

(5) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter, including, but not limited to, the hearing at which the final adoption order is to be granted.

(e) If all prior notices required by this section have been provided to an Indian tribe, the Indian tribe receiving those prior notices is encouraged to provide notice to the department and to the licensed

adoption agency or adoption service provider, not later than five calendar days prior to the date of the hearing to determine whether or not the final adoption order is to be granted, indicating whether or not it intends to intervene in the proceeding required by this section, either on its own behalf or on behalf of a tribal member who is a relative of the child.

(f) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with an Indian tribe. Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, an Indian tribe, and the child, from voluntarily entering into a written agreement to permit continuing contact between the Indian tribe and the child, if the agreement is found by the court to have been entered into voluntarily and to be in the best interest of the child at the time the adoption petition is granted.

(g) With respect to giving notice to Indian tribes in the case of voluntary placements of Indian children pursuant to this section, a person, other than a birth parent of the child, shall be subject to a civil penalty if that person knowingly and willfully:

(1) Falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether the child is an Indian child or the parent is an Indian.

(2) Makes any false, fictitious, or fraudulent statement, omission, or representation.

(3) Falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact.

(4) Assists any person in physically removing a child from the State of California in order to obstruct the application of notification.

(h) Civil penalties for a violation of subdivision (g) by a person other than a birth parent of the child are as follows:

(1) For the initial violation, a person shall be fined not more than ten thousand dollars ($10,000).

(2) For any subsequent violation, a person shall be fined not more than twenty thousand dollars ($20,000).

(i) For purposes of this section, the terms ''Indian tribe,'' ''Indian organization,'' and ''Indian child'' are defined in Section 1903 of Title 25 of the United States Code.

SEC. 5. Section 10553.1 of the Welfare and Institutions Code is amended to read:

10553.1. (a) Notwithstanding any other provision of law, the director may enter into an agreement, in accordance with Section 1919 of Title 25 of the United States Code, with any California Indian tribe or any out-of-state Indian tribe, as defined in Section 1903 of Title 25 of

the United States Code, that has reservation lands that extend into this state.

(b) (1) An agreement under subdivision (a) shall provide for the delegation to the tribe or tribes of the responsibility that would otherwise be the responsibility of the county for the provision of child welfare services or assistance payments under the AFDC-FC program, or both.

(2) An agreement under subdivision (a) concerning the provision of child welfare services shall ensure that a tribe meets current service delivery standards provided for under Chapter 5 (commencing with Section 16500) of Part 4, and provides the local matching share of costs required by Section 10101.

(3) An agreement under subdivision (a) concerning assistance payments under the AFDC-FC program shall ensure that a tribe meets current foster care standards provided for under Article 5 (commencing with Section 11400) of Chapter 2 of Part 3, and provides the local matching share of costs required by Section 15200.

(c) Upon the implementation date of an agreement authorized by subdivision (a), the county that would otherwise be responsible for providing the child welfare services or AFDC-FC payments specified in the agreement as being provided by the tribe shall no longer be subject to that responsibility to children served under the agreement.

(d) Upon the effective date of an agreement authorized by subdivision (a), the tribe shall comply with fiscal reporting requirements specified by the department for federal and state reimbursement child welfare or AFDC-FC services.

(e) An Indian tribe that is a party to an agreement under subdivision (a), shall, in accordance with the agreement, be eligible to receive allocations of child welfare services funds pursuant to Section 10102.

(f) Implementation of an agreement under subdivision (a) may not be construed to impose liability upon, or to require indemnification by, the participating county or the State of California for any act or omission performed by an officer, agent, or employee of the participating tribe pursuant to this section.

CHAPTER 470

An act to add Sections 11077.1 and 11077.2 to, and to amend Section 11077 of, the Penal Code, relating to criminal offender record information.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 11077 of the Penal Code is amended to read:

11077. The Attorney General is responsible for the security of criminal offender record information. To this end, he or she shall:

(a) Establish regulations to assure the security of criminal offender record information from unauthorized access and disclosures by individuals and public and private agencies at all levels of operation in this state.

(b) Establish regulations to assure that this information is disseminated only in situations in which it is demonstrably required for the performance of an agency's or official's functions.

(c) Coordinate these activities with those of any interstate systems for the exchange of criminal offender record information.

(d) Cause to be initiated for employees of all agencies that maintain, receive, or are eligible to maintain or receive, criminal offender record information a continuing educational program in the proper use and control of criminal offender record information.

(e) Establish regulations as he or she finds appropriate to carry out his or her functions under this article.

SEC. 2. Section 11077.1 is added to the Penal Code, to read:

11077.1. (a) Commencing July 1, 2005, and except as provided by subdivision (b), the Department of Justice shall accept fingerprint images and related information to process criminal offender record information requests for employment, licensing, certification, custodial child placement, or adoption purposes, only if those images and related information are electronically transmitted. The department shall continually monitor the statewide availability of electronic transmission sights and work with public and private entities to ensure reasonable availability is maintained.

(b) The department shall, based on the regional unavailability of electronic transmission sites or when departmental processing procedures show a need, accept hard fingerprint cards in order to process criminal offender record information requests for employment, licensing, certification, custodial child placement, or adoption purposes.

SEC. 3. Section 11077.2 is added to the Penal Code, to read:

11077.2. (a) The Attorney General shall establish a communication network that allows the transmission of requests from private service providers in California to the Department of Justice for criminal offender record information for purposes of employment, licensing, certification, custodial child placement or adoption. The communication network shall allow any entity that is approved by the department to connect directly to the department.

(b) Users of the communication network shall undergo initial and remedial training as determined by the department. Failure or refusal to comply with the training requirement shall terminate the connection to the communication network until the training is completed. The scope of the training and the entities' level of participation shall be determined by the department.

(c) Users of the communication network shall comply with any policy, practice, procedure, or requirement deemed necessary by the department to maintain network security and stability. Failure or refusal to comply shall terminate the connection to the communication network until the department determines that there is satisfactory compliance.

(d) Users of the communication network shall only use hardware and software in relation to or for connection to the communication network that is currently approved and certified by the department, the National Institute of Standards and Technology, and the Federal Bureau of Investigation.

(e) Users of the communication network shall be independently responsible for securing all hardware, software, and telecommunication service or linkage necessary to accomplish connection to the communication network, once they are authorized by the department.

(f) The communication network shall be implemented by July 1, 2004.

(g) Nothing in this section is intended to authorize any entity to access or receive criminal offender record information from the Department of Justice.

CHAPTER 471

An act to amend Sections 51203 and 51283 of the Government Code, and to amend Sections 69.4, 75.11, 75.31, 155, 194, 213.7, 214, 214.01, 214.8, 218, 231, 254.5, 259.5, 259.7, 272, 423, 439.2, 532, 534, 1609.5, 1841, 6066.3, 6066.4, and 11006 of, to add Sections 74.7 and 254.6 to, and to repeal Sections 75.30, 401.9, 5098, and 5098.5 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2003. Filed with Secretary of State September 22, 2003.]

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

SECTION 1. Section 51203 of the Government Code is amended to read:

51203. The current fair market valuations referred to in Section 51283, upon the request of either of the parties to the contract, shall be subject to appeal to the county board pursuant to Section 1605 of the Revenue and Taxation Code.

SEC. 2. Section 51283 of the Government Code is amended to read:

51283. (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee. At the same time, the assessor shall send a notice to the assessee indicating the current fair market value of the land as though it were free of the contractual restriction. The notice shall advise the assessee of the right to appeal the fair market value of the land under Section 1605 of the Revenue and Taxation Code and that the appeal shall be filed within 60 days of the date of mailing printed on the notice or the postmark date therefor, whichever is later.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee that the landowner shall pay the county treasurer upon cancellation. That fee shall be an amount equal to $12^1/_2$ percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined that it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or is not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the record

of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first nine hundred eighty-five thousand dollars ($985,000) of revenue paid to the Controller pursuant to subdivision (e) in the 1992–93 fiscal year, and any other amount as approved in the final Budget Act for each fiscal year thereafter, shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of both of the following:

(1) The total cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 65570.

(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(e) When cancellation fees required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (d). The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30 days of the execution of a certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) It is the intent of the Legislature that fees paid to cancel a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.

SEC. 3. Section 69.4 of the Revenue and Taxation Code is amended to read:

69.4. (a) Notwithstanding any other provision of law, pursuant to the authority of subdivision (i) of Section 2 of Article XIII A of the California Constitution, the base year value of qualified contaminated property may be transferred to a replacement property that is acquired or newly constructed as a replacement for the contaminated property, pursuant to subparagraph (A) of paragraph (1) of that subdivision.

(b) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

SEC. 4. Section 74.7 is added to the Revenue and Taxation Code, to read:

74.7. (a) For purposes of subparagraph (B) of paragraph (1) of subdivision (i) of Section 2 of Article XIII A of the California Constitution, ''new construction'' does not include the repair or replacement of a substantially damaged or destroyed structure on qualified contaminated real property where the remediation of the environmental problems required the destruction of, or resulted in substantial damage to, a structure located on that property. The repaired or replacement structure shall be similar in size, utility, and function to the original structure.

(b) For purposes of this section:

(1) ''Substantially damaged or destroyed'' means the structure sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the damage.

(2) ''Similar in function'' means the replacement structure is subject to similar governmental restrictions, including, but not limited to, zoning.

(3) ''Similar in size and utility'' means the size and utility of the structure are interrelated and associated with its value. A structure is similar in size and utility only to the extent that the replacement structure is, or is intended to be, used in the same manner as the substantially damaged or destroyed structure, and its full cash value does not exceed 120 percent of the full cash value of the replaced structure if that structure was not contaminated. For purposes of this paragraph:

(A) A replacement structure or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced structure, shall, to the extent of the dissimilar use, be considered not similar in utility.

(B) A replacement structure or portion thereof that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the structure if that property were not contaminated, will be considered, to the extent of the excess, not similar in utility and size.

(4) To the extent that replacement property, or any portion thereof, is not similar in function, size, and utility, the property, or portion thereof, shall have a new base year value determined pursuant to Section 110.1.

(c) Only the owner or owners of the property substantially damaged or destroyed in the process of remediation of the contamination, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section.

(d) In order to receive the exclusion provided for in this section, the property owner shall notify the assessor in writing that he or she intends to claim the exclusion prior to, or within 30 days of, completion of any project covered by this section. All documents necessary to support the exclusion shall be filed by the property owner with the assessor not later

than six months after the completion of the property. A claimant shall not be eligible for the exclusion provided by this section unless the claimant provides to the assessor the following information:

(1) Proof that the claimant did not participate in, or acquiesce to, any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is related to any individual or entity that committed that act or omission.

(2) Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

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

(4) The date of the claimant's purchase and the date of completion of new construction.

(e) This section applies to new construction completed on or after January 1, 1995.

SEC. 5. Section 75.11 of the Revenue and Taxation Code is amended to read:

75.11. (a) If the change in ownership occurs or the new construction is completed on or after January 1 but on or before May 31, then there shall be two supplemental assessments placed on the supplemental roll. The first supplemental assessment shall be the difference between the new base year value and the taxable value on the current roll. In the case of a change in ownership of the full interest in the real property, the second supplemental assessment shall be the difference between the new base year value and the taxable value to be enrolled on the roll being prepared. If the change in ownership is of only a partial interest in the real property, the second supplemental assessment shall be the difference between the sum of the new base year value of the portion transferred plus the taxable value on the roll being prepared of the remainder of the property and the taxable value on the roll being prepared of the whole property. For new construction, the second supplemental assessment shall be the value change due to the new construction.

(b) If the change in ownership occurs or the new construction is completed on or after June 1 but before the succeeding January 1, then the supplemental assessment placed on the supplemental roll shall be the difference between the new base year value and the taxable value on the current roll.

(c) If there are multiple changes in ownership or multiple completions of new construction, or both, with respect to the same real property during the same assessment year, then there shall be a net supplemental assessment placed on the supplemental roll, in addition to the assessment pursuant to subdivision (a) or (b). The net supplemental

assessment shall be the most recent new base year value less the sum of (1) the previous entry or entries placed on the supplemental roll computed pursuant to subdivision (a) or (b), and (2) the corresponding taxable value on the current roll or the taxable value to be entered on the roll being prepared, or both, depending on the date or dates the change of ownership occurs or new construction is completed as specified in subdivisions (a) and (b).

(d) No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph (1), (2), or (3), as follows:

(1) The fourth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred.

(2) The eighth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred, if the penalty provided for in Section 504 is added to the assessment.

(3) The eighth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred, if the change in ownership was unrecorded and a change in ownership statement required by Section 480 or preliminary change in ownership report, as required by Section 480.3, was not timely filed.

(4) Notwithstanding paragraphs (1), (2), and (3), there shall be no limitation period on making a supplemental assessment, if the penalty provided for in Section 503 is added to the assessment.

For the purposes of this subdivision, ''assessment year'' means the period beginning annually as of 12:01 a.m. on the first day of January and ending immediately prior to the succeeding first day of January.

(e) If, before the expiration of the applicable period specified in subdivision (d) for making a supplemental assessment, the taxpayer and the assessor agree in writing to extend the period for making a supplemental assessment, correction, or claim for refund, a supplemental assessment may be made at any time prior to the expiration of that extended period. The extended period may be further extended by successive written agreements entered into prior to the expiration of the most recent extension.

SEC. 6. Section 75.30 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 75.31 of the Revenue and Taxation Code is amended to read:

75.31. (a) Whenever the assessor has determined a new base year value as provided in Section 75.10, the assessor shall send a notice to the assessee showing the following:

(1) The new base year value of the property that has changed ownership, or the new base year value of the completed new construction

that shall be added to the existing taxable value of the remainder of the property.

(2) The taxable value appearing on the current roll, and if the change in ownership or completion of new construction occurred between January 1 and May 31, the taxable value on the roll being prepared.

(3) The date of the change in ownership or completion of new construction.

(4) The amount of the supplemental assessments.

(5) The exempt amount, if any, on the current roll or the roll being prepared.

(6) The date the notice was mailed.

(7) A statement that the supplemental assessment was determined in accordance with Article XIII A of the California Constitution that generally requires reappraisal of property whenever a change in ownership occurs or property is newly constructed.

(8) Any other information which the board may prescribe.

(b) In addition to the information specified in subdivision (a), the notice shall inform the assessee of the procedure for filing a claim for exemption that is to be filed within 30 days of the date of the notice.

(c) (1) The notice shall advise the assessee of the right to an informal review and the right to appeal the supplemental assessment, and, unless subject to paragraph (2) or (3), that the appeal shall be filed within 60 days of the date of mailing printed on the notice or the postmark date therefor, whichever is later. 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.

(2) For counties in which the board of supervisors has adopted the provisions of subdivision (c) of Section 1605, and the County of Los Angeles, the notice shall advise the assessee of the right to appeal the supplemental assessment, and that the appeal shall, except as provided in paragraph (3), be filed within 60 days of the date of mailing printed on the tax bill or the postmark date therefor, whichever is later. 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) (A) If the taxpayer does not receive a notice in accordance with paragraph (1) at least 15 days prior to the deadline to file the application described in Section 1603, the affected party or his or her agent may file an application within 60 days of the date of mailing printed on the tax bill or the postmark thereof, whichever is later, along with an affidavit declaring under penalty of perjury that the notice was not timely received.

(B) Notwithstanding any other provision of this subdivision, an application for reduction in a supplemental assessment may be filed within 12 months following the month in which the assessee is notified of that assessment, if the affected party or his or her agent and the assessor stipulate that there is an error in 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 the assessed value is filed in accordance with Section 1607.

(d) The notice shall advise the assessee of both of the following:

(1) The requirements, procedures, and deadlines with respect to an application for the reduction of a base year value pursuant to Section 80, or the reduction of an assessment pursuant to Section 1603.

(2) The criteria under Section 51 for the determination of taxable value, and the requirement of Section 1602 that the custodial officer of the local roll make the roll, or a copy thereof, available for inspection by all interested parties during regular office hours.

(e) The notice shall advise the assessee that if the supplemental assessment is a negative amount the auditor shall make a refund of a portion of taxes paid on assessments made on the current roll, or the roll being prepared, or both.

(f) The notice shall be furnished by the assessor to the assessee by regular United States mail directed to the assessee at the assessee's latest address known to the assessor.

(g) The notice given by the assessor under this section shall be on a form approved by the State Board of Equalization.

SEC. 8. Section 155 of the Revenue and Taxation Code is amended to read:

155. The time fixed in this division for the performance of any act by the assessor or county board may be extended by the board or its executive director for not more than 30 days, or, in case of public calamity, 40 days. If an extension of time is granted, the executive director of the board shall give written notice thereof to the county auditor, county tax collector, and the officer or county board to whom the extension is granted. The executive director shall inform the board at its next regular meeting of any action with respect to extensions taken by him or her. There shall be the same extension of time for any act of the board dependent on the act for which time was extended.

SEC. 9. 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 ten thousand dollars ($10,000), 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. 10. Section 213.7 of the Revenue and Taxation Code is amended to read:

213.7. (a) As used in Section 214, ''property used exclusively for religious, hospital, scientific or charitable purposes'' shall include the property of a volunteer fire department that is used exclusively for volunteer fire department purposes, provided that the department qualifies for exemption either under Section 23701d or 23701f of this

code or under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. This section shall not be construed to enlarge the ''welfare exemption'' to apply to organizations qualified under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, but not otherwise qualified for the ''welfare exemption'' under other provisions of this code.

(b) As used in this section, ''volunteer fire department'' means any fund, foundation or corporation regularly organized for volunteer fire department purposes, that qualified as an exempt organization on or before January 1, 1969, either under Section 23701d or 23701f of this code or under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, having official recognition and full or partial support of the government of the county, city, or district in which the volunteer fire department is located, and that has functions having an exclusive connection with the prevention and extinguishing of fires within the area of the county, city, or district extending official recognition for the benefit of the public generally and to lessen the burdens of the entity of government which would otherwise be obligated to furnish such fire protection.

(c) For purposes of subdivision (a), an organization shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

SEC. 11. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) ''Occasional use'' means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) ''Fundraising activities'' means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive. The owner of the other organization also shall file with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(E) Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the ''welfare exemption.'' This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations

meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of,

the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, ''low and moderate income'' has the same meaning as the term ''persons and families of low or moderate income'' as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which either of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars ($20,000) of tax.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000–01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, ''lower income households'' has the same meaning as the term ''lower income households'' as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would

be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, ''emergency or temporary shelter'' means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, ''educational purposes'' means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and shall not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

SEC. 11.2. Section 214.01 of the Revenue and Taxation Code is amended to read:

214.01. (a) For the purpose of Section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation, or in the case of any other fund or foundation, or corporation chartered by an act of Congress, in the bylaws, articles of association, constitution, or regulations thereof, as determined by the State Board of Equalization.

(b) If, when performing the duties specified by Section 254.6, the board finds that an applicant for the welfare exemption is ineligible for an organizational clearance certificate, because at the time of the filing of the claim required by Section 254.6, the applicant's articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, constitution or regulations, did not comply with the provisions of this section, the board shall notify the applicant in writing. The applicant shall have until the next succeeding

lien date to amend its articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, constitution or regulations, and to file a certified copy of these amendments that conform to the provisions of this section with the board, and the board shall make a finding that the applicant, if otherwise qualified, is eligible for an organizational clearance certificate and forward that finding to the assessor.

SEC. 11.3. Section 214.8 of the Revenue and Taxation Code is amended to read:

214.8. (a) Except as provided in Sections 213.7 and 231, and as provided in subdivision (g) of Section 214 with respect to veterans' organizations, the ''welfare exemption'' shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701d of this code or Section 501(c)(3) of the Internal Revenue Code. This section shall not be construed to enlarge the ''welfare exemption'' to apply to organizations qualified under Section 501(c)(3) of the Internal Revenue Code of 1954 but not otherwise qualified for the ''welfare exemption'' under other provisions of this code.

The exemption for veterans' organizations shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701f or 23701w of this code or under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code. This section shall not be construed to enlarge the ''veterans' organization exemption'' to apply to organizations qualified under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code but not otherwise qualified for the ''veterans' organization exemption'' under other provisions of this code.

(b) For purposes of subdivision (a), an organization shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

SEC. 11.4. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners' property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the Constitution. That exemption shall be in the amount of seven thousand dollars ($7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran's exemption.

(c) For purposes of this section, all of the following apply:

(1) ''Owner'' includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative

housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) ''Dwelling'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) ''Dwelling'' includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning property taxes among owners of share or membership interests in the cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a ''dwelling'' or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the Constitution shall first be applied to the building, structure or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 12. Section 231 of the Revenue and Taxation Code is amended to read:

231. (a) Property that is owned by a nonprofit corporation and leased to, and used exclusively by, government for its interest and benefit shall be exempt from taxation within the meaning of ''charitable purposes'' in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution if:

(1) All of the provisions of Section 214 are complied with, except paragraph (6) of subdivision (a). For purposes of paragraph (6) of subdivision (a) of Section 214, irrevocable dedication to charitable

purpose shall be deemed to exist if the lease provides that the property shall be transferred in fee to the entity of government leasing the same upon the sooner of either the liquidation, dissolution, or abandonment of the owner or at the time the last rental payment is made under the provisions of the lease.

(2) All of the provisions of Section 254.5 relating to owners are complied with, commencing during calendar year 1969.

(3) All of the provisions of Section 214.01 are complied with by March 15, 1970.

(b) As used in this section ''property'' means:

(1) Any building or structure of a kind or nature which is uniquely of a governmental character and includes, but is not limited to, the following:

(A) City halls.

(B) Courthouses.

(C) Administration buildings.

(D) Police stations, jails, or detention facilities.

(E) Fire stations.

(F) Parks, playgrounds, or golf courses.

(G) Hospitals.

(H) Water systems and waste water facilities.

(I) Toll bridges.

(2) Any other property required for the use and occupation of the buildings and leased to government.

(3) Any possessory interest of the nonprofit corporation in property and in the land upon which the property was constructed and so much of the surrounding land that is required for the use and occupation of the property.

(4) Any building and its equipment in the course of construction on or after the first Monday of March, 1954, together with the land on which it is located as may be required for the use and occupation of the building when the building and equipment is being constructed for the sole purpose of being leased to government to lessen its burden.

''Uniquely of a governmental character'' means the property, except hospitals, water systems, waste water facilities, golf courses, and toll bridges, is not intended to produce income or revenue in the form of rents or admission, user or service fees, or charges.

(c) As used in this section ''property'' does not include any possessory interest of any person or organization not exempt from taxation.

(d) As used in this section ''nonprofit corporation'' means a community chest, fund, foundation or corporation, not conducted for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and that nonprofit corporation is

organized and operated for the sole purpose of leasing property to government and to lessen the burden of government and, in fact, only leases property to government. That nonprofit corporation shall qualify as an exempt organization either under Section 23701f or 23701u of this code or Section 501(c)(4) of the Internal Revenue Code of 1986. This subdivision is not intended to enlarge the ''welfare exemption'' to apply to organizations qualified under Section 501(c)(4) of the Internal Revenue Code of 1986 but not otherwise qualified for the ''welfare exemption'' under this section. Nonprofit corporations that meet the tests of this subdivision are deemed to be organized and operated for charitable purposes.

(e) As used in this section ''government'' means the State of California, a city, city and county, county, public corporation, and a hospital district.

(f) The exemption provided for in this section shall be deemed to be within the ''welfare exemption'' for purposes of Section 251.

(g) For leases first entered into by and between government and a nonprofit corporation on or after January 1, 1969, all requirements of this section shall be met for the property and the nonprofit corporation to qualify for the exemption provided by this section.

(h) For leases first entered into by and between government and a nonprofit corporation on or before December 31, 1968, all requirements of this section shall be met except that the last unnumbered paragraph of subdivision (b) shall not apply and for the purposes of subdivision (b)(1) the list of real property qualifying for this exemption includes community recreation buildings or facilities, golf courses, airports, water, sewer and drainage facilities, music centers and their related facilities, and public parking incidental to and in connection with one of the buildings or structures set forth in this section.

(i) Property exempt under this section shall be located within the boundaries of the entity of government leasing the same.

(j) Where the construction has commenced on or after January 1, 1969, improvements shall be advertised and put to competitive bid to qualify for the exemption provided by this section.

(k) For purposes of subdivision (d), a nonprofit corporation shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

SEC. 12.1. Section 254.5 of the Revenue and Taxation Code is amended to read:

254.5. (a) Claims for the welfare exemption and the veterans' organization exemption shall be filed on or before February 15 of each year with the assessor.

The assessor may not approve a property tax exemption claim until the claimant has been issued a valid organizational clearance certificate pursuant to Section 254.6. Financial statements shall be submitted only if requested in writing by the assessor.

(b) (1) The assessor shall review all claims for the welfare exemption to ascertain whether the property on which the exemption is claimed meets the requirements of Section 214. In this connection, the assessor shall consider, among other matters, whether:

(A) Any capital investment of the owner or operator for expansion of a physical plant is justified by the contemplated return thereon, and required to serve the interests of the community.

(B) The property on which the exemption is claimed is used for the actual operation of an exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(2) The assessor may institute an audit or verification of the operations of the owner or operator of the applicant's property to ascertain whether both the owner and operator meet the requirements of Section 214.

(c) (1) The assessor may deny a claim for the welfare exemption on a property, notwithstanding that the claimant has been granted an organizational clearance certificate by the board.

(2) If the assessor finds that the claimant's property is ineligible for the welfare exemption, the assessor shall notify the claimant in writing of all of the following:

(A) That the property is ineligible for the welfare exemption.

(B) That the claimant may seek a refund of property taxes paid by filing a refund claim with the county.

(C) That if the claimant's refund claim with the county is denied, the claimant may file a refund action in superior court.

(d) Notwithstanding subdivision (a), an applicant, granted a welfare exemption and owning any property exempted pursuant to Section 214.15 or Section 231, shall not be required to reapply for the welfare exemption in any subsequent year in which there has been no transfer of, or other change in title to, the exempted property and the property is used exclusively by a governmental entity or by a nonprofit corporation described in Section 214.15 for its interest and benefit. The applicant shall notify the assessor on or before February 15 if, on or before the preceding lien date, the applicant became ineligible for the welfare exemption or if, on or before that lien date, the property was no longer owned by the applicant or otherwise failed to meet all requirements for the welfare exemption.

Prior to the lien date, the assessor shall annually mail a notice to every applicant relieved of the requirement of filing an annual application by this subdivision.

The notice shall be in a form and contain that information that the board may prescribe, and shall set forth the circumstances under which the property may no longer be eligible for exemption, and advise the applicant of the duty to inform the assessor if the property is no longer eligible for exemption.

The notice shall include a card that is to be returned to the assessor by any applicant desiring to maintain eligibility for the welfare exemption under Section 214.15 or Section 231. The card shall be in the following form:

To all persons who have received a welfare exemption under Section 214.15 or Section 231 of the Revenue and Taxation Code for the ____ fiscal year.

Question: Will the property to which the exemption applies in the ____ fiscal year continue to be used exclusively by government or by an organization as described in Section 214.15 for its interest and benefit in the ____ fiscal year?

YES ___ NO ___

Signature: _____

Title: _____

Failure to return this card does not of itself constitute a waiver of exemption as called for by the California Constitution, but may result in onsite inspection to verify exempt activity.

(e) Upon any indication that a welfare exemption on the property has been incorrectly granted, the assessor shall redetermine eligibility for the exemption. If the assessor determines that the property, or any portion thereof, is no longer eligible for the exemption, he or she shall immediately cancel the exemption on so much of the property as is no longer eligible for the exemption.

(f) If a welfare exemption on the property has been incorrectly allowed, an escape assessment as provided by Article 4 (commencing with Section 531) of Chapter 3 in the amount of the exemption, with interest as provided in Section 506, shall be made, and a penalty shall be assessed for any failure to notify the assessor as required by this section in an amount equaling 10 percent of the escape assessment, but may not exceed two hundred fifty dollars ($250).

(g) Pursuant to Section 15640 of the Government Code, the board shall review the assessor's administration of the welfare exemption as

part of the board's survey of the county assessment roll to ensure the proper administration of the exemption.

SEC. 12.2. Section 254.6 is added to the Revenue and Taxation Code, to read:

254.6. (a) An organization that intends to claim the welfare exemption shall file with the State Board of Equalization a claim for an organizational clearance certificate.

(b) The board staff shall review each claim for an organizational clearance certificate to ascertain whether the organization meets the requirements of Section 214 and shall issue a certificate to a claimant that meets these requirements. In this connection, the board staff shall consider, among other matters, whether:

(1) The services and expenses of the owner or operator (including salaries) are excessive, based upon like services and salaries in comparable public or private institutions.

(2) The operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals.

(c) Any claim of any organization that files for an organizational clearance certificate for the first time shall be accompanied by the claimant's corporate identification number, mailing address, and all of the following documents:

(1) A certified copy of the financial statements of the organization.

(2) A certified copy of the articles of incorporation and any amendments thereto, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, constitution, or regulations and any amendments thereto.

(3) A copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or, in the alternative, the Internal Revenue Service, that states that the organization qualifies as an exempt organization under the appropriate provisions of the Bank and Corporation Tax Law or the Internal Revenue Code.

(d) (1) If the board staff determines that a claimant is not eligible for an organizational clearance certificate, the board shall notify the claimant of the ineligibility.

(2) The claimant may file an appeal of the board staff's finding of ineligibility with the board within 60 days of the date of mailing of the notice of ineligibility. The appeal of the board staff's finding shall be in writing and shall state the specific grounds upon which the appeal is founded.

(3) The board shall conduct a hearing on the appeal in accordance with any rules of notice, procedure, and briefing as the board shall prescribe. The parties to the hearing or proceeding shall be the board staff and the claimant appealing the finding of ineligibility. The board staff

and the claimant may agree in writing to submit the matter to the board for a decision without a hearing. The board shall provide written findings and conclusions or a written decision to support its decision.

(e) (1) Once granted, an organizational clearance certificate shall remain valid until the board staff determines that the organization no longer meets the requirements of Section 214.

(2) If the board staff determines that the organization no longer meets the requirements of Section 214, the board staff shall revoke the certificate and notify the claimant and each county assessor of the revocation.

(3) The organization may file an appeal of the board staff's revocation with the board within 60 days of the date of mailing of the notice revocation. The appeal of the revocation shall be in writing and shall state the specific grounds upon which the appeal is founded.

(4) The board shall conduct a hearing on the appeal in accordance with any rules of notice, procedure, and briefing as the board shall prescribe. The parties to the hearing or proceeding shall be the board staff and the claimant appealing the finding of ineligibility. The board staff and the claimant may agree in writing to submit the matter to the board for decision without hearing. The board shall provide written findings and conclusions or a written decision to support its decision.

(f) Pursuant to Section 15618 of the Government Code, the board may institute an audit or verification of an organization to ascertain whether the organization meets the requirements of Section 214.

SEC. 12.3. Section 259.5 of the Revenue and Taxation Code is amended to read:

259.5. The claim for the welfare exemption shall show that the property use requirements entitling the property to the exemption are met, and that the claimant has a valid organizational clearance certificate issued pursuant to Section 254.6.

SEC. 12.4. Section 259.7 of the Revenue and Taxation Code is amended to read:

259.7. The claim for the veterans' organization exemption shall show that the property use requirements entitling the property to the exemption are met, and that the claimant has a valid organizational clearance certificate issued pursuant to Section 254.6.

SEC. 12.5. Section 272 of the Revenue and Taxation Code is amended to read:

272. Notwithstanding any other provision of law, whenever a valid application for exemption on the property is filed pursuant to Section 270 or 271 and the assessor grants the claim prior to the completion of the roll for the year for which the exemption is claimed, the assessor shall enroll the property so as to provide for the amount of exemption on the property's assessed value as provided by the applicable section.

When the application for exemption on the property or the granting of the claim occurs after completion of the roll, the assessor shall initiate an action to correct the roll by addition of the appropriate amount of exemption on the property. Upon notification by the assessor, the auditor shall make the appropriate adjustment on the roll.

Where authorized under the provisions of this article, the tax, penalty or interest thereon subject to cancellation or refund shall be canceled pursuant to Article 1 (commencing with Section 4985) of Chapter 4 of Part 9, as if it had been levied or charged erroneously, and, if paid, a refund thereof shall be made pursuant to Article 1 (commencing with Section 5096) of Chapter 5 of Part 9 as if it had been erroneously collected. The amount of tax, penalty or interest which is not canceled or refunded under this article with respect to property tax exemptions covered by this article and filed late may be paid in installments as provided in Chapter 3 (commencing with Section 4186) of Part 7.

SEC. 12.6. Section 401.9 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 423 of the Revenue and Taxation Code is amended to read:

423. Except as provided in Sections 423.7 and 423.8, when valuing enforceably restricted open-space land, other than land used for the production of timber for commercial purposes, the county assessor shall not consider sales data on lands, whether or not enforceably restricted, but shall value these lands by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available the income shall be the fair rent which can be imputed to the land being valued based upon rent actually received for the land by the owner and upon typical rentals received in the area for similar land in similar use, where the owner pays the property tax. Any cash rent or its equivalent considered in determining the fair rent of the land shall be the amount for which comparable lands have been rented, determined by average rents paid to owners as evidenced by typical land leases in the area, giving recognition to the terms and conditions of the leases and the uses permitted within the leases and within the enforceable restrictions imposed.

(2) Where sufficient rental information is not available, the income shall be that which the land being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the land is enforceably restricted. There shall be a rebuttable presumption that ''prudent management'' does not include use of the land for a recreational use, as defined in subdivision (n) of Section 51201 of the Government Code, unless the land is actually devoted to that use.

(3) Notwithstanding any other provision herein, if the parties to an instrument which enforceably restricts the land stipulate therein an amount which constitutes the minimum annual income per acre to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For the purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, which the land can be expected to yield to an owner-operator annually on the average from any use of the land permitted under the terms by which the land is enforceably restricted, including, but not limited to, that from the production of salt and from typical crops grown in the area during a typical rotation period, as evidenced by historic cropping patterns and agricultural commodities grown. When the land is planted to fruit-bearing or nut-bearing trees, vines, bushes, or perennial plants, the revenue shall not be less than the land would be expected to yield to an owner-operator from other typical crops grown in the area during a typical rotation period, as evidenced by historic cropping patterns and agricultural commodities grown. Proceeds from the sale of the land being valued shall not be included in the revenue from the land.

Expenditures shall be any outlay or average annual allocation of money or money's worth that has been charged against the revenue received during the period used in computing that revenue. Those expenditures to be charged against revenue shall be only those that are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the land, interest on funds invested in trees and vines valued as land as provided by Section 429, property taxes, corporation income taxes, or corporation franchise taxes based on income. When the income used is from operating the land being valued or from operating comparable land, amounts shall be excluded from the income to provide a fair return on capital investment in operating assets other than the land, to amortize depreciable property, and to fairly compensate the owner-operator for his operating and managing services.

(b) The capitalization rate to be used in valuing land pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component, to be determined by the board and announced no later than October 1 of the year preceding the assessment year, which is the arithmetic mean, rounded to the nearest $^1/_4$ percent, of the yield rate for long-term United States government bonds, as most

recently published by the Federal Reserve Board as of September 1, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to each of the four immediately preceding assessment years.

(2) A risk component that shall be a percentage determined on the basis of the location and characteristics of the land, the crops to be grown thereon and the provisions of any lease or rental agreement to which the land is subject.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the land for the assessment year times the assessment ratio. The estimated total tax rate shall be the cumulative rates used to compute the state's reimbursement of local governments for revenues lost on account of homeowners' property tax exemptions in the tax rate area in which the enforceably restricted land is situated.

(4) A component for amortization of any investment in perennials over their estimated economic life when the total income from land and perennials other than timber exceeds the yield from other typical crops grown in the area.

(c) The value of the land shall be the quotient for the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b).

(d) Unless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

In determining the 1975 base year value under Article XIII A of the California Constitution for any parcel for comparison, the county may charge a contractholder a fee limited to the reasonable costs of the determination not to exceed twenty dollars ($20) per parcel.

(e) If the parties to an instrument that creates an enforceable restriction expressly so provide therein, the assessor shall assess those improvements that contribute to the income of land in the manner provided herein. As used in this subdivision ''improvements which contribute to the income of the land'' shall include, but are not limited to, wells, pumps, pipelines, fences, and structures which are necessary or convenient to the use of the land within the enforceable restrictions imposed.

SEC. 14. Section 439.2 of the Revenue and Taxation Code is amended to read:

439.2. When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted.

Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those that are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as most recently published by the Federal Housing Finance Board as of September 1, rounded to the nearest one-fourth of 1 percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board as of September 1, rounded to the nearest one-fourth of 1 percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

SEC. 15. Section 532 of the Revenue and Taxation Code is amended to read:

532. (a) Except as provided in subdivision (b), any assessment made pursuant to either Article 3 (commencing with Section 501) or this

article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(b) (1) Any assessment to which the penalty provided for in Section 504 must be added shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(2) Any assessment resulting from an unrecorded change in ownership for which either a change in ownership statement, as required by Section 480 or a preliminary change in ownership report, as required by Section 480.3, is not timely filed with respect to the event giving rise to the escape assessment or underassessment shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed. For purposes of this paragraph, an ''unrecorded change in ownership'' means a deed or other document evidencing a change in ownership that was not filed with the county recorder's office at the time the event took place.

(3) Notwithstanding paragraphs (1) and (2), in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership or change in control and either the penalty provided for in Section 503 must be added or a change in ownership statement, as required by Section 480.1 or 480.2 was not filed with respect to the event giving rise to the escape assessment or underassessment, an escape assessment shall be made for each year in which the property escaped taxation or was underassessed.

(c) For purposes of this section, ''assessment year'' means the period defined in Section 118.

SEC. 16. Section 534 of the Revenue and Taxation Code is amended to read:

534. (a) Assessments made pursuant to Article 3 (commencing with Section 501) or this article shall be treated like, and taxed at the same rate applicable to, property regularly assessed on the roll on which it is entered, unless the assessment relates to a prior year and then the tax rate of the prior year shall be applied, except that the tax rate for years prior to the 1981–82 fiscal year shall be divided by four.

(b) No assessment described in subdivision (a) shall be effective for any purpose, including its review, equalization and adjustment by the Board of Equalization, until the assessee has been notified thereof personally or by United States mail at his or her address as contained in the official records of the county assessor. For purposes of Section 532, the assessment shall be deemed made on the date on which it is entered on the roll pursuant to Section 533, if the assessee is notified of the assessment within 60 days after the statute of limitations or the placing of the escape assessment on the assessment roll. Otherwise the

assessment shall be deemed made only on the date the assessee is so notified.

(c) The notice given by the assessor pursuant to this section shall include all of the following:

(1) The date the notice was mailed.

(2) Information regarding the assessee's right to an informal review and the right to appeal the assessment, and except in a case in which paragraph (3) applies, that the appeal shall be filed within 60 days of the date of mailing printed on the notice or the postmarked date therefor, whichever is later. For the purposes of equalization proceedings, the assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(3) For counties in which the board of supervisors has adopted a resolution in accordance with subdivision (c) of Section 1605, and the County of Los Angeles, the notice shall advise the assessee of the right to appeal the assessment, and that the appeal shall be filed within 60 days of the date of mailing printed on the tax bill or the postmark therefor, whichever is later. For the purposes of equalization proceedings, the assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(4) A description of the requirements, procedures, and deadlines with respect to an application for the reduction of an assessment pursuant to Section 1605.

(d) (1) The notice given by the assessor under this section shall be on a form approved by the board.

(2) Giving of the notice required by Section 531.8 shall not satisfy the requirements of this section.

SEC. 17. Section 1609.5 of the Revenue and Taxation Code is amended to read:

1609.5. (a) Whenever an employee of the board is desired as a witness before a county board in a hearing on an application for reduction, a subpoena requiring his or her attendance may be served by delivering a copy either to the employee personally or to the executive director of the board at his or her office in Sacramento.

(b) The employee shall attend as a witness as required by the subpoena, regardless of the distance to be traveled, provided that the subpoena is accompanied by fees payable to the State Board of Equalization in the amount of two hundred dollars ($200) per day for each day that the employee is required to remain in attendance pursuant to the subpoena. These fees are to be paid by the party requesting the subpoena.

(c) The employee shall receive the salary or other compensation to which he or she is normally entitled during the time that he or she travels to and from the place where the hearing is conducted and while he or she

is required to remain at that place pursuant to the subpoena. He or she shall also receive usual and customary travel expenses and per diem. If the actual expenses should later prove to be less than the amount paid by the party, the excess shall be refunded by the board.

(d) If the employee is subpoenaed at the request of the applicant and the county board grants a reduction in the assessment, the county board may reimburse the applicant in whole or in part for the actual witness fees paid pursuant to this section.

(e) Any person who pays or offers to pay any money or other form of consideration for the services of any employee of the board required to appear as a witness, other than the compensation provided in this section, is guilty of a misdemeanor, and any employee who receives this payment is guilty of a misdemeanor.

SEC. 18. Section 1841 of the Revenue and Taxation Code is amended to read:

1841. When the review, equalization, and adjustment are completed, the executive director of the board shall transmit to the auditor and the governing body of the taxing agency whose assessment is questioned, and to the applicant a notice of the action of the board with respect to the assessment. The notice is prima facie evidence of the regularity of all proceedings of the board resulting in the action that is the subject matter of the notice. Upon receipt of the notice the auditor shall enter upon the local roll any change in the assessment resulting from the action of the board.

SEC. 19. Section 5098 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 5098.5 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 6066.3 of the Revenue and Taxation Code is amended to read:

6066.3. (a) A city, county, or city and county may collect information from persons desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property under this part and shall transmit that information to the board. The information shall be provided to the board in a format to be determined by the board after consulting with the League of California Cities and the California State Association of Counties.

(b) The information submitted to the board under subdivision (a) shall serve as all of the following:

(1) The preliminary application for a seller's permit.

(2) Notification to the board by the city, county, or city and county of a person desiring to engage in the business of selling of tangible personal property in that jurisdiction.

(3) Notice to the board for purposes of redistribution under Section 7209.

(c) The board shall issue a determination regarding issuance of a seller's permit and receipt of notification for purposes of paragraphs (2) and (3) of subdivision (b). The board shall provide a copy of that determination and receipt of notification to the city, county, or city and county from which the board has received information under subdivision (a). The board shall make its determination as follows:

(1) For persons for whom a determination can be made based on the information submitted, the determination shall be issued within 30 days of receipt of the information.

(2) For persons for whom additional information is required before a determination can be made, the determination shall be issued within 120 days of receipt of the information.

(d) The board shall, after consulting with the League of California Cities and the California State Association of Counties, adopt standardized data addressing and naming conventions that are compatible with local jurisdiction conventions for new registrants and, to the extent possible, for current accounts.

(e) A city, county, or city and county may not charge applicants a fee for collecting and transmitting information pursuant to this section.

SEC. 21.1. Section 6066.4 of the Revenue and Taxation Code is amended to read:

6066.4. A city, county, or city and county may require each person desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property to provide his or her seller's permit account number, if any.

SEC. 21.3. Section 11006 of the Revenue and Taxation Code is amended to read:

11006. (a) Commencing on December 31, 2001, the Controller, in consultation with the Department of Motor Vehicles and the Department of Finance, shall recalculate the distribution of the amount of motor vehicle license fees paid by commercial vehicles that are subject to Section 9400.1 of the Vehicle Code and transfer those sums from the General Fund as follows in the following order:

(1) An amount sufficient to cover all allocations and interception of funds associated with all pledges, liens, encumbrances and priorities as set forth in Section 25350.6 of the Government Code, which shall be transferred so as to pay that allocation.

(2) An amount sufficient to continue allocations to the State Treasury to the credit of the Vehicle License Fee Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code, which would be in the same amount had the amendments made by the act that added this section to Section 10752 of

the Revenue and Taxation Code not been enacted, which shall be deposited in the State Treasury to the credit of the Vehicle License Fee Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code.

(3) An amount sufficient to continue allocations to the State Treasury to the credit of the Vehicle License Fee Growth Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code, which would be in the same amount had the amendments made by the act that added this section to Section 10752 of the Revenue and Taxation Code not been enacted, which shall be deposited in the State Treasury to the credit of the Vehicle License Fee Growth Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code.

(4) An amount sufficient to cover all allocations and interception of funds associated with all pledges, liens, encumbrances and priorities, other than those referred to in paragraph (1), as set forth in Section 25350 and following of, Section 53584 and following of, 5450 and following of, the Government Code, which shall be transferred so as to pay those allocations.

(b) The balance of any funds not otherwise allocated pursuant to subdivision (a) shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(c) In enacting paragraphs (1) and (4) of subdivision (a), the Legislature declares that paragraphs (1) and (4) of subdivision (a), shall not be construed to obligate the State of California to make any payment to a city, city and county, or county from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a city, city and county, or county, including, but not limited to, any payment in satisfaction of any debt or liability incurred or so guaranteed if the State of California had not so bound itself prior to the enactment of this section.

SEC. 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.

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